

IN THE SUPREME COURT OF THE STATE OF IDAHO

IDAHO SUPERINTENDENT OF PUBLIC
INSTRUCTION SHERRI YBARRA, in her official
capacity,

Petitioner,

v.

THE LEGISLATURE OF THE STATE OF IDAHO,
BY REPRESENTATIVE SCOTT BEDKE, in his
official and representative capacity as SPEAKER OF
THE HOUSE OF REPRESENTATIVES, SENATOR
BRENT HILL, in his official and representative
capacity as SENATE PRESIDENT PRO TEM, and
THE IDAHO STATE BOARD OF EDUCATION by
DEBBIE CRITCHFIELD, in her official and
representative capacity as PRESIDENT OF THE
BOARD,

Respondents.

Docket No. 47991-2020

**DECLARATION OF PAUL G. HEADLEE IN SUPPORT OF
IDAHO STATE LEGISLATURE
BY HOUSE SPEAKER BEDKE AND SENATE PRESIDENT PRO TEM HILL
RESPONSE TO VERIFIED PETITION**

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I, Paul G. Headlee, declare and state as follows:

1. I am the Division Manager of the Budget and Policy Analysis Division of the Idaho Legislative Services Office (“LSO”). I have personal knowledge of all of the matters stated herein, and I make this declaration based upon my personal knowledge.

2. I have served as the Division Manager of the LSO since May, 2017. As the Division Manager, I am responsible for the daily operations of the division, which include 10 budget analysts who provide non-partisan support to the legislative budget process.

3. I have been part of the LSO since August, 2007. During my tenure at the LSO, I have served in several different positions. My first position at the LSO was as the education budget analyst and the analyst for the Idaho Transportation Department. I served as the education analyst from 2007 to 2017 and was responsible for the budgets for public schools (K-12), the Superintendent of Public Instruction, the Office of the State Board of Education, and all of higher education (universities, colleges, etc.). This responsibility included budget and policy analysis, presentations to the Joint Finance-Appropriations Committee (JFAC¹) and germane committees, and appropriation bills drafting. I was promoted to Deputy Division Manager in 2014.

4. Prior to working at the LSO, I worked for the Legislature’s Office of Performance Evaluations from 2000 to 2006. I hold a Master’s Degree in Public Administration from Boise State University in 2000.

5. In connection with my work, I have also been active at the national level. I am a

¹ “JFAC” is the Joint Finance-Appropriations Committee of the Legislature. As the name suggests, JFAC is populated by members of the Senate Finance Committee and House Appropriations Committee, meeting jointly to analyze available revenue and state agency budget requests in order to set a balanced state budget each year.

member of the Legislative Education Staff Network (LESN), which is a coordinated network of professional legislative staff from across the country who work on education policy. In 2014, I served as a co-chair of the organization. I received LESN's annual Recognition Award in 2015 that is provided to a "legislative education staffer who exhibits a high degree of professionalism, competence and integrity in service to the legislature and the public; is an expert in education policy; and contributes to the work" of the LESN.

6. Based upon my experience and 13 years of service with the LSO and the Budget and Policy Analysis Division, I am thoroughly familiar with their functions and operations, and I am also similarly familiar with the budget process for the Idaho Legislature, as well as the appropriations made by the Idaho Legislature.

7. I have reviewed the Verified Petition for a Declaration of Unconstitutionality and a Writ of Mandamus and/or Prohibition by Original Jurisdiction filed by Petitioner, Idaho Superintendent of Public Instruction, Sherri Ybarra ("Petitioner") and am generally familiar with its contents.

8. I have also reviewed the documents and files of the Budget and Policy Analysis Division relating to Senate Bills 1409 and 1410 from the 2020 Idaho legislative session and am familiar with and have personal knowledge of information contained therein. I am also familiar with these appropriation bills through my involvement and the involvement of the Budget and Policy Analysis Division with the bills, as described below.

The Legislative Services Office and the Budget and Policy Analysis Division

9. The LSO was created by the Legislature in 1993 to consolidate into one office the non-partisan staff support for Idaho's legislators. The duties and responsibilities of the LSO were established in the Idaho Code in 2009 and are set forth in Title 67, Chapter 7, Idaho Code.

10. The Budget and Policy Analysis Division of the LSO provides independent, non-partisan analytical support to the Legislature in setting the state budgets and making appropriations for state agencies each year. The duties and responsibilities of the Budget and Policy Analysis Division are set forth in Idaho Code § 67-703. The duties and responsibilities of the Division include providing the Legislature with research and analysis of current and projected state revenues and expenditures for budgets, providing analysis and reports of proposed revenue and expenditure plans, and reviewing and evaluating requests for appropriations. The Division is also responsible for preparing draft legislation for JFAC appropriations for state agencies, including statements of purpose and fiscal notes. The Division also coordinates and facilitates agency budget hearings, compiles budget information into publications, and works closely with legislators in analyzing budget requests and agency performance and developing funding options for each agency and institution.

