

## MINUTES

# HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Wednesday, January 25, 2012
- TIME:** 1:30 P.M.
- PLACE:** Room EW42
- MEMBERS:** Chairman Wills, Vice Chairman Luker, Representative(s) Smith(24), Nielsen, Shirley, Hart, Bolz, Ellsworth, Bateman, McMillan, Perry, Sims, Burgoyne, Jaquet, Killen
- ABSENT/  
EXCUSED:** Representative Nielsen
- GUESTS:** Susie Headle, U.S. Federal Court; Lisa Sturn & Nancy Lopez, EUDh Partnership; Keely Duke, Idaho Chapter, Federal Bar; John Zarian, Parsons; Gayle Hines, Olympic Development Program (ODP); Dennis Stevenson, Dept. of Administration; Lt. Bob Clements, Alcohol Beverage Control (ABC), Maj. Clark Rollins, Kevin Hudgens & Dawn Peck, Idaho State Police (ISP)
- Vice Chairman Luker** called the meeting to order at 1:32 p.m.
- DOCKET NO. 11-1002-1101:** **Dawn Peck**, Manager of the ISP Bureau of Criminal Identification, presented **Docket No. 11-1002-1101**. She explained the fees outlined in this rule govern the fingerprint-taking procedure for purposes such as licensing, regulation, and employment. All fees collected are deposited in a separate fund and are used for staff funding, operating costs associated with the criminal repository, applicant program, audit and training activities regarding criminal history and collection, and the central sex offender registry.
- Ms. Peck** emphasized the fingerprint check fee has not changed since 1996, and the name check fee, since 2001. The fees used to support these programs were once available through general fund dollars, but currently the department is operating at a deficit and anticipate funding to be completely depleted by end of FY2013. The department proposed increasing the fingerprint fee from \$10 to \$25 and the name check fee to \$20 which is lower than the department's national search (\$37/set). The department believes the increase in fees will enable them to adequately continue doing their statutorily mandated work. The new funding would be used to pay salaries to the staff who complete the processing and for the maintenance of the system used to verify fingerprint matches.
- In response to committee questions, **Ms. Peck** confirmed the school districts are among the "users" listed in the rule. She indicated she has an upcoming meeting with the school districts so they can adjust their fees accordingly. In regards to increasing costs, she stated the agency has been operating at a deficit, and currently has two positions they are not funding.
- MOTION:** **Rep Burgoyne** made a motion to approve **Docket No. 11-1002-1101**. **Motion carried by voice vote.**
- DOCKET NO. 11-0501-1101:** **Lt. Bob Clements**, ABC/ISP, presented **Docket No. 11-0501-1101**. He explained the substance of the rule in the January 23, 2012 committee meeting and stood for questioning. The committee had chosen to reconsider this docket at its last meeting. In regards to the definition of multi-purpose arena inclusions, Lt. Clements explained that if the establishment is licensed to dispense alcohol, it would be allowed to apply for this permit, unless it meets one of the exceptions (multi-purpose arena). In regards to time requirements, he explained that the committee who put this rule together agreed on monthly reporting because it allowed local law enforcement enough time to adjust staffing needs.

**Lt. Clements** explained the central purpose of the rule was to address public safety concerns and, because certain events can attract unruly crowds, it is important that law enforcement have the necessary tools. This rule is less restrictive, providing an avenue for these establishments to sell alcohol and still allow minors on the premises. For example, this would apply to those establishments who fail to meet a restaurant permit requirement.

**Rep. Burgoyne** invoked Rule 38 stating a possible conflict of interest but would still be voting on **Docket No. 11-0501-1101**. He disclosed his personal interest/relationship to the potentially affected movie theatre "The Flicks." In response to committee questions about the effect on movie theatres that serve food and alcohol, **Lt. Clements** explained that these theatres are grand-fathered in by another exception and would not be affected by implementation of this rule.

Regarding questions about penalties for failing to timely inform local law enforcement, **Lt. Clements** referenced Section E, which allows 24-hour notification for an event that might require additional law enforcement staffing. The notification requirement is a part of the application for the permit and the description of the event is within the security plan.

**MOTION:** **Rep. Jaquet** made a motion to approve **Docket No. 11-0501-1101**. In support of the motion, she emphasized that venues are very diverse and **Docket No. 11-0501-1101** will apply to a large group of businesses. She also asked **Lt. Clements** for an assurance that the rule may be fixed in the future. Committee members expressed concerns that **Docket No. 11-0201-1101** gives the Director a very large amount of power and sees this as a threat and a burden to small businesses. **A voice vote was taken on the motion. Vice Chairman Luker** was in doubt so he called for a roll call vote.

**ROLL CALL VOTE:** **Vice Chairman Luker** requested a roll call vote to approve **Docket No. 11-0501-1101**. **Motion failed by a vote of 7 AYE, 7 NAY, and 1 Absent/Excused. Voting in favor of the motion: Vice Chairman Luker, Chairman Wills, Reps. Smith (24), Shirley, Bolz, Bateman, and Jaquet. Voting in opposition to the motion: Reps. Hart, Ellsworth, McMillan, Perry, Sims, Burgoyne, and Killen. Rep. Nielsen was absent/excused.**

Upon completion of the rules review, **Vice Chairman Luker** turned the gavel over to **Chairman Wills**.

**RS 20828:** **Lt. Bob Clements**, ABC/ISP, presented **RS 20828**. He explained this piece of legislation creates an Alcohol Beverage Control Fund and provides secured funding to allow the ISP to adequately enforce the Idaho liquor law. He explained that ABC conducts service checks, investigates criminal activities associated with such regulations, approves licensing and investigates serving intoxicated patrons. He stated that there is 1 ABC officer to every 5,000 establishments. In closing, he stated the overall purpose of the proposed legislation is to ensure adequate funds for staffing.

**MOTION:** **Rep. Ellsworth** made a motion to introduce **RS 20828**. **Motion carried by voice vote.**

**RS 20806:** **Maj. Clark Rollins**, ISP, presented **RS 20806**. **Chairman Wills** recognized Maj. Rollins' achievement as a newly promoted Major. Maj. Rollins explained that the proposed legislation will add a \$20 fee to all felony and misdemeanor drug offenses. These funds will be used to cover costs associated with making reports and training costs.

In response to committee questions, **Maj. Rollins** clarified that the \$20 will be in addition to the fees/fines that already exist. ISP would like to shift the burden created by violation of the drug statutes from the taxpayer to the offenders.

In regards to fees going into a donation fund, **Maj. Rollins** stated that when the fund was first established, as a drug donation fund, the funding used to come from a "checked box" on each taxpayer's income tax form. He clarified that the fee will be assessed against the criminal, for all felony and misdemeanor convictions. In regard to the offender's ability to pay, he stated that would be addressed through the probation or parole office.

**Maj. Rollins** stated he was unfamiliar with other states' policies on assessment of additional fees but has yet to see a conflict in court on this matter. He clarified that the effect caused by increased fees will be seen during sentencing; restitution is ordered by the court, and then the district court will assess the fees. He also confirmed that this legislation applies to all misdemeanor and felony drug convictions, which includes possession of marijuana.

**MOTION:** **Rep. Bateman** made a motion to introduce **RS 20806**. **Motion carried by voice vote.**

**H 402:** **Larry Hayhurst**, State Brand Inspector/ISP, presented **H 402**. He stated this bill places the Director of the ISP into an administrative role. He explained he has not heard any resistance or complaints from affected agencies and because brand inspectors are required to do law-enforcement work, this bill ensures the ISP Director has oversight and authority over the brand inspectors. Mr. Hayhurst stated that he believes this bill will enhance what brand inspectors already do, takes no power from the board, and will not increase industry costs.

**MOTION:** **Rep. Killen** made a motion to send **H 402** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.**

**HJM 4:** **Rep. Burgoyne**, presented **HJM 4**. He stated that this memorial encourages Congress to create and fund a third judicial federal judgeship for the State of Idaho. He emphasized that an effective judiciary is important for the preservation of society. Currently, Idahoans are often judged by judges who are not connected with our state. He stated that since the most recent addition of a federal judgeship, in 1954, federal court caseload has increased enormously, and more importantly, it is not tenable for those who have business with the federal court. He emphasized this is a very real problem for those who need to be heard in commercial disputes where federal court is the only court with proper jurisdiction. He provided figures on other states with a smaller population yet have more federal district judges than Idaho does.

**Rep. Hart** asked why the RS included the language "District of Idaho" rather than "State of Idaho." **Rep. Burgoyne** explained that he was unsure of why we don't call the federal court in Idaho the United States District Court for the District of Idaho but speculates the reason is because the federal court is not a state court and judges of the federal court are not state judges. He further stated that federal judges in Idaho are not selected by the state of Idaho and speculated that the federal court is called the District of Idaho because the federal courts are organized into districts. He went on to explain how larger states have multiple districts. California, for example, is divided into the southern, central and northern districts.

**Rep. Hart** next asked a question regarding the connection between sending federal intellectual property cases to Texas and losing some of these cases as Idaho has one of the highest patent per capita rates in the nation. He questioned whether **Rep. Burgoyne** believed Idaho to be at a disadvantage because of this. **Rep. Burgoyne** stated that it is his understanding that, for example, Micron recently had a case decided in which it was fortunate enough to prevail in the state of Texas. He has heard from colleagues who focus their practice in intellectual property who told him there are a number of cases that would be appropriate for Idaho courts, but are sent elsewhere because Idaho lacks the forum for adjudicating these cases. He stated to the extent that we have Idaho businesses that have intellectual property disputes, we want to be sure that Idaho has the resources to be on even footing with other states, so that Idaho cases do not have to be tried outside Idaho. Furthermore, he stated we (as Idahoans) want Idaho judges and juries to try these cases, and we don't want them going to another state because we don't have the resources in the federal court in Idaho to decide them.

Those speaking in support were **John Zarian**, former chairman of Idaho State Bar (ISB) Litigation Section, who is an attorney working for an intellectual property firm, and **Keely Duke**, a labor law trial attorney and President of the Idaho Chapter of the Federal Bar Association. They emphasized the extreme delay in intellectual property case adjudication in federal courts, causing the need for visiting and retired Magistrate judges to hear federal cases in Idaho. **Ms. Duke** spoke about the great impact the delay of patent law case resolution has on her clients and also spoke on behalf of **Wendy Olson**, of the US Attorney's Office, who has great concerns about non-Idaho judges deciding these cases and also the delays this causes to criminal case adjudication.

In response to committee questions about time delay, **Ms. Duke** said a federal court case will experience a delay of 2.5 to 3.5 years for a jury trial. She also stated that the process for beginning the appointment for a new judgeship can take a few months or several years before the judge is in place.

**MOTION:** **Rep. Killen** made a motion to send **HJM 4** to the floor with a **DO PASS** recommendation. In opposition to the motion, **Rep. Bateman** stated he does not want to encourage the expansion of the federal government though recognized the need for efficiency in federal court case adjudication.

**VOTE ON THE MOTION:** **Motion carried by voice vote.** **Rep. Bateman** requested that he be recorded as voting **NAY**.

**SJR 102:** **Brent Reinke**, Director of the Idaho Department of Corrections, presented **SJR 102**. He introduced **Paul Panther**, Idaho AG/Chief Criminal Law Division, who provided a quick history to support the Constitutional Amendment proposal. **Mr. Panther** said currently, Article 10, Section 5, of Idaho Constitution, is unclear in regards to who will manage felony and misdemeanor parole. This history leaves the question: "Can the Board of Correction supervise misdemeanor probation?"

**Mr. Panther** explained that the insertion of the word "felony" clarifies the Board's authority to supervise. It is unknown, before the 1990s, to what extent the Board of Correction supervised misdemeanor probation. Furthermore, it is also unknown to what extent that power (if held) can be delegated away.

Regarding misdemeanor probation authority, **Mr. Panther** explained the constitutional provision governing counties, Article 18, Section 12, allows county officers to perform duties as prescribed by law. There are currently two statutes that allow counties to collect costs for that purpose. **Mr. Panther** noted that a Constitutional Amendment is required in order to adequately address the issue of some counties who wish to eliminate their misdemeanor probation programs.

**MOTION:** Rep. Killen made a motion to send **SJR 102** to the floor with a **DO PASS** recommendation. In support of the motion, Rep. Burgoyne pointed out that the first opportunity to fix this would be November 2012 and if we do not address this now, then the next opportunity to fix this would be in November of 2014. Furthermore, there is a risk that a court case could arise sometime between now and November 2014, and there would be no authority to enforce.

**VOTE ON THE MOTION:** **Motion carried by voice vote.** Representatives **Perry, McMillan, Ellsworth, Smith (24)**, and **Vice Chairman Luker** requested that they be recorded as voting **NAY**.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 3:15 p.m.

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Representative Wills  
Chair

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Stephanie Nemore  
Secretary