

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 14, 2012
TIME: 1:30 P.M.
PLACE: Room WW54
MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, McKague, Mortimer, Nuxoll, Bock, and LeFavour
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.

Chairman Darrington called the meeting to order at 1:30 p.m. and asked the secretary to call the roll. The Chairman changed the order of the Agenda to present the bills first and then the hearing of the Gubernatorial Appointment for the Parole Commission.

H 570

Relating to the Peace Officer and Detention Officer Temporary Disability Act. **Paul Jagosh**, Idaho Fraternal Order of Police, explained the purpose of the Peace Officer and Detention Officer Temporary Disability Act that was passed in 2007 was to cover the gap between workers compensation time loss benefits and an officers full rate of pay. Time loss benefits have a maximum payment which is sometimes less than what an officer makes, creating a financial hardship for the officer and his family after being injured in the line of duty. To explain the reason for this change, he cited the example of the two Idaho State Police Officers who were intentionally run over while on their motorcycles. Since they were not responding to an emergency or in pursuit of a violator of the law, as in the current statute, they were not covered. Fortunately for the officers, ISP paid these benefits from their budget for one year. The added verbiage to the law covers when the injury is caused by the actions of another person. This is a temporary benefit administered by Workers Compensation. They and their doctors determine when this injury ceases to exist and the officer can return to work. This bill has no impact on the State General Fund. There is a dedicated fund from a \$3.00 fee added to misdemeanor and felony convictions. Currently, there is a balance of \$562,000 in the fund.

Senator Bock asked if he could explain how this was limited to the performance of the duties of the police officer. **Mr. Jagosh** said the officers would have to be on duty and he didn't know how to further define their work. **Senator Davis** suggested that the answer could be found in paragraph (1), but he further asked suppose there are two officers that are on duty and involved in horseplay and someone gets hurt. **Mr. Jagosh** said the legislative intent is if doing their duties and they are injured, not in horseplay, and he thought workers compensation would deny such a claim. **Chairman Darrington** asked Chief Masterson if he would like to respond to the question. **Chief Masterson** said in response to Senator Davis and Senator Bock, the discussion that follows when an injury is caused by another, he believes paragraph (1) has to be in effect for (c) to follow. He also pointed out that an officer injured in a horseplay incident is not considered performance of duties and would not be submitted by them and there are also effective screenings in place by workers comp and the industrial commission to make a determination that the subsets of this law applies.

Chairman Darrington asked if there were others to speak to or in favor of H 570. **Chief Michael Masterson**, representing Boise Police Department, and past president of the Idaho Chiefs Association, said that there were some areas that needed closure. The way the bill was written with response to emergency or apprehending a suspect doesn't cover an officer investigating a suspicious activity and being attacked or injured. The officer is in the performance of his duties and attacked by another. The wording in this proposed bill will cover officers that provide that protection.

Paul Jagosh, in closing, said he realized it may be the last time he stands before the Chairman in this Committee, and he thanked him for his service and dedication to the law enforcement community and helping meet the needs for all these years.

MOTION

Senator Mortimer moved, seconded by **Senator Nuxoll**, to send **H 570** to the Floor with a **do pass** recommendation. The motion carried by **voice vote**.

H 514

Relating to Disturbing the Peace. Representative Nonini explained this bill is to provide additional provisions relating to Disturbing the Peace. In Idaho Code, § 18-6409, in (1) by adding "...conduct that is intended to seriously alarm or harass a person such as would cause a reasonable person substantial emotional distress,..." within the description of what constitutes disturbing the peace. He said this was brought to his attention by some constituents that were being continually harassed by a neighbor. When they looked into it with the Sheriff Deputy, the prosecuting attorney in Kootenai County, and Mike Kane, it became more of a statewide issue. Last year he had tried to amend the stalking statute and at that time had opposition from the Prosecuting Attorneys Association and the Sheriffs Association so he didn't proceed. He continued to work on it through the summer with the Kootenai prosecuting attorney, Barry McHugh, trying to come up with some compromise language and then got into the Disturbing the Peace statute. The four attorneys in the House Judiciary & Rules Committee went back and forth, changing the bill at the print hearing. It came back for a bill hearing in the House Judiciary & Rules Committee with the language that the attorneys had put in it and it got the support of the Sheriffs Association and the Prosecuting Attorneys Association. It is another tool to allow groups to deal with these issues that come up occasionally when you have a neighbor that continually harasses a group of neighbors within an area.

Senator Davis asked what "trading" means. **Representative Nonini** did not know. **Senator Lodge** asked if this legislation would apply to someone that was not your neighbor, but came into your neighborhood and harassed you or your family. **Representative Nonini** said he understood that it would if the conduct was intended to "seriously alarm or harass." **Senator Lodge** asked if it would cover a person that didn't say anything, was not loud, just stood in front of your house with a banner that was emotionally disturbing to you. **Representative Nonini** presented some examples of a particular neighbor that continually harassed a group of neighbors in his legislative district, by taking a couple of sheets of tin off a shed that were approximately 10 feet long by 4 feet wide and put them together on stakes, then spray painted obscenities. The neighbors came up the shared road and had to see the signs. They went to the County and got them to change the sign ordinance which addressed that one issue. Now he can just put a smaller size sign up. There are other issues related to the signage because when the lady neighbors are driving without their husbands, this neighbor had a tendency to tailgate them almost creating a road rage incident. And when they look into the rear view mirror to try to pull off, he is giving them an offensive hand gesture. That's harassment. In another case recently, the road department had removed a sign that they had installed on a roadway and this harassing neighbor called the sheriff's office and said that these neighbors that

were being harassed took the sign down and so the sheriff went to investigate the people that were being harassed with the complaint that they took the sign down. Representative Nonini concluded that this was the best language they could come up with to help the situation.

Fairy Hitchcock, Hitchcock Family Advocates, opposes the legislation and explained that "traducing" meant continual pestering.

MOTION

Vice Chairman Vick moved, seconded by **Senator Mortimer**, to send **H 514** to the Floor with a **do pass** recommendation.

SUBSTITUTE MOTION

Senator Bock moved, seconded by **Senator LeFavour**, that **H 514** be **Held in Committee**. **Senator Bock** stated that the language that concerned him was "seriously alarmed" or "harassed" and regarding Senator Lodge's concern of where the line was drawn. He stated the legislation was overly broad and he saw no reason for creating this opportunity for unconstitutional law. The substitute motion failed by a **voice vote**.

ORIGINAL MOTION

The original motion was to send **H 514** to the Floor with a **do pass** recommendation. A roll call vote was held. Chairman Darrington, Vice Chairman Vick, Senators Lodge, McKague, Mortimer, Nuxoll voted aye. Senators Bock and LeFavour voted nay. The motion passed 6 to 2.

H 376

Relating to Successor Corporations. **Jesse Taylor** explained the situation regarding their client. Crown Cork & Seal purchased one of its competitors in 1963, Mundet Cork, another bottle-cap maker. For \$7 million, Crown obtained a majority stock interest in Mundet. Before the purchase, Mundet had run a small side business manufacturing asbestos insulation, but had shut it down and focused on its bottle-cap production by the time Crown became involved. Within 92 days of Crown's obtaining its interest in Mundet, everything left from Mundet's insulation division, idle machinery, leftover inventory, and customer lists were sold to a New Jersey insulation company. With only its bottle-cap business, remaining, Mundet was merged into Crown in 1966 when Crown acquired the remainder of the Mundet stock. Although Crown never manufactured, sold, or distributed any asbestos-containing products, its brief involvement with Mundet made it a target of asbestos-related lawsuits. Crown has been hit with more than 300,000 asbestos tort claims during the past 40 years. Crown's initial \$7 million investment in Mundet has resulted in more than \$700 million in asbestos-related payments.

Russell Westerberg, of Westerberg & Associates, addressed the Committee. A written copy of Mr. Westerberg's testimony is included in these minutes as Attachment #1. He declared that the act known as successor asbestos-related liability reform legislation previously passed in fifteen states and approved in neighboring states of Utah and Arizona this year. It simply allows innocent successor companies like Crown Cork & Seal that acquired and merged with asbestos-tainted companies prior to the promulgation of the 1972 OSHA asbestos regulations to be treated no worse than those companies that acquired asbestos-tainted companies after 1972, that had the benefit of being forewarned and to protect themselves from unfair successor liability by maintaining the acquired companies as subsidiaries.

Barbara Jorden, Idaho Trial Lawyers Association (ITLA), explained that the bill is sponsored by Crown, Cork & Seal and believes it to be a special interest legislation that is uniquely tailored to benefit one company or a group of companies, but it has not affected any other companies in the United States other than Crown, Cork & Seal. She said in the fifteen years they have been trying to pass this in all of the states, it is only for their company. Ms. Jorden recommends that the bill be held in Committee. Crown Cork & Seal is a multi-national company with net sales nearing \$8 billion dollars a year. Even though they do continue to have payouts for asbestos-related claims, the company itself is not struggling and there is no impact on their bottom line. She further stated there is no asbestos crisis in Idaho. There are very few claims here and no companies that are manufacturing or selling asbestos related products in our state. The ITLA believe this bill is unconstitutional and Ms. Jorden referred to Article 3, Section 19, that local and special laws are prohibited and should not be passed.

Senator Bock stated (1) you don't buy stock, you buy assets; and (2) if you acquire the stock, then you cannot complete the dissolution of the acquired company because that opens the door to liability. Those are the standard rules and procedures for acquisition of assets and stock. He said he was struggling with why this company would be treated any differently than any other company involved in acquisitions. **Mr. Westerberg** said that in 1963, when Crown Cork acquired Mundet as a bottle cap producing company with no knowledge that they ever had an asbestos manufacturing operation.

A discussion ensued regarding other examples of a company acquiring another, i.e. a medical company that produced a product that caused the death of a lot of people, a risk that was unknown at the time of the acquisition. He asked how that scenario was different than the one of his client. **Mr. Westerberg** said it was simple; the referenced company was responsible for manufacturing a substance that had a disastrous effect on health. He repeated that Crown Cork never manufactured, distributed, or had anything to do with asbestos. **Senator Bock** then brought up the instance of phthalimide and that company. **Mr. Westerberg** agreed that the person injured by that substance should have a right to access the assets of the company that produced that substance. The example given is about someone that should have some culpability for making something that harmed other people. He reiterated that Crown never made anything called asbestos. He concluded that according to the trial lawyers, it was indicated that the bill was unnecessary because Crown is profitable and needs no relief. His closing comment was that there was a new Director of Commerce and presently engaged in going around the country trying to recruit investment and business in Idaho. What kind of message will be sent to the outside world since the state legislature is the window to the state.

MOTION

Senator McKague moved, seconded by **Senator Nuxoll**, to send **H 376** to the Floor with a **do pass** recommendation. A roll call vote was requested. Chairman Darrington, Vice Chairman Vick, Senators Lodge, McKague, Mortimer, Nuxoll voted aye. Senators Bock and LeFavour voted nay. The motion prevailed.

GUBERNATORIAL APPOINTMENT

Gary Scheihing of New Plymouth, Idaho was appointed to the Commission on Pardons and Parole to serve a term commencing January 1, 2012 and expiring January 1, 2015. Mr. Scheihing said he had 37 years of law enforcement experience, ranging from dispatcher to Chief of Police. He has a proven management record of improving employee productivity, morale and efficiency. He also had communicated openly with employees, the media, and the public, creating a positive law enforcement image in the community. He is an expert in developing, training, and day-to-day operations of a K-9 unit and state-of-the-art K-9 facility. Regarding the Commission, he discussed the changes and how the information on inmates with the Hearing Officers had improved. **Chairman Darrington** mentioned that they are hearing inmates sooner, before their eligibility date. **Mr. Scheihing** said they have a plan and the inmate knows exactly the steps he must take to get out. **Chairman Darrington** asked about his attitude on revocations and was he a one chance guy or a two chance guy. **Mr. Scheihing** said he had to look at everything the guy has done and go from there. He and Senator Lodge discussed his work with canines.

Director Olivia Craven discussed the programs within the institution and how helpful they had been. She said that misdemeanor probation has an effect since they are dealing with people at a lower level before they are committed to prison. The Parole Commissioners, past and present, came to the podium. Mark Funaiole and Bill Young have just retired from the Commission, but wanted to share their experiences with the Committee. Janie Dressen, Bud Langerak and Mike Matthews are current Commissioners. They talked about the hearings, the drug issue, and the paradigm shift in the Courts. There are many programs, and the Pathways Program is a great asset. Mr. Matthews stressed that affecting revocation was the economy and the another difficult situation to address was drug addiction. All in all, they are making tough decisions and have enjoyed the comradery of each other.

COMMITTEE VOTE

Senator Bock moved to send the gubernatorial appointment of Gary Scheihing to the Commission on Pardons and Parole to the floor with the recommendation that it **be confirmed** by the Senate. **Senator Nuxoll** seconded the motion. The motion passed by **voice vote**.

Olivia Craven introduced Wes Greer and Connie Morgan and thanked Senator Darrington for his work with the Commission. She and her staff presented the Senator with a plaque noting their appreciation and a picture for him to hang in his mountain cabin.

ADJOURNMENT

There being no further business, **Chairman Darrington** adjourned the meeting at 3:10 p.m.

Senator Darrington
Chairman

Leigh Hinds
Secretary