

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

- DATE:** Monday, February 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 1:30 p.m. and asked the secretary to call the roll.
- MINUTES:** **Senator Hagedorn** moved to approve the minutes of January 25, 2013 as written. **Senator Bock** seconded the motion. The motion carried by **voice vote**.
- S 1032** **Relating to Public Assistance - Robert L. Aldridge**, representing Trust & Estate Professionals of Idaho, Inc., explained that during the Clinton administration, there was a bill called the "Health Insurance Portability and Accountability Act of 1996," otherwise known as the Kennedy-Kassebaum bill. In that bill, there was a very controversial provision, commonly referred to as "granny goes to jail." It said that if you did Medicaid planning that involved a transfer of assets, you could go to jail. That ran into a fire storm and was withdrawn. Then a bill was drawn up called "granny's attorney goes to jail." In other words, if an attorney helps someone to plan and point out legal ways to do this, the attorney could go to jail. That also ran into a fire storm. Medicaid law has clear terms on allowable transfers and provides appropriate penalties for certain types of transfers. At the same time, provisions were put into the Idaho Code which still remain even though they are not enforced. The language in this bill was negotiated with the Department of Health and Welfare and is adequate to prosecute actual fraud. **Mr. Aldridge** stated that the bill adds the term "public assistance," which encompasses everything. There are two additions to the language in subsections (2) and (3) that takes care of the "granny goes to jail" and the "granny's attorney goes to jail" provisions.
- Senator Lakey** said it appeared that an attorney might be giving good or bad advice and how was that handled. **Mr. Aldridge** said if they were giving advice on what the federal or state statutes or regulations were, it should not be a criminal matter. If they were improperly advising them, there could be a malpractice suit. **Senator Davis** had comments about the wording, specifically how the word "provision" was used. **Mr. Aldridge** said that Legislative Services felt that was the correct reference in that paragraph.
- MOTION:** **Senator Bock** moved to send **S 1032** to the floor with a **do pass** recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

S 1033

Relating to Conservators and Powers of Attorney - Mr. Aldridge explained this bill amends Section 15-12-108, Idaho Code, to provide that responsibilities relating to an agent's accountability to certain fiduciaries and principals shall also apply to appointed temporary conservators, and to provide that under certain conditions powers of attorney are terminated unless limited or continued by the court. It also provides an effective date. **Mr. Aldridge** stated that at the print hearing there was discussion about some of the language and they checked with Professor Dave English about the appropriate language. The alternate language that was passed out to the committee is the new language for a possible amendment. **Mr. Aldridge** said this statute would be effective as to appointments of temporary or permanent conservators made on or after July 1, 2013 only and not apply to existing cases. **Mr. Aldridge** felt the new language had more clarity.

MOTION:

Vice Chairman Vick moved that **S 1033** be referred to the 14th Order for amendment. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

GUB APPT:

Chairman Lodge asked Kathy Baird to come forward and give a brief summary on the Sex Offender Management Board (Board). **Ms. Baird**, Management Assistant for the Board, explained that the Board was created in 2011 to replace the Sex Offender Classification Board that had been in place since 1998. The new Board is responsible for a broader range of sex offender management issues. She said this Board has been empowered to create standards for sex offender treatment, treatment providers, polygraph providers as well as sex offender evaluations and evaluators. Last year when most of the Board members were confirmed by this committee, they lacked one member, the defense attorney position. **Ms. Baird** stated that this Board had expanded on the previous board's format by adding more risk assessment type measures and also trying to standardize reports for the courts. **Senator Lakey** asked if this did a better job of protecting the community. **Ms. Baird** said she believed that by having the standardized reporting to the courts, they would gain information needed to make better decisions on sentencing.

Kimberly Jo Simmons appointed to the Sex Offender Management Board, said she was a native Texan, transplanted to Boise, Idaho in 2003. She said she had a graduate degree in Psychology from Missouri, and received her law degree from Tulane Law School in 2003. She had worked in the State Appellate Public Defender's office and has been with the Ada County Public Defender's office since 2006. Sara Thomas had recommended her for this appointment. She said her passion was the rehabilitation of others in general, and she thought she had a lot to offer by being a member on this Board. **Senator Davis** suggested that she check with colleagues in other states and see how they have handled these situations, not just on a management board, but within their practice. **Senator Bock** asked about changes that were required and how she would address the purpose of creating the Board in the first place. **Ms. Simmons** said the changes that she saw had a lot to do with due process. She said the Violent Sexual Predator classification, or at least the process, was found to be unconstitutional. She saw many positive changes on how to classify and treat sex offenders. **Chairman Lodge** thanked Ms. Simmons and said they would vote on the confirmation at the Wednesday meeting.

ADJOURNED:

There being no further business, **Chairman Lodge** adjourned the meeting at 2:30 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary