

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Monday, March 04, 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 1:37 p.m. and asked the secretary to call the roll.

**MINUTES:** **Senator Bock** moved to approve the minutes of February 27, 2013 as written. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

**Senator Nuxoll** moved to approve the minutes of February 22, 2013 as written. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

**S 1122**

**Relating to Child Custody - Robert L. Aldridge**, Trust Estate Professionals of Idaho, Inc. (TEPI), explained that certain protections were already in law under the Servicemembers Civil Relief Act, and this bill first requires that the court determine if the Act applies and then act accordingly. The Department of Defense put together a list of Best Practices they would like to see adopted in regards to child custody. **Mr. Aldridge** said the precedent for this new section covers petitions for modification to a child custody order during the time of a servicemember's deployment, expiring 60 days after the completion of deployment with notification to the court and all interested persons that the deployment has ended. The bill also allows an expedited or emergency hearing if an interested person files a motion alleging that expiration of the order would not be in the best interest of the child, and the order will remain in effect until that hearing is held and the court issues its ruling, but the court will enter a temporary order granting reasonable contact to the deploying parent with the child, unless that is not in the best interest of the child.

**Senator Davis** asked if this bill did not pass, what would happen if a servicemember was the custodial parent and was deployed. **Mr. Aldridge** said: (1) it allows a delegation of custody the ability to delegate to someone else, most commonly to grandparents; (2) in the case of a divorce action and a custody battle, and the servicemember is deployed, that person could ask for a delay and it would go on hold until that person's return. **Senator Davis** referred to the second point and asked if there was a deployment, would a pending custody fight be stayed until completion of the deployment. **Mr. Aldridge** said that was his understanding. **Senator Davis** asked if the consent of the other parent was required in the case of a grandparent taking over as primary custody of the child. **Mr. Aldridge** said the way the statute is written the custodial parent can do that delegation, but it is subject to challenge by the non-custodial parent.

**Senator Lakey** questioned whether in a child custody case where the best interest of the child is the issue, that a stay for a period of time based on a servicemember's return is an automatic. **Mr. Aldridge** said he relied on the Department of Defense which said that the option was to have a delay in custody and visitation cases. **Senator Lakey** said it may be discretionary with the court whereas others are not. **Mr. Aldridge** did not know. **Chairman Lodge** asked Senior Judge Barry Wood, who was in the audience if he would like to respond. **Judge Wood** came to the podium. He said he was reluctant to express an opinion although in the interest of the child, it is difficult to understand how someone overseas could prevent that from happening.

**Senator Hagedorn** asked if this language was similar to or used in any other states. **Mr. Aldridge** said it was proposed and adopted according to his understanding from Mr. Mark San Souci, the Regional Liaison for Military Families, in several of the surrounding states. Some states have adopted a more extensive version. **Senator Hagedorn** asked if he was aware of any issues or negative outcomes that were caused by the interpretation of this language in other states. **Mr. Aldridge** replied no. The Defense Department said it had worked well in all the states where it has been adopted.

**MOTION:** **Senator Hagedorn** moved to send **S 1122** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**S 1119** **Relating to Mandatory Income Withholding for Child Support - Kandace Yearsley**, Child Support Bureau Chief, explained that effective May 2012, the Social Security Act requires states to utilize a standardized income withholding form in all cases in which child support is withheld and paid through employer income withholding. This requirement was developed in partnership with a committee of private employers to standardize the form and simplify the income withholding process. This eliminates employer confusion resulting from inconsistent income withholding orders. The requirement also specifies that all payments made by employers are to be processed through the state's disbursement unit to avoid risk of missed payments and to simplify the process for employer payroll departments.

**MOTION:** **Senator Davis** moved to send **S 1119** to the floor with a **do pass** recommendation. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

**H 103** **Relating to Fees - Patricia Tobias**, Administrative Director of the Courts, explained this bill proposes to repeal the June 2013 sunset provision from the emergency surcharge enacted in 2010. The surcharge was intended to enable the third branch of Government during the financial crisis to continue to fulfill its constitutional responsibilities, to provide services that benefit the people of Idaho, and to help reduce the burden on the state budget. Idaho Code § 31-320H was enacted to provide that these new court costs would be dedicated to the needs of the courts, paid by users of the courts who have committed offenses. The estimated emergency surcharge would generate \$4.3 million dollars annually. She referred to the handout (Attachment 1) to show that it has never reached that level, but the surcharge revenue has kept the courthouse doors open, sustaining such beneficial programs as drug courts, mental health courts, and family court services. **Ms. Tobias** said the sunset provision in the bill was intended to permit further review over three years of the financial outlook and the needs of the courts. At present, the general fund has not fully recovered, the needs remain, and the projected revenues are about five percent below the original projection of \$4.3 million.

In closing, **Ms. Tobias** said she was not aware of a compelling public policy reason to extend the sunset for the surcharge at this time. Three years ago Idaho was experiencing an unprecedented financial crisis.

**Senator Mortimer** suggested that they add a sunset of five years just to remind the committee to look at it specifically. **Vice Chairman Vick** said he would like some additional assurance that there is no incentive for anyone in the system to make decisions based on these fees. **Ms. Tobias** said there were a number of ways in which adequate safeguards are provided. These funds are collected and sent to the state of Idaho and disbursed from the Treasurer's office for specific purposes in other funds. There are at least four degrees of separation. No individual, judge or county would obtain any direct benefit from a decision that was made in that case.

**Senator Hagedorn** said it was commendable that four years ago they came within six percent of a projection of what these fees would raise. He also said he appreciated the fact that the users are now paying for the system. He then asked why the term emergency was still on the bill. **Ms. Tobias** said others have asked why they didn't strike the term 'emergency' and just leave a surcharge that would be assessed. She felt that since it would require the computer people to search out and change that term everywhere it was mentioned, it didn't seem feasible or prudent.

**Senator Werk** asked where the lion's share of the money was coming from. **Ms. Tobias** said it was not from felony cases, but from infractions and misdemeanor cases. **Senator Werk** asked why are felonies negligible. **Ms. Tobias** said the volume of felony cases is lower and also the felon is incarcerated and has no income. **Senator Werk** said the legislation eliminates the sunset provision which means this doesn't come before the legislature again and he asked if that was the intent why not just extend the sunset. **Ms. Tobias** said she could ensure that the courts are very concerned about the overall fees, fines, and forfeitures and obligations that are placed on criminal defendants. They are taking a look at all of the court fees and fines that the legislature provides to be paid by all defendants and to whom they are paid or collected. She would submit that the bigger system does need review and they will be checking the efficiency through technology systems and policies on fees and fines. A comprehensive package will be brought before the legislature. **Senator Werk** asked if there was some constitutional provision or statutory provision that requires the legislature to provide funding for the judiciary. **Ms. Tobias** said yes, the legislature is responsible to provide funding for the Idaho courts so they can achieve their constitutional mission. She was not aware of anything in the constitution that says that funding has to be provided from the general fund or from other dedicated funds.

- MOTION:** **Senator Bock** moved to send **H 103** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion.
- SUBSTITUTE MOTION:** **Senator Mortimer** moved to send **H 103** to the 14th Order for an amendment to add a five year sunset clause. **Senator Nuxoll** seconded the motion. A roll call vote failed with Vice Chairman Vick and Senators Mortimer, Nuxoll and Werk voting aye; Chairman Lodge, Senators Davis, Hagedorn, Lakey, and Bock voting nay.
- ORIGINAL MOTION:** The motion carried by **voice vote**.
- ADJOURNED:** There being no further business, **Chairman Lodge** adjourned the meeting at 2:37 p.m.

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Senator Lodge  
Chairman

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Leigh Hinds  
Secretary