

MINUTES
Approved by the Committee
Committee on Federalism
Tuesday, September 28, 2021
10:00 A.M.
Room WW02
Boise, Idaho

Cochair Vick called the meeting to order at 10:02 a.m.; a silent roll call was requested.

Members in attendance: Cochair Senator Vick and Senators Johnson, Harris, and Nelson (via Zoom); Cochair Representative Dixon and Representatives Boyle, Blanksma, Horman, and Mathias; LSO staff Katharine Gerrity, Kristin Ford, Rob Sepich, Jennifer Kish, and Trevor Ahrens. Absent/excused: Senator Crabtree.

Audience sign-in: Clark Corbin-Idaho Capital Sun; Jennifer Adornette; Heather Carson; Mary Zimmerman; Benn Brocksome-Idaho Sportsmen.

NOTE: Presentations and handouts provided by the presenters/speakers are posted to the Idaho Legislature's website <https://legislature.idaho.gov/sessioninfo/2021/interim> and copies of those items are on file at the Legislative Services Office in the State Capitol. Recordings of the meeting also may be found under the committee's listing on the website.

REVIEW OF THE REQUEST FOR INFORMATION AND THE REQUEST FOR PROPOSAL PROCESS

Cochair Vick called upon Ms. Julie Weaver, Section Chief, Contracts and Administrative Law Division in the Office of the Attorney General, for her presentation and comments on the Request for Information (RFI) and the Request for Proposal (RFP) process. Ms. Weaver explained that an RFI allowed one to survey the marketplace to better understand what services and technology were available to better formulate the RFP. She noted that the two processes usually go hand in hand but it was not necessary to have an RFI for an RFP. Ms. Weaver suggested posting the documents on the Legislature's website and possibly on the Division of Purchasing's website. The documents submitted by Ms. Weaver were templates and could be edited to reflect the specific needs of the committee.

[Request for Information \(RFI\)](#)

- Sen. Johnson asked whether an RFP was required to be issued if an RFI was circulated? Ms. Weaver responded that it was not; possibly an RFI would reveal that there was no viable service to be purchased or possibly an entity no longer had a need for the service. Sen. Johnson then asked whether one could initiate a contract after an RFI without issuing an RFP. Ms. Weaver submitted that the Legislature was not subject to the Division of Purchasing's rules and so the committee was not required to follow the traditional process. Sen. Johnson asked about the pros and cons of the process. Ms. Weaver noted that an RFI might provide information that was not known; therefore, an RFI may give you information to better craft the RFP, including measurement tools and realistic timelines. She noted that a shorter process would move more quickly but it may miss necessary information.
- Sen. Vick noted that HCR08 did not require the committee to issue a RFP. Rep. Horman and Sen. Harris both believed they had recommended the competitive bid process when sponsoring the legislation.
- Sen. Nelson inquired whether there were risks to skipping a RFP. Ms. Weaver proffered that the committee may not receive the broadest market for services or the best possible cost.
- Rep. Horman expressed interest in expediting the process in order to have information available in time for the upcoming session. Ms. Weaver surmised that combining the process may only save about 2-3 weeks. She submitted that the RFI usually required 3-4 weeks to turn around and

then the RFP would require another 3-4 weeks. Ms. Weaver proffered that, if the committee felt it had vetted enough vendors, it could skip the RFI and go straight to the RFP.

- Sen. Johnson inquired about a best and final offer process. Ms. Weaver explained that a best and final offer was most often used when the scope of work was changed and then it was resubmitted to the vendors to adjust the offers.
- Sen. Nelson inquired where the qualifications of a vendor should be requested. Ms. Weaver stated that minimum qualifications would occur in the RFP; however, an RFI could provide what qualifications existed.

[Request for Purchase \(RFP\)](#)

- Cochair Vick asked whether a "not to exceed" clause could be added. Ms. Weaver agreed that it could.
- Rep. Mathias inquired what conditions would allow the committee to reject a qualified proposal. Ms. Weaver noted that since the Legislature was not subject to the Division of Purchasing's rules, that, as long as the reason was not illegal (ethnic background, etc.), such reasons were at the committee's discretion.
- Cochair Dixon submitted the 117th Congress SB1008 as a document that the committee may use as a model.

[Agreement / Contract](#)

- Sen. Johnson yielded to the cochairs the decision of whether to start with the RFI. Rep. Horman supported the idea of an RFI; Sen. Harris agreed.
- Sen. Nelson requested that those vendors participating in the RFI submit any licensing or qualifications. Cochair Vick noted that the committee was not requiring the vendors to be licensed but that a vendor may submit that information to support its qualifications.
- **Rep. Horman made a motion that the Committee on Federalism authorize an RFI as related to the study outlined in [HCR08 \(2021\)](#), submissions to be due four (4) weeks from publication of the notice, electronic submissions to be permissible, and for the RFIs submitted to be vetted by the cochairs but submitted to the committee members for review; Sen. Harris seconded. With no objection, the motion passed unanimously.**

AMERICA THE BEAUTIFUL aka 30X30 PLAN

[Governor Little Response](#)

At 10:40 a.m., Sam Eaton, Policy Director and Legal Counsel, Office of the Governor, came forward for his presentation [Update on Conserving and Preserving America the Beautiful](#). This program has also been called the [America the Beautiful AKA Biden Administration 30x30 Plan](#).

- Rep. Boyle asked whether the 30% goal was in addition to existing land. Mr. Eaton reported that it was a total rather than an addition to currently existing areas. Rep. Boyle inquired whether state parks and multi-use areas were included and whether roadless areas would then be off-limits. Mr. Eaton responded that state parks and multi-use areas were included, as well as private land conservation efforts and federal designations. He noted that this plan would not change currently designated areas or their uses.
- Sen. Harris asked when more details of the plan would be available. Mr. Eaton did not know and had expected details already since the plan had been issued in May of this year.
- Sen. Johnson asked whether the threat of fire was addressed by this plan and whether the governor's office had plans for a policy statement on carbon solutions or climate change. Mr. Eaton submitted that the plan did discuss the threat of fire and expected the governor to tout those programs already working and leading the effort (Good Neighbor Authority, Shared

Stewardship Project, etc.) on fire abatement. He acknowledged that the governor's office did not have a policy statement but has been working on Idaho's issues to address those items.

U.S. Senator Jim Risch Response

At 11:05 a.m., Rachel Burkett, State Director for U.S. Senator Jim Risch, provided comments from the Senator's office on the America the Beautiful Plan. Senator Risch serves on the Natural Resources Committee which would have oversight on this initiative. Ms. Burkett shared that the Senator felt there were more details needed on this program for it to be effective, but felt it was an unnecessary duplication of programs that already worked in Idaho.

U.S. Congressman Russ Fulcher Response

At 11:10 a.m., Dirk Mendive, Regional Director for U.S. Congressman Russ Fulcher, provided comments from the Congressman's office on the America the Beautiful Plan. Mr. Mendive echoed many of the same sentiments about the program not having enough detail in how to achieve its goals and also that it seemed redundant to other initiatives.

- Rep. Boyle asked how it was determined that the US was already at 12% of the 30% goal. Mr. Mendive was not aware of any matrixes used to make that determination.
- Rep. Mathias commented that Idaho's Department of Lands had some great programs regarding fire abatement and he hoped that this initiative would provide an opportunity for Idaho to take advantage of funds to create a better mill capacity in southwest Idaho.

With the scheduled presentations concluded early, the committee recessed for lunch at 11:37 a.m.

UPDATE ON EXTENDED UNEMPLOYMENT BENEFITS LAWSUIT

At 1:04 p.m., the committee resumed its agenda. Sen. Vick requested Mr. Brian Kane, Chief Deputy, Office of the Attorney General, to approach the podium for the next agenda item: Update on Extended Unemployment Benefits Lawsuit. Mr. Kane introduced his colleagues Mr. Steve Olsen, Chief of Civil Litigation, and Mr. Cory Carone, Deputy Attorney General for Civil Litigation. Mr. Carone argued the case in court and submitted a [letter](#) to summarize the procedures.

- Rep. Mathias asked Mr. Carone to explain the doctrine of unclean hands and laches. Mr. Carone explained that it meant that a plaintiff unnecessarily delayed bringing suit which disadvantaged the state. The governor made the announcement on May 11 and the state ended the program on June 19 but the plaintiff did not file suit until late August.
- Sen. Johnson asked when notice went to the Idaho Department of Labor to end the program. Mr. Carone reported that it was issued the same day as the governor's announcement, May 11.
- Cochair Vick inquired whether all of the suits in other state were within state court jurisdictions. Mr. Carone responded that all cases were, as most states operated under the same model language.

REFUGEE PLACEMENT IN IDAHO

At 1:20 p.m., the committee invited Mr. Brian Kane, Chief Deputy, Office of the Attorney General, to return to the podium for the next agenda item: Refugee Placement in Idaho. Mr. Kane referenced legislation that defined a refugee and explained that the authority of the federal government over refugees and immigration arises from Article 1, Section 8 of the U.S. Constitution. He noted that there exists an Idaho Office for Refugees, which was a private organization. Mr. Kane reported that the State of Idaho was notified by the federal government that it would be receiving approximately 400 individuals (at least 200 of which were youth) identified as Afghan refugees to be settled in the Boise and the Twin Falls areas. A [letter](#) was sent by Governor Little and Idaho's congressional delegation to President Biden objecting that there was no consultation with the State of Idaho before the notification and to impress upon the federal government to heavily vet these individuals before resettling them.

- Rep. Boyle inquired whether the state of Idaho could refuse the refugees. Mr. Kane explained that it could not refuse, reinforcing why the consultation was important *before* the directive. Rep. Boyle asked whether this was in part due to the Fish-Wilson Act [Wilson-Fish Act 1984]. Mr. Kane was not familiar with that act. Rep. Boyle asked how these Afghan refugees were being vetted. Mr. Kane believed it to be through the Department of Homeland Security and the Department of State.
- Cochair Dixon inquired whether the federal government was working with the Idaho Office for Refugees. Mr. Kane believed that to be true and opined that the consultation had not occurred with the governor's office but rather the Idaho Office for Refugees, which was a private organization. Cochair Dixon wondered whether the federal government was working with that entity because it issued funds to that entity. Mr. Kane did not know how the connection had been made and suggested that the committee invite someone from that organization to speak on its behalf.

COMMITTEE DISCUSSION

Cochair Dixon commented that the next meeting's agenda would include proposed legislation on the topic of the federal vaccine mandate. He noted that any proposed legislation approved by the committee would be "recommended" to the appropriate germane committee. Cochair Vick noted that there would be no public testimony at the upcoming meeting.

With no further business to discuss, the meeting was adjourned at 1:40 p.m.