

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 20, 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 1:33 p.m. and asked the secretary to call the roll. The Chairman called on Senator Davis to present his four RSs.

RS 22309 **A Senate Resolution Amending Senate Rule 8: Public Records Requests - Senator Davis** explained this resolution would amend Senate Rule 8 to provide a centralized and consistent process in responding to public records requests on behalf of the Senate. Because of the strict timetables and process requirements involved in the public records act, it is important to have a standardized approach to ensure that all such requests are handled properly and consistently. This amendment to Joint Rule 8 would simply allow the President Pro Tempore of the Senate to designate a custodian of public records who would coordinate and prepare all responses to requests for public records on behalf of the Senate, its committees and its individual members.

Senator Bock had a concern that notice should be given to the member involved in the record request. He would like to see that added if possible. **Senator Davis** said he didn't believe that was necessary because he could say in a rule that the Pro Tempore would designate a limited custodian, but the Public Records Law controls all of us. If someone were to make a public records request, they would comply with the statute, not the rule. This Senate Rule is only binding on us.

Senator Werk brought up the neutral gender issue. **Senator Davis** agreed that the rules were not written as such. **Senator Werk** asked how a member could respond within the custodian's limited designated custody and control. How would this work when an individual and the custodian don't communicate - there could be two different responses that were not being consistent. **Senator Davis** said the word "limited" was not in the first draft. In his opinion, the Secretary of the Senate is the custodian of the Senate's records, not the Legislative Services Office (LSO). The word limited is in there to say "for the limited purpose of complying with the public records request." He did not want to create the impression by rule that LSO became the custodian of our Senate. LSO works with the requestor.

MOTION: **Senator Werk** moved to print **RS 22309** and send it to the 10th Order on the floor. **Vice Chairman Vick** seconded the motion. The motion carried by **voice vote**.

RS 22310 **Amending Section 73-113 Construction of Statutory Language - Senator Davis** explained this legislation would strengthen the current statutory language regarding interpretation of legislative intent. As the legislature moves toward live recording of legislative proceedings on the floor and in committees, it is important to underscore the importance of the literal words in a statute as being the best guide in determining legislative intent. It is simply codification of standards by interpreting the statutes as written.

MOTION: **Senator Hagedorn** moved to print **RS 22310**. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

RS 22311 **A Senate Concurrent Resolution Amending Joint Rule 18: Statements of Purpose and Fiscal Notes** - **Senator Davis** explained this concurrent resolution would amend Joint Rule 18 to add language clarifying that a statement of purpose (SOP) or fiscal note is not a statement of legislative intent. The SOP and fiscal note are helpful only as an internal document in the legislative process, but since the sponsor of the legislation writes the SOP and fiscal note there can be an inherent bias in that process which can undermine the accuracy of those statements of purpose. The only true expression of legislative intent is in the literal language of the bill itself.

Vice Chairman Vick asked if there had been a problem in this area that is being addressed or are we trying to avert the problem. **Senator Davis** said the courts have even looked at SOPs for legislative intent when making appellate court decision.

MOTION: **Senator Nuxoll** moved to print **RS 22311** and send it to the 10th Order on the floor. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**.

RS 22312 **A Senate Concurrent Resolution Creating a new Joint Rule 21: Recording of Legislative Proceedings** - **Senator Davis** explained this concurrent resolution would create a new Joint Rule 21 addressing the issues of live streaming, recording and archiving of the floor proceedings of each house and their committees. The rule states that each floor session of the House and Senate shall be streamed live and recorded unless an affirmative vote is taken by the individual body to suspend such streaming and/or recording. Likewise, the committees of the House and Senate shall also be streamed live and recorded, except that such streaming and/or recording may be suspended at the discretion of the committee chair, or by an affirmative vote of the committee. This new joint rule also states that these recordings cannot be used for commercial or political purposes without permission. Statements made by individual speakers in the recordings do not reflect legislative intent, and the recordings do not substitute for the official record of the House and Senate Journals. The new rule also stipulates how archiving of these recordings is to be handled.

Senator Hagedorn remarked that the foundational portion of this is protecting the journal, which is the intent, but he did have some issues. He asked if someone in the majority leadership could release a video of someone in the minority body that had a particular testimony that they did not appreciate or vice-a-versa without that member's authorization. **Senator Davis** said this was the current practice, but it could not be for commercial or political purpose. He gave a hypothetical example which would raise an ethics complaint and would be against the Senate rules.

Senator Hagedorn said his point would be if someone in leadership wanted to help the efforts of one of their party that was running against someone, could they request a video of a member on a particular issue or debate to be used without the member's authorization? **Senator Davis** answered yes, just as one can do right now. **Senator Hagedorn** said his last point is nothing is mentioned about archiving or streaming to be copyrighted. **Senator Davis** said he had that conversation with the Attorney General and what he heard back was similar to what he tells clients; a non-compete-agreement is as enforceable as the integrity of the person that signs it.

Senator Lakey asked who would be the authorized designee. **Senator Davis** said that in the past, Legislative Council has done a separate contract with Idaho Public Television. **Senator Bock** had some of the same concerns as were mentioned by Senator Hagedorn.

Senator Werk said he was trying to get comfortable with the political piece, but would like to use a hypothetical example to ask his question. If during an election, the opposition to Senator X runs a television commercial with recordings that have been absconded with and they show Senator X making comments, placing them completely out of context, pretending the speech is about one thing when it is about another. Then Senator X decides he or she wishes to respond in kind by showing the actual context. In other words, Senator X would be making the request of their leadership to be provided with a copy to be used in a political ad to refute the ad that had aired. If this rule did not include "for political purpose" and if we allowed leadership to only provide "for commercial purpose" would Senator X be able to access the official archived version of the proceedings under that scenario with nothing mentioned about political purpose. **Senator Davis** responded that these are the rules of the Senate and the Joint Rules of the House and the Senate. They do not have a definition section, but as they wrestled with what words to include, they wanted the phrase "political purpose" for the very hypothetical suggested. The fear was that "commercial purpose" was inadequate to provide protection to the member. This does not give protection or apply to third parties, but is only binding on the body. **Senator Werk** said his discomfort was the offensive use of the recording versus defensive use of the quotes. In one instance, legislative leadership has the ability to decide to release a clip for political attack and on the other side, legislative leadership decides to release a clip for political defense - to defend oneself. That's where the concern is and even though there were probably many discussions with this kind of flip flop in terms of language. He wonders if that language can be altered in such a way that makes it clear that the political purpose for which this is going to be released is defensive in nature. It would provide a response to an attack that is inaccurate. As a member of the minority, and having great respect for the members of the majority, he knows how nasty campaigns can get and he has a distinct concern about these issues. He would like help in understanding whether or not there can be some language that will specify the kind of political purpose allowed for leadership to sign off on. **Senator Davis** said he knew that sometimes there were ghosts in bills, and ghosts were not there, but he could see how Senator Werk could see what he could see. They wrote it with the feeling to entrust that decision to the member of leadership in that process. He was not sure how to write the difference between a sword and a shield into the rule. He didn't know how to take what was, in some ways, clearly foreseeable and write it; so the intent was to say they have good people on both sides and to entrust them with this decision and see how they do. If it is not done well, they will look to wordsmith this in a better way. That's how they came to the determination to rely on the member of leadership to sort through those moments. **Senator Werk** commented that he would have more comfort if there had been an "and" instead of an "or" in the legislation so that a member of minority and majority were involved in the process. Then there would be a check and a balance because neither party would be inclined towards using it in a manner that might be untoward.

MOTION:

Senator Hagedorn moved to print **RS 22312** and send it to the 10th Order on the floor. **Senator Bock** seconded the motion. The motion carried by **voice vote**. **Senator Werk** said he had some real issues again about the single member of leadership being able to make the decision so he will oppose the motion and see what happens looking forward. **Senator Davis** said he would like to rethink through some of this, but would still like to print the RS and visit with other sponsors and leadership and see if there is need to revisit it or if they are still comfortable. He said this was good conversation and he appreciates the input. **Senator Werk** voted no.

H 124 **Relating to the State Board of Corrections - Olivia Craven**, Director of Pardons and Parole, advised the committee that the purpose of this proposal is to clarify the timeframe in which requests can be made for the remission of bond monies; within one year from the date of discharge of the offense for which the offender was serving parole. Additionally, monies may be used for extradition of parole violators.

MOTION: **Senator Hagedorn** moved to send **H 124** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

H 256 **Relating to the Child Protective Act - Chairman Lodge** asked Judge Varin if he could return on Monday to present this bill due to time constraints of today's meeting.

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 3:05 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary