

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Thursday, March 29, 2012

TIME: 8:00 A.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Darrington, Vice Chairman Vick, Senators Davis, Lodge, Mortimer, Nuxoll, Bock, and LeFavour

ABSENT/ EXCUSED: Senator McKague

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 8:02 a.m. and asked the secretary to call the roll. He then asked if there were minutes to approve.

MOTION **Senator Lodge** moved, seconded by **Senator Mortimer**, that the minutes of **March 27, 2012** be approved as written. The motion carried by **voice vote**.

RS 21570 **A Senate Resolution Stating Findings of the Senate and Amending Rule 39 of the Rules of the Senate Relating to Voting.** **Senator Davis** explained that this legislation modifies Rule 39 to make certain each senator has a duty to vote both in Committee and on the floor. The senator has a similar duty to disclose any conflict of interest both in Committee and on the floor.

MOTION **Senator Mortimer** moved, seconded by **Senator Nuxoll**, to print **RS 21570** and send to the floor immediately. The motion carried by **voice vote**.

RS 21571 **A Senate Resolution Stating Findings of the Senate and Amending Rule 7 of the Rules of the Senate Relating to Employees of the Senate.** **Senator Davis** explained that this legislation modifies Rule 7 to remove the requirement of a two thirds vote to remove a member of the Senate.

MOTION **Vice Chairman Vick** moved, seconded by **Senator Mortimer**, to print **RS 21571** and send to the floor immediately. The motion carried by **voice vote**.

RS 21569C1 **A Senate Resolution Stating Findings of the Senate and Amending Rule 53 of the Rules of the Senate Relating to a Committee on Ethics.** **Senator Davis** explained this legislation modifies Rule 53. The complaint shall be in writing, signed and verified and contain one or more of the following:

1. Substantial conduct unbecoming a Senator;
2. A violation of the Rules of the Senate;
3. A violation of any state law that uses public office for private pecuniary gain;
4. A violation of any state law relating to conflicts of interest; or
5. A violation that brings discredit or embarrassment to the Senate or that constitutes a breach of public trust.

The complaint shall be specific and supported by competent preliminary evidence. It shall be provided to the chairman of the committee on ethics by the President Pro Tempore and may be dismissed if not in compliance with this Senate Rule or the alleged violation occurred two years or more before the date of the complaint.

Senator Davis further explained that the committee's investigatory meetings shall be held in executive session. If after investigation, the committee determines no probable cause exists, it shall be dismissed and remain confidential. If a probable cause exists that a violation may have occurred, the committee shall so notify the complaining Senator and the Senator complained against and it shall become a public document.

Senator LeFavour voiced her concerns of a deadlock within the committee even if it was split equally between parties. She feared that one party could possibly be squashed. **Senator Davis** said he believed that both parties must take ownership and have equal responsibility. **Senator Bock** said he would prefer a wholly independent committee, but that would be for another day.

MOTION

Senator Mortimer moved, seconded by **Senator Nuxoll**, to print **RS 21569C1** and send to the floor immediately. The motion carried by **voice vote**. **Senator LeFavour** voted nay.

H 660

Relating to Judges' Retirement and Compensation. Representative Lake explained that the Judges Retirement Fund (JRF) was not adequate. In 2011 there were two bills considered, but there were problems with the House. Prior to the close of last session, four House members and representatives of the judiciary looked for a long term solution to the funding issues of the retirement fund. He said that disparate views, ideas, alternatives and philosophies were exchanged. Actuarial studies and analyses were completed.

Patricia Tobias, Administrative Director of the Courts, explained that after eight meetings, and considerable debate and analysis, an agreement was reached on January 26, 2012, and recommended to Governor Otter, Chief Justice Burdick, President Pro Tem Hill and Speaker of the House Denney. There was then a meeting with the executive director of PERSI, Mr. Don Drum, and the PERSI Board, to ensure their ideas and requirements were obtained to transfer the administration of the fund to PERSI. Ms. Tobias called attention to the attached documents with detailed information for the legislation. (Attachment #1)

Judge Barry Wood explained this bill revises the statutes regarding the JRF in order to ensure the stability of the Fund in the years ahead. It was created in 1947 and is the oldest public retirement plan in Idaho and has been funded by a combination of employer contributions, employee contributions, and filing fees in civil cases. The major changes that will be enacted by this bill are as follows:

1. An increase in two steps in the employer's contribution from the current 7% to 10.5%.
2. An increase in two steps in the employee's contribution from the current 6% to 9%.
3. An increase in the civil filing fee contribution to the JRF by \$8 to \$26.
4. There are amendments to two statutory provisions regarding Plan B and would apply to all new judges who take office following the effective date of the legislation: (a) the senior judge service requirement would be increased from 35 days a year to 60 days a year for 5 years; (b) judges who become eligible for retirement only because they are at least 55 years of age and have at least 15 years of service would not be eligible to elect a Plan B retirement.
5. The surviving spousal benefit paid would be rolled back from the current 50% to 30%.
6. The annual cost of living adjustment (COLA) to the retirement benefit would be the same percentage as that provided for PERSI retirees.

7. A transfer of plan administration of the JRF to PERSI upon adoption of the above described funding mechanisms, receipt of an IRS determination letter and the enactment of any changes required by the IRS.
8. A fiscal year-end actuarial evaluation of the JRF, including a specific report on Plan B, which reports shall be provided to the germane legislative committees and the Joint Finance-Appropriations Committee.

Judge Wood explained the organizational structure of the bill and the effective dates. The bill has 13 sections and Section 13 is the effective date provision. He stated that five of the twelve substantive sections of the bill; sections 1, 3, 5, 6, and 10 would go into effect on July 1, 2012. The other seven substantive sections; sections 2, 4, 7, 8, 9, 11 and 12 would go into effect when PERSI assumes responsibility for administration of the JRF. This would occur, as section 13 provides, on the first July 1 occurring at least three months after the PERSI Board informs the Secretary of State that: (1) a determination letter from the IRS has been received ruling that the JRF meets the requirements for a qualified plan, and (2) any changes to the JRF required by the IRS or the determination letter have been made.

Don Drum, Executive Director of PERSI, stated that the IRS was extremely slow in issuing determination letters; for example, PERSI's has been under consideration for four years. There's no reason to believe they won't get one, there's a question as to when it will happen. Often with determination letters, they will initially issue a letter with some corrections they want made and generally those are very specific and easy to accommodate the IRS and then you can reapply which is much quicker response. **Senator Mortimer** asked if Mr. Drum had been involved in negotiations of the Supreme Court with this legislation. **Mr. Drum** said he had been involved once there was consensus with the House and the judges system. At that time, they had reviewed it, understood it, and had the Chairman of the Board attend meetings as well. **Senator Mortimer** asked if he had looked at this to make sure the percentages and the contributions match and were actuarially sound. **Mr. Drum** said he had not looked at it in detail, but he had a lot of trust in Millman, who is also their actuary.

The senators had some discussion with the presenters for clarification. They then thanked the participants involved in the many meetings and discussions to arrive at a consensus in providing a solution for this problem.

Senator Lodge thanked Representative Lake for his work on this legislation. In accordance with Rule 39 H, she declared a conflict of interest.

MOTION

Senator LeFavour moved, seconded by **Vice Chairman Vick**, that **H 660** be sent to the floor with a **do pass** recommendation. The motion carried by **voice vote**.

Chairman Darrington said this was an emotional moment for him and that he had probably chaired more committees in the Idaho State Senate than any person who served in the Senate. He has been a chairman since 1984 and done numerous interim committees. And so, he said he would leave us with the words of the orchestra player on the Titanic, "It's been a pleasure to serve with you..." and with that he adjourned the meeting at 9:20 a.m. APPLAUSE.

Senator Darrington
Chairman

Leigh Hinds
Secretary