11. The LSO Budget Division works closely with Governor's Division of Financial Management to jointly publish the annual Budget Development Manual that provides the guidance and rules to state agencies regarding annual budget submissions.

The Budget and Appropriation Process

12. The Budget and Policy Analysis Division is involved in the Legislature's annual budget and appropriations process. Our involvement in the process begins with the Budget and Policy Analysis Division receiving the budget requests from state agencies on September 1st. Once the budget requests are received, staff will analyze the budget requests and eventually compile them into the annual Legislative Budget Book (LBB) for JFAC's review and for the budget hearing and budget setting process. Staff will also analyze the Governor's budget

recommendation for each state agency and include it in the LBB so that legislators can review side-by-side the agency requests and the Governor's recommendations.

13. These steps take place in September through December each year. JFAC's budget hearing processes take place in January and February, with the budget setting process taking place in February and March. Once the budgets are set by JFAC, the Budget and Policy Analysis Division will prepare appropriation bills, and the JFAC Co-chairs will assign the bills to either the House of Representatives or the Senate. The appropriations bill will then proceed through the legislative process like any other bill. The budget process is also described in Title 67, Chapter 35, Idaho Code, and the provisions relating specifically to JFAC are set forth in §§ 67-435, 67-3513 and 67-3514.

14. Attached as **Exhibit A** to this declaration is a true and correct copy of the LSO budget flow chart that outlines the process for state agency budgets. This flow chart can be found on the LSO website at <https://legislature.idaho.gov/lso/bpa/process/>.

Senate Bills 1409 and 1410

15. Staff members of the Budget and Policy Analysis Division and I were involved with SB 1409 and 1410. Our involvement included researching and compiling information and data relating to the budget for the State Department of Education, as well as information relating to the Department's full-time equivalent employee positions ("FTPs"). Additionally, we were involved in assisting legislators on JFAC to draft a proposed budget for the Superintendent of Public Instruction, who is the executive officer for the State Department of Education, and a budget for the Office of the State Board of Education, for Fiscal Year 2021.

16. One of the components of the FY 2021 budget for the Superintendent, as requested by JFAC members working on the budget, was the transfer of 18 FTPs and the funding

for those employees and their operations to the Office of the State Board of Education's budget. The FTPs and funding had previously been appropriated to the Superintendent of Public Instruction for the Department of Education and its Technology Services Group ("Technology Group").

17. The process for the program transfer required two different budgets for JFAC's consideration. One budget was for the Superintendent of Public Instruction for the Department of Education that would reflect the reduction from the Department's budget of the 18 FTPs and the \$2,714,800 in funding for those positions and their operations and capital outlay. The second budget was for the Office of the State Board of Education that added the 18 FTPs and the corresponding funding to its budget. At the request of certain members of JFAC, the Budget and Policy Analysis Division assisted in preparing these budgets in the form of prepared motions to use during the budget setting process. The FTPs and the \$2,714,800 in funding for those positions and operations were not eliminated but were transferred from one agency's budget to another. The motions for these budgets were made and approved by JFAC on March 3, 2020. While the appropriation bills reflect a \$2,714,800 reduction in the Superintendent's budget, the actual amount appropriated to the Office of the Board of Education was \$2,684,800. The difference between this sum and the \$2,714,800, as noted in the Statement of Purpose/Fiscal Note for the two bills represents, an across-the-board 2% reduction in the General Fund base appropriation.

18. Based upon my staff's and my involvement in the FY 2021 budgets and appropriations for these entities, the bill sponsors' intent for the transfer was to consolidate IT and data management functions within the Board of Education and its executive office, the Office of the State Board of Education consistent with § 33-133(2), Idaho Code. My staff and I

have personal knowledge of the intended purpose of a particular piece of legislation because as part of our statutory responsibilities, we are responsible for drafting proposed legislation at the request of legislators, including the Statement of Purpose and the Fiscal Note. Based upon our involvement with SB 1409 and 1410, the stated purpose of SB 1409 and 1410 is “to centralize IT and data management from the Department of Education to the Office of the State Board of Education”—as stated in the Statement of Purpose for the two bills. Similarly, the Fiscal Note contains a corresponding statement that also describes the appropriation as “Move IT and Data Mngmt from SDE,” meaning that the appropriation is for the purpose of moving IT and data management personnel and funding from the State Department of Education’s budget.

19. As part of the process for preparing motions for JFAC consideration, and at the request of the legislative members of JFAC, our Division, including two LSO staff members and myself, requested and held a meeting on February 24, 2020 with Superintendent Ybarra and four members of her staff to discuss the proposed changes to the Department of Education’s budget. Meetings of LSO staff and state agencies regarding fiscal year appropriations are conducted when necessary, and sometimes as a courtesy to the agencies, for the benefit of LSO staff and JFAC members. They are not required by law, regulation, or otherwise.

20. During the meeting with Superintendent Ybarra, we explained to her that under the proposed budget, while the funding and supervision of the Technology Group would be transferred to the Board, all other aspects of the Technology Group, including their location, computers, offices, as well as the work performed, would remain the same. Additionally, we explained that the data and information collected and maintained by the Technology Group would continue to be accessible to the Superintendent and the Department of Education. The details of the transition would have to be determined by the Board and the Superintendent

through a memorandum of understanding or inter-agency agreement. These types of agreements are common in state government.

21. Two days after the meeting, on February 26, 2020, staff from the Department of Education provided LSO with additional information regarding the Department's personnel and operating costs. This information assisted LSO in developing a proposed budget for the transfer.

22. On March 3, 2020, JFAC held budget setting hearings for both the Superintendent and the Office of the State Department of Education's budget, during which the committee discussed the details contained in motions that ultimately passed and became SB 1409 and 1410. At the March 3 budget hearing, JFAC approved several budgets including the budgets for Superintendent and the Office of the State Board of Education. Staff then drafted the appropriation bills, which were assigned to the Senate and received bill numbers on March 11, 2020.

23. Senate Bills 1409 and 1410 were passed by the Senate on March 16, 2020, as evidenced by the official legislative history for the bills. The bills were passed by the House of Representatives on March 17, 2020. They were signed by Governor Little on March 19, 2020, with an effective date of July 1, 2020.

Appropriations

24. In my experience with the LSO and as the Division Manager for Budget and Policy Analysis, appropriation bills such as SB 1409 and 1410 are passed each session. JFAC and the Legislature commonly make changes to programs within an agency through line-items in the motions and appropriation bills. I am familiar with this type of legislation and have worked on many appropriations bills where programmatic changes, program creation, and program deletions for agencies are made through appropriations. In addition to my experience, I am

aware of many other appropriation bills that our staff has been involved with where agency program changes were made through appropriations.

25. Examples of such program changes include the appropriations to the Superintendent of Public Instruction (Department of Education):

- For FY 2018, the Legislature passed SB 1170, which approved an appropriation to the Superintendent for \$800,000 to expand the broadband program and \$100,000 to redesign the Idaho reading indicator assessment.
- For FY 2019, the Legislature passed HB 717, which approved an appropriation of \$305,000 to the Superintendent's budget to expand the Student Assessment Growth program and an appropriation of \$283,800 to provide for a K-3 Reading Assessment Program.
- For FY 2020, the Legislature passed HB 232 and HB 291, which moved programs from the public school appropriations to the Superintendent's budget. Specifically, the Legislature appropriated \$100,000 to move the Innovations Schools program, \$150,000 to move the Online Class Portals program, and \$166,200 to move the IRI Operating Costs program. Additionally, the Legislature appropriated \$200,000 to fund a program for recruiting, training, and retaining nontraditional teachers.

True and correct copies of the LSO's Legislative Fiscal Reports for these appropriations that are prepared by the LSO as a regular and ordinary part of our operations, as required by statute (67-703(14), Idaho Code), are attached as **Exhibit B**. These program changes were made by the Legislature through appropriations bills using the same process used for SB 1409 and 1410 to make the program change to transfer 18 FTPs from the Technology Group and their operational funding from the Department of Education to the Board of Education. For comparison, Exhibit B also contains the LSO's Legislative Fiscal Report for SB 1409 and 1410.

26. Other examples of program or funding transfers made by the Legislature through line appropriations are as follows:

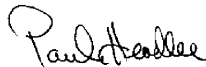
- In 2018, the Legislature passed HB 672 which transferred 3.00 FTP and \$413,800 for the Career Information System (CIS) to the Office of the State Board of Education. An appropriation bill (SB 1365) reflected the removal of the CIS program from the Department of Labor by a decrease FTPs and funding.

- In 2019, the Legislature passed SB 1173 that reduced \$735,000 from the Department of Health and Welfare and provided it to the Judicial Branch via its appropriation (SB 1164) to fund Problem Solving Courts.
- In 2020, the Legislature passed HB 564, which added 69.00 FTP and \$6,309,200 to the Office of Information Technology Services (OITS), consolidating (and removing) technology services from seven state agencies. The initiative impacted the Real Estate Commission (SB 1394), Department of Agriculture (SB 1413), Department of Environmental Quality (SB 1403), Department of Fish and Game (SB 1391), Department of Water Resources (HB 646), Department of Parks and Recreation (SB 1396), and the Department of Correction (SB 1360). All had corresponding decreases in their budgets and IT staff were removed so they could work at OITS instead.

True and correct copies of the LSO's Legislative Fiscal Reports for these appropriations that are prepared by the LSO as a regular and ordinary part of our operations, as required by statute (67-703(14), Idaho Code), are attached as **Exhibit C**.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 14th day of May, 2020.



PAUL G. HEADLEE

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2020, I caused to be filed and served, via iCourt, a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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/s/ William G. Myers III
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**Legislative Services Office
Budget and Policy Analysis Division**

Budget Flow Chart

<https://legislature.idaho.gov/lso/bpa/process/>

