

## MINUTES

# HOUSE JUDICIARY, RULES, & ADMINISTRATION COMMITTEE

- DATE:** Tuesday, February 05, 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. Perry
- GUESTS:** Dawn Peck, Leila McNeill, Matthew Gamette, Clark Rollins & Charlie Spencer, Idaho State Police; Judge Barry Wood & Patti Tobias, Idaho Supreme Court; Mike Kane, Idaho Sheriffs Association; Roger Seiber, Capitol West; Russell Westerberg, Rocky Mountain Power; Matt Wetherell, Parole Commission; Tony Smith, Idaho Land Title Association; Jim Lowe & Benjamin Kelly, Food Producers of Idaho; Jim Clark, JC & Associates; Dennis Takikuni, Idaho Farm Bureau; Miguel Legarreta, Realtors
- Chairman Wills** called the committee to order at 1:30 p.m.
- RS 21776C1:** **Rep. Morse** presented **RS 21776C1**. He explained the proposed legislation will amend I. C. § 7-711 and allow a landowner to recover actual costs when the condemning agency changes project plans after the initial offer in a condemnation proceeding.
- In response to committee questions, **Rep. Morse** provided an example of a situation this legislation is meant to remedy: it involves the issue of access where there is a landowner with property. He said the amendment will level the playing field and won't allow the condemning agency to shift those costs. Additionally, he confirmed the SOP should read Idaho Code section "7-711" rather than "7-712."
- As a means of clarification, **Rep. Morse** explained that the effect of the amendment would be to indemnify the landowner for the portion of legal costs that are undercut by plan changes.
- MOTION:** **Rep. Nielsen** made a motion to introduce **RS 21776C1** with the following changes to the Statement of Purpose: 1) line one, I.C. § "7-712", should read "7-711"; and, 2) "damage" should read "damages" in the last sentence before the fiscal note.  
**Motion carried by voice vote.**
- RS 21588:** **Dawn Peck**, Manager, Criminal Bureau of Investigation, Idaho State Police (ISP), presented **RS 21588**. She said the Bureau is responsible for the criminal history repository which is based upon arrest fingerprints submitted to the Bureau from law enforcement agencies throughout the state. Next, she said the proposal has three purposes: 1) it will add the definition of Rap Back to clarify what the system does. 2) It will provide clear authorization for the retention of these prints to take advantage of the Rap Back Program and for humanitarian or latent matching purposes. 3) It will remove the word "serious" from the definition of misdemeanor in I.C. § 67-3001, which will remove confusion as Idaho does not have multiple levels of misdemeanor offenses.
- In response to committee questions, **Ms. Peck** explained "serious" should be struck because the reference to this rule has not been put into an agency rule yet, and this refers to the FBI definition of misdemeanor and is not the Idaho Code definition. She confirmed that a misdemeanor charge, and the associated fingerprints, would remain in an individual's record unless that person has been acquitted.

- MOTION:** **Rep. Burgoyne** made a motion to introduce **RS 21588**. **Motion carried by voice vote.**
- RS 21838:** **Mike Kane**, Idaho Sheriffs Association (ISA), presented **RS 21838**. He explained that this is not a court fee and will only be paid by sex offenders. He said this proposed legislation would change the current paper system to an electronic system, which is beneficial; because, the system would auto-update when an offender moves. He said federal funding for this service is running out, and with the desire to switch to an electronic system, offenders' registration fees would increase from \$40 to \$80. He said the electronic program is called "Offender Watch" and has the ability to transfer sex offender information between states. He indicated the counties and the ISA are in support of this legislation and ISP is not in opposition.
- In response to committee questions, **Mr. Kane** said this is not a court fee and there is an option to waive the fee for indigent offenders. He confirmed that this is a stand alone system, and in regards to where the fees go, Mr. Kane said currently the money is retained by each county for the cost of doing business. He indicated that this change is projected to raise approximately \$150,000 per year. He also confirmed that juvenile sex offender will also be required to pay these fees.
- MOTION:** **Rep. Nielsen** made a motion to introduce **RS 21838**. **Motion carried by voice vote.**
- RS 21739:** **Patti Tobias**, Administrative Director of the Courts, presented **RS 21739**. She said the proposed legislation would remove the sunset provision of the emergency source funding for problem solving courts. She elaborated by stating that these funds are needed to keep the current court programs in operation.
- In response to committee questions, **Ms. Tobias** said she elected to propose a removal of the sunset clause as a means of keeping the legislation simple.
- MOTION:** **Rep. Bolz** made a motion to introduce **RS 21739**. **Motion carried by voice vote.** **Rep. Sims** requested to be recorded as voting **NAY**.
- RS 21695C1:** **Matthew Gamette**, Idaho State Police (ISP) Forensics Lab Manager, presented **RS 21695C1**. He said ISP provides forensic testing at the request of law enforcement, prosecutors, and public defenders. He said the purpose of this legislation is to prevent a private expert, hired by a private attorney, the ability to perform research at the state lab because it is a misuse of state resources, increases the cost of lab accreditation and certification, and raises contamination concerns. He said ISP doesn't have resources, nor the statutory obligation to provide resources, for private use of the lab under court order.
- MOTION:** **Rep. Packer** made a motion to introduce **RS 21695C1**. **Motion carried by voice vote.**
- H 29** **Patti Tobias** and **Judge Barry Wood**, Idaho Supreme Court, presented **H 29**. Ms. Tobias said this bill adds three district judgeships, one each in Jefferson, Ada and Canyon County. She indicated that the effective date would be set on or after October 1, 2013, to correspond with the Idaho counties' fiscal year. She explained the counties play a role in the funding of the courts in Idaho. She said some judicial districts have experienced lots of population growth, and stresses on the courts have increased. Taxpayer money will be saved in reducing jail time for those awaiting trial because waiting times would decrease.
- Judge Wood** said district judges hear all felony trial, and all civil cases where the amount in controversy exceeds \$10,000. He said district judges are important because they ensure trials are fair, determine crime victim's rights, set restitution amounts, and determine sentencing. He provided some case examples of how certain cases are delayed because the courts are overburdened. He emphasized

that the district judges' role is important to all citizens. Ms. Tobias spoke about the fiscal note and that \$168,000 would go into the general fund next year.

**MOTION:** **Rep. Bateman** made a motion to send **H 29** to the floor with a **DO PASS** recommendation.

**Ms. Tobias** clarified that the request for the 3 district judge positions and the budget for those positions has already been submitted to The Joint Finance-Appropriations Committee (JFAC). Ms. Tobias confirmed that the fiscal impact of the legislation includes the cost of three new judges, court reporters, and the associated benefits for each.

**VOTE ON THE MOTION:** **Motion carried by voice vote. Representatives Bolz and Trujillo** will sponsor the bill on the floor.

**H 76:** **Kris Ellis**, Idaho Land Title Association, said this legislation will clarify when a rescission of the trustee's deed is recorded. It puts all affected parties in a status quo position as of the time the trustee's sale was held and not when the trustee's deed is recorded, which can be several days later.

In response to committee questions, **Mr. Jesse Hamilton**, Pioneer Title, said that in the situation when bankruptcy is filed shortly before a sale is to take place, there needs to be a mechanism to put everyone back in the position they had been in prior. He indicated that by the time the bank executes the trustee's deed, this could be up to three weeks after the time of the trustee's sale, and the legislation would now mandate that the title would be returned at the time of the trustee's sale.

**MOTION:** **Rep. Packer** made a motion to send **H 76** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Anderst** will sponsor the bill on the floor.

**H 77:** **Capt. Charlie Spencer**, Idaho State Police (ISP), presented **H 77**. He said a dedicated funding source is needed to ensure that ISP Detectives have a reliable funding source to conduct controlled buys of narcotics, surveillance tools and other investigative equipment to ensure continued success in criminal prosecution of drug trafficking organizations in Idaho.

In response to committee questions, **Capt. Spencer** confirmed that 85% of crimes committed in Idaho are drug related. He said that the anticipated revenue received from this change would be \$140,000, even though the amount stated in the bill is \$293,000. **Mr. Kane** said that the Idaho Sheriff's Association (ISA) supports this bill. He noted that local law agencies rely on ISP to help with drug investigations because of the need for sophisticated equipment.

In regards to the amount and dispersion of the fines, **Mr. Kane** said that fines are not levied and the money goes into the general fund, rather than to the agencies individually.

**Michael Henderson**, Idaho Supreme Court counsel, said that 14% of the monies gathered go to Physician Orders for 48 Scope of Treatment (POST) and 84% will go to the general fund. There was committee concern that this method of funding for Idaho State Police (ISP) is not the proper route and is rather a general fund issue.

**Mr. Henderson** said there is an annual review of changes and Idaho State Police (ISP) would receive this money only after it was disbursed to five other fee designations. In regards to the ability of offenders to pay their fines, he said it would be the probation officer's discretion to file a probation violation over nonpayment. **Capt. Spencer** said the dedicated funding source is needed to conduct criminal drug investigations and funding for this will determine the level of service that can be provided to Idaho's citizens. He said the amounts owed are per conviction, and should be viewed as a fee or assessment rather than a fine. He also said the court would have this discretion to suspend the fine which would not affect the ability of the fine to be included within a payment plan for the offender.

**MOTION:** **Rep. Meline** made a motion to send **H 77** to the floor with a **DO PASS** recommendation.

**SUBSTITUTE MOTION :** **Rep. Sims** made a motion to send **H 77** to the floor with **NO** recommendation.

**Chairman Wills** spoke about the effect of sending with no recommendation and spoke to the merits of the bill. Committee members commented that there is a cost of doing government, the prioritization of the collection, and that there is no assurance that the collection will be at the bottom of the priority scale. Additionally, there was concern over the effect of parole and probation violations and those that are trying to comply but are without money will be found to be in violation of their probation/parole agreement. There was additional comment that this should be a general fund/JFAC issue.

**AMENDED SUBSTITUTE MOTION:** **Rep. Packer** made an amended substitute motion to send **H 77** to **General Orders** to add a two-year sunset clause.

**UNANIMOUS CONSENT REQUEST:** **Rep. Sims** made a unanimous consent request to withdraw the substitute motion. **There being no objection, the request was granted.**

**AMENDED SUBSTITUTE MOTION:** **Rep. Packer** made a motion to **HOLD H 77** in committee.

**Rep. Packer** withdrew the amended substitute motion to hold H77 in committee. **Rep. Packer** will sponsor the bill on the floor.

**VOTE ON THE NEW SUBSTITUTE MOTION:** **Motion carried by voice vote.**

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 4:03 p.m.

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Representative Wills  
Chair

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Stephanie Nemore  
Secretary