

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 18, 2013

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Vick, Senators Davis, Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the meeting to order at 1:30 p.m. and asked the secretary to call the roll.

MINUTES: **Senator Lakey** moved to approve the minutes of February 6, 2013 as written. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

RS 22054 **Vice Chairman Vick** presented the Concurrent Resolution stating the rejection of certain rules of the Idaho State Police relating to the rules of the Idaho Peace Officer Standards and Training Council, Section 010, Subsection 27 and Section 197, Subsection 01, only, adopted as pending rules under Docket Number 11-1101-1202.

MOTION: **Senator Davis** moved to print **RS 22054**. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

RS 22055 **Vice Chairman Vick** presented the Concurrent Resolution stating the rejection of certain rules of the Idaho State Police relating to the rules of the Idaho Peace Officer Standards and Training Council, Section 091, Subsection 01, only, adopted as pending rules under Docket Number 11-1101-1201.

MOTION: **Senator Davis** moved to print **RS 22055**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

S 1048 **Relating to Driver's Licenses - Senator Bart Davis** explained that a constituent had their drivers license suspended for failure to pay a parking ticket when another person unlawfully parked the car. Since the print hearing, **Senator Davis** said he met with members of the Court, a representative of the Department of Transportation and a representative from the Association of Cities. He would like to send this bill to the floor and to the 14th Order for possible amendment. He provided the anticipated amendment with an option of adding the word "...the parking or bicycle violation..." In case this does not have the phraseology that includes "...an infraction for failure to pay" he would also add that. He reminded the committee that the state of Idaho and also state parks issue parking tickets and this would apply to them as well as the municipalities.

MOTION: **Senator Lakey** moved to send **S 1048** to the floor to the 14th Order for amendment. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

Relating to Mandatory Income Withholding for Child Support - Kandace Yearsley, Child Support Bureau Chief, explained this bill was about the use of the federally approved income withholding form and is a requirement under the Social Security Act and mandated by the Administration of Health and Human Services. This federal mandate requires states to utilize the federally approved Income Withholding for Support form in all IV-D child support cases with child support orders initially issued in the state on or after January 1, 1994. The rule also requires states to administer all withholding payments through the State Disbursement Unit with an effective date of May 31, 2012.

Senator Mortimer asked if these garnishments were held if their child support is current. **Ms. Yearsley** said the income withholding they were talking about in this situation was about a person who gets a divorce or a withholding order on their own, not a case from Health and Welfare. So, the answer to the question is yes. **Senator Mortimer** asked if they were requiring that income come to the department for disbursement even though it hasn't originally gone through the department. **Ms. Yearsley** said that was correct. **Senator Mortimer** asked if she was indicating that was a federal requirement for medicaid. **Ms. Yearsley** said that was a federal requirement for the child support program and also a requirement for the Social Security Act.

Senator Davis asked if it was required by the federal government, why put it in Idaho code. **Ms. Yearsley** said part of that requirement was that it was in state code so the federal government knows it is being followed. **Senator Davis** asked if the federal government was not just requiring that their form is used, but they are requiring that Idaho statute be amended to require the use of that form. **Ms. Yearsley** said the requirement came into effect in May of 2012 and it should have been brought to the legislature in the previous session. She said the state plan is at risk if they do not bring it forward now. **Senator Davis** asked why they use the word "federally" when they are complying by using the income withholding form required by the federal government. **Ms. Yearsley** said the form itself has the word federal as part of the header on the form which is why it has been identified as such. **Senator Davis** said he did not like codifying federal law and Idaho law may adopt federal standards, but not say in statute what is already law. **Ms. Yearsley** said the program they operate is important to the kids in this state. She would be glad to go back and see if "federally" could be taken out without a risk to the program.

Senator Hagedorn asked what the risk was if this was not passed. **Ms. Yearsley** said the grant money would be in jeopardy. **Senator Hagedorn** followed up by asking if the child support program was paid for by federal dollars. **Ms. Yearsley** said the child support program was funded sixty-six percent federal and thirty-four percent state. **Senator Hagedorn** said the money for the children comes from the divorced parents through a court order so what kind of numbers actually fund the program. **Ms. Yearsley** said somewhere in the vicinity of eighteen million dollars.

Senator Lakey asked what was the state plan she had described. **Ms. Yearsley** said states must have a plan run a certain way, federally complied, with medical support in all child support orders and signed off by the Governor. **Vice Chairman Vick** pointed out some discrepancies as the word "for" was in one place and not in another. **Ms. Yearsley** said she would look into that.

MOTION:

Vice Chairman Vick moved to hold **S 1022** in Committee until Ms. Yearsley can return with answers. **Senator Davis** seconded the motion. The motion carried by **voice vote**. **Senator Hagedorn** asked that she clearly identify the risk to the program when she returns.

Relating to Judicial Districts; Increase of Judges and Resident Chambers - Patricia Tobias, Administrative Director of the Courts, explained this bill would add three new district judge positions; one district judge to be chambered in Canyon County (3rd District), one district judge in Ada County (4th District) and one district judge with resident chambers in Jefferson County (7th District). She said the effective date is on or after October 1, 2013 to correspond to the fiscal year of county government. She pointed out that after careful analysis, the data clearly shows new judgeships have not kept pace with population, caseload trends and the increasing complexity of court complexity. (See Attachment 1). The Court has deferred requests for new judgeships the last five years due to the economic decline and senior judges have helped to fill the gap. She stated that Idaho's economy and local communities demand that business and property disputes are resolved efficiently and timely. She also said that tax payers' money would be saved by reducing the time that defendants spend in jail awaiting trial and sentencing. **Ms. Tobias** asked Senior Retired Judge Barry Wood to describe the work of district judges across the state.

Judge Wood explained the jurisdictional levels of district judges in Idaho. These judges hear all trials and sentencing's in felony cases, which could be punishable with death or by imprisonment, all civil cases where the amount in controversy exceeds ten thousand dollars, and appeals from all administrative agencies and the decisions of the magistrate judges. **Judge Wood** said that in his experience, sentencing decisions can be the most difficult part of the job. District judges also hear, on the Civil Law side, complex business cases, monetary and property claims, commercial disputes. One of the district judges adjudicates ownership of water related disputes and appeals from the Idaho Department of Water Resources. On the appellate side, district judges hear: criminal and civil appeals from the magistrate's division, appeals from rulings of county commissioners and Idaho administrative agencies. The appeals from these boards and agencies are no trivial matter as they can affect entire communities, counties or regions. The fiscal note of this bill includes the annualized costs for three new district judges and three court reporters.

Senator Nuxoll asked why the request for district judges rather than magistrate judges. **Ms. Tobias** said the need was greatest first for the three district judge positions, and secondly adding two judges to the magistrate judge caseload. The 87 magistrate judges have a very broad jurisdiction and they will better handle their increased workload with the two additional judges that are included in the budget.

Senator Hagedorn asked Ms. Tobias why the numbers of caseload by judge were not equitable between districts as shown on the handout. **Ms. Tobias** said they would have to take the overall caseload and divide by the number of district judges, but include the new additional judges. Then it would be more equitable. She said they did an extensive analysis looking at far more than is shown on Attachment 1. They analyze by case type, by whether they are serving as a problem-solving judge, by number of miles they are driving within their judicial districts, by the number of senior judges that would be pulled out if a district judge was added.

Senator Hagedorn asked if there were economies of scale where there are more judges for districts. **Ms Tobias** said that some judges, as those in the Ada County Courthouse, were not spending time on the road as part of their overall workload as compared to the 7th Judicial District that travels to ten counties.

Senator Bock asked if there was a difference in cases in counties and is there a different level of complexity and if so, how is it measured. **Ms. Tobias** said she could not describe by any objective measure any variations in the complexity of cases based upon the jurisdiction, but there are differences in composition of caseload across the state. She deferred to Judge Wood for further comment.

Judge Wood said the examples that came to mind were Ada County where most of the appeals came from big business and also the prison is located there. The degree and level of their civil work is significantly different from what other judges elsewhere will see. The criminal load can vary widely by jurisdiction. Canyon County, for example has had more than their share of criminal cases. In Jefferson and Blaine County, nothing gets built without a lawsuit. Blaine County has less criminal load, but appeals from various agencies is significantly higher. In that sense, the workload isn't the same because it changes all the time.

MOTION: **Senator Davis** moved to send **H 29** to the floor with a **do pass** recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: Recruitment of Judges - Ms. Tobias and **Judge Wood** described a serious and persistent problem the 3rd branch of Government is experiencing. When the Court has encountered a problem that it cannot resolve, the Executive, Legislative and Judicial branches come together to solve the problems. The problem they are now facing is that a sufficient number of highly-qualified individuals are 'not' applying for District Judge positions when vacancies occur. She turned the presentation over to Senior District Judge Barry Wood to describe why this issue is important and to understand the results of their study of recruitment challenges. **Judge Wood** expressed two reasons why the quality of the district judge bench is so critical:

1. A district judge hears the most heinous crimes, but ensures that procedural requirements, according to the constitution, were met including that the defendant was presumed to be innocent until proven guilty and the trial was conducted fairly so any conviction will be upheld on appeal.
2. A district judge also hears the complex and often protracted business cases that provide a forum for organizations to resolve their disputes timely and fairly so they can keep doing business and allows commerce to continue.

Judge Wood added that while the right to an appeal to a higher court is an important tenant of the judicial system, it is no substitute for a high quality trial bench. He reminded the committee of the critical work of a district judge as the consequences are huge and they need competent people, well trained people to protect the constitutional rights of everyone involved. **Judge Wood** gave a couple of examples of real life cases from some of Idaho's district judges. He said the recruiting problem was one of urgency. There are 42 district judges and 60 percent that are currently serving will be eligible to retire within the next five years. There are more applicants for magistrate judge vacancies than for district judge vacancies. The concern is that judges who are selected today will be Idaho's Judiciary for years to come. The work they perform is of critical importance today, tomorrow and well into the future. **Judge Wood** said it was imperative that they are able to recruit the best and the brightest to meet the long-term constitutional mandates of the Judiciary. While money alone is not the sole reason for seeking a judgeship, salaries will determine both the number and the caliber of applicants applying for these openings.

Ms. Tobias shared with the committee what the Judiciary has done to try to address this problem. She said they had surveyed the Idaho State Bar in 2009 and the top three impediments to judicial recruitment in were:

- inadequate compensation
- perceived unfairness in the initial selection process - through the Judicial Council and Governor
- the prospect of a contested election

They instituted a recruitment committee chaired by two Court of Appeals judges. They conducted recruitment outreach programs in districts where vacancies have existed. They traveled the state to all seven judicial districts and asked for ideas to address the issue. The judges (appellate, district and magistrate) identified the following:

- salary compression - not enough difference between the four levels of judges
- inadequate salaries for all judges
- excessive workload and the need for additional judgeships in some districts
- smaller pools of qualified applicants among lawyers for the case work performed by district judges
- the need to bolster recruiting efforts
- concerns about the initial selection process
- the prospect of a contested judicial election

She said the one identified solution that the Judiciary cannot address are the salary concerns; both compression and salary levels. The Idaho Constitution provides that judicial salaries are set by the Idaho legislature. The Court cannot provide merit, longevity, recruitment incentives, or any other variance from the pay as established by law. Lastly, she said they can't address this part of the problem without the help of the legislature.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 2:47 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary