

MINUTES

HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

DATE: Monday, January 21, 2013

TIME: 1:30 P.M.

PLACE: Room EW42

MEMBERS: Chairman Wills, Vice Chairman Luker, Representatives Nielsen, Bolz, Bateman, McMillan, Perry, Sims, Dayley, Horman, Malek, Packer, Patterson, Trujillo, Burgoyne, Meline, Ringo

**ABSENT/
EXCUSED:** Rep. Nielsen

GUESTS: Patti Tobias, Michael Henderson & Judge Barry Wood, Idaho Supreme Court; LeRoy Fiscus, ACLU of Idaho; Jan Sylvester

Chairman Wills called the meeting to order at 1:30 p.m.

RS 21752: **Rep. Luker** explained **RS 21752** would amend House Rule 76 and provides for new procedures for the House standing ethics committee. He said currently there is an ad hoc committee and this change to the rule would establish a standing ethics committee for a two year term of the legislature. He explained the process: there will be a confidential election process by each caucus and then members of the ethics committee would meet when a complaint to the committee was received. He said the Chairman of the ethics committee would be designated by the Speaker and the committee would have a 3-2 majority/minority configuration. He said the change in the rule would create more specific categories for ethical misconduct and change the procedure for complaints received. Generally, there will be the initial complaint, confidential review of the complaint by the committee, a probable cause finding, and then a public hearing. The change to the rule would also clarify sanctions, which could be censure with or without conditions. He said this would make the censure/reprimand process a more powerful and flexible tool.

In regard to committee questions, **Rep. Luker** said the reason for reducing the committee size from seven to five was because having fewer members would be less burdensome and would make the committee more manageable.

MOTION: **Rep. Bateman** made a motion to introduce **RS 21752. Motion carried by voice vote.**

RS 21737: **Patti Tobias**, Idaho Supreme Court, explained **RS 21737** is a simple change that will have an enormous positive influence on the state. She said this legislation will create three new judge positions, one each in Canyon, Ada and Jefferson counties. She outlined the specific changes in the legislation. She explained counties are responsible for funding facilities and other court support personnel and operating expenses so it makes sense to coincide the effective date of October 1, 2013 with the county fiscal year. She also indicated that county commissioners have pledged their support in writing for these positions.

In response to committee concerns, **Ms. Tobias** said she would return to the committee with information on judge work load increases from 2000 to the present. She added that population in these counties with the added judgeships has increased dramatically and emphasized these are important positions for commerce.

MOTION: **Rep. Burgoyne** made a motion to introduce **RS 21737. Motion carried by voice vote.**

RS 21742: **Matthew Henderson**, Idaho Supreme Court, said **RS 21742** is meant to fill a hole in the Idaho Code. He explained much of the Idaho Code contains the language "under penalty of perjury" and when this statement is signed it may not have in fact been true, because there is no associated penalty. He then referenced Idaho Code Title 18, Chapter 54, "perjury" defined. (see attached handout) He said Section 2 would attempt to address the issue that the signor didn't actually take an oath. The additional language on lines 29-31 would make it so your signature "under penalty of perjury" would actually constitute an oath and you would be liable for perjury. In conclusion, Mr. Henderson stated that this addition would make preparation and filing of legal documents more practical and comprehensive.

MOTION: **Rep. Meline** made a motion to introduce **RS 21742**. **Motion carried by voice vote.**

RS 21695: **Matthew Gamette**, Idaho State Police (ISP) Forensic Labs Quality Control Manager explained that **RS 21695** concerns forensic case work done by the ISP lab for the public. He said the lab provides support for court testimony that supports for private testimony when ISP has investigated. He indicated that all this support is provided at no cost to any of the entities involved. He also said that ISP provides support for public defenders, requested through the courts. To date, courts have required ISP to provide court testimony on private defense experts when ISP was not a party to the case. He emphasized that ISP pays to maintain and calibrate their materials and expenses and it is very costly and time consuming to have private entities use the ISP lab at no cost to them. Allowing private entities use the lab leads to contamination issues and prevents ISP lab technicians from being able to complete their work while the private consultants are using the lab. Mr. Gamette provided additional examples of how this court mandate is a burden to ISP and ISP should not have to support a private business. He concluded by stating that ISP doesn't have a statutory obligation or the resources to provide expert consulting services.

In response to committee questions, **Mr. Gamette** said that the ISP Lab policy is clear and has been overruled by court order to allow defense experts to come into the laboratory. He said he wasn't certain which courts within Ada County specifically have ordered this and will provide that info at the next hearing. There were committee concerns over whether the language in the RS adequately addresses this problem. Mr. Gamette stated that the intent is not to avoid subpoenas when ISP is a party to the case. He said the word "personnel" used in the RS is intended to give police authority to not send that employee if ISP had not been involved in the case in any way. There was additional discussion over the ISP law enforcement purpose, whether it is to support the prosecutor and officers charging crimes, and it seems the purpose might be to support the judicial system in general. There was concern over the definition of "ISP law enforcement purposes." **Chairman Wills** suggested to Mr. Gamette to have two committee members assist in drafting a change 1 for wordsmithing so it might be more acceptable to the committee. Mr. Gamette agreed and emphasized that this legislation is in no way intended to inhibit the judicial process and rather the intent is to prevent citizens from using public resources for solely private use at the exclusion of their regular prescribed mission.

In response to committee questions, **Mr. Gamette** said the number of privately owned forensic labs available depends on the discipline of the lab, and he will try and find more numbers on this to present to the committee.

MOTION: **Rep. Bolz** made a motion to hold **RS 21695** in committee for a time certain until next Tuesday, January 29th. **Motion carried by voice vote.**

Vice Chairman Luker will serve as chair of the Nielsen Subcommittee upon adjournment of this meeting.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:14 p.m.

Representative Wills
Chair

Stephanie Nemore
Secretary