

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 25, 2013

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Vick, Senators Mortimer, Nuxoll, Hagedorn, Lakey, Bock and Werk

ABSENT/ EXCUSED: Senator Davis

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 1:03 p.m. and asked the secretary to call the roll.

MINUTES: **Vice Chairman Vick** moved to approve the minutes of March 6, 2013 as written. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

RS 22316 **Relating to the Idaho Uniform Business Organization Code - Michael Brassey**, Uniform Law Commissioner, said this was a product of a number of years of work by the Uniform Law Commission. The concept is to take Idaho's unincorporated business organization statutes and harmonize them into one business code with common definitions in a single section. It creates a common way of filing with the Secretary of State so there are not different forms for every entity, thus making it easier to use the statutes relating to these entities. There are few substantive changes in the law; there are just changes to the form. Because this RS deals with so many laws and is very large and cumbersome, copies were not made for each committee member.

Chairman Lodge asked for the one copy to be circulated among the members. She said she understood that this is for printing only. **Mr. Brassey** said they did not intend to advance the legislation, but want it available to the Bar so they can review the legislation to be considered next year.

MOTION: **Senator Hagedorn** moved to print **RS 22316**. **Senator Mortimer** seconded the motion. The motion carried by **voice vote**.

H 150 **Relating to County Finances and Claims Against County - Michael J. Kane**, Idaho Association of Counties, explained the purpose of this bill is to clarify that a person must comply with the Idaho Administrative Procedure Act prior to bringing an appeal regarding the decisions of county commissioners. They are simply adding the word "final" in a couple of places in the statute.

Senator Hagedorn asked if there were any interim orders that are acted upon and never become final. **Mr. Kane** said under the administrative procedures, all preliminary orders have to become final in the end and that is the point for an appeal.

Vice Chairman Vick noticed that there were a lot of 'no' votes in the House and asked what those concerns were. **Mr. Kane** said he watched the debate and was puzzled by some of the questions being raised. One question was about appealing a budget, but you don't appeal budgets. Budgets are set and go forward year to year; there seemed to be confusion on that issue. **Mr. Kane** said they were trying to control the appellate process so that you only appeal final orders.

MOTION: **Senator Hagedorn** moved to send **H 150** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

HCR 26 **A Concurrent Resolution authorizing the Legislative Council to Appoint a Committee to complete a study of Potential Approaches to Public Defense Reform - Representative Bolz** explained this concurrent resolution is for the purpose of authorizing legislative council to appoint an interim committee to undertake and complete a study of the public defender system in the state of Idaho. Currently, a few counties have public defender officers; all the remaining counties contract for services of public defenders. This led the Criminal Justice Committee to appoint a subcommittee to identify those deficiencies within the public defender system in Idaho. A number of deficiencies were identified and they are listed in the concurrent resolution. They include indigency determination, public defense contracting practices, excessive caseloads and workloads, lack of training and resources for attorneys performing public defender services, existence of flat fee contracts, etc. The most significant trend among nationwide approaches was toward the statewide oversight that would include statewide standards and in some instances even some city funding. The interim committee will study the potential approaches of public defense reform in Idaho. Currently, only those counties that have public defender systems are required to submit data to the state. A unanimous decision of the US Supreme Court upheld the 6th amendment of the US constitution, but yet the 14th amendment applies to state courts, and basically in that decision, the court announced that lawyers in criminal courts were a necessity and not a luxury. Those accused of a crime are entitled to an attorney although they may not be able to afford one. The Idaho constitution article 1, section 13 as well as Idaho Code title 19, chapter 8 also provides the right of counsel.

TESTIMONY **Monica Hopkins**, Executive Director of American Civil Liberties Union (ACLU) of Idaho, and representing those members, urged the support of this bill. **Ms. Hopkins** stated that in the 2010 National Legal Aids Association (NLAA) report commissioned by the Idaho Criminal Commission, it was found by delegating to each county the responsibility to provide counsel at the trial level without any state funding or oversight, Idaho was lax in the competency of services rendered. She also pointed out that the ACLU joined by the national office has commenced an independent study which has taken a special interest in bringing Idaho's system up to constitutional minimums. There seems to be a fundamental misunderstanding in counties of the roll of a public defender and the importance of the 6th amendment. She urges the support of HCR 26.

MOTION: **Senator Bock** moved to send **HCR 26** to the 10th Order of business on the floor. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

H 241 **Relating to Scrap Dealers - Representative Luke Malek** deferred to **Neil Colwell** to present the bill. **Mr. Colwell** is a lobbyist for Avista Corporation which is a gas and electric utility headquartered in Spokane, but with customers in Idaho. He said they were bringing this bill because of a situation in their service territory. In spite of changes made to metal theft laws adopted in 2009, metal theft is still increasing. On their system in 2011, in spite of the bill, they had 21 incidents and in the past year they saw a tripling of statistics. Over the last three years, they have had 92 metal thefts on their system that have resulted in approximately \$400,000. It is not just an issue in their service territory, but is statewide as others will testify. Grounding wires can be sold for about \$200, but replacement costs are about \$10,000 to be paid by customers. This bill has three elements to it: (1) it deals mostly with scrap dealers who must collect information of sales, (2) requires photographs to be taken of individuals and the load they are selling, and (3) makes it a felony to enter a substation with the intention of stealing metals or stealing from an electric or communications utility which could interrupt service. There is a danger in

handling these utility wires and grounding wires. In addition, this bill provides some protection from liability if an individual gets injured while in the process of stealing metals. This would prohibit them from suing the owner. The food producers, scrap metal dealers, and utilities would like more done so it has been agreed to have a group of the stakeholders work on additional legislation for next year.

Senator Hagedorn asked if there was a process of how the scrap holders would keep these digital photos or if they would be printed out with the documentation one has to fill out. **Mr. Colwell** said that was not defined in this bill. The law right now simply requires that they hold the digital image until law enforcement requests the information. **Senator Hagedorn** said his concern was how a digital photograph and documentation would be connected. **Mr. Colwell** deferred to **Representative Malek** who replied that the connection would have to be a material witness, someone present for photo and documentation on that date. He said this was a drastic issue and they needed to move quickly.

Senator Werk commented that with another felony, the fiscal note was probably incorrect. This would increase the cost to the state. He also asked if the crime is committed when a person enters a substation and is apprehended without having stolen anything, but with intent and asked if that was still a felony? **Mr. Colwell** said that if someone is caught inside a substation and has not yet stolen anything, they would at least be charged with trespassing. This proposed statute says that if you went inside with the intent to steal, it is a felony. The interim group may come up with something different. **Senator Werk** asked if grand theft is stealing \$1,000 of stuff, how much stuff would be you need to get from a substation? **Mr. Colwell** deferred to **Holly Koole**, prosecuting attorney and she said they would be prosecuted for the replacement value. **Mr. Colwell** said some of these thefts can interrupt phone wires. He also commented that the scrap dealers were not real organized.

TESTIMONY:

Roy Eiguren, lawyer and lobbyist, introduced **Michael Cataldo** of Pacific Steel & Recycling. **Mr. Cataldo** agrees with the bill in principle, but there are some areas of concern. They only learned about this bill last week and are disappointed that they weren't part of the process. He said when anyone comes into any facility in the state and makes a purchase of \$20 or more, they see the drivers license, get a description of the vehicle and license plate number and they are doing that now. They are also a member of the Institute of Scrap Recycling Industries (ISRI) scrap metal alert which is nationwide and free and it's not being utilized by anyone in Idaho.

Vice Chairman Vick asked if the records he keeps now are sufficient and are the photo records of the stolen items necessary. **Mr. Cataldo** said he didn't have pictures of the stolen items. He reiterated that he was not fighting this issue, but wanted to be involved in the process. They are the ones doing the work and helping to apprehend some of the people who are stealing.

TESTIMONY:

Brent Ekart with United Metals Recycling, a family owned business in Canyon County, said he had issues with the comment that scrap metal recyclers were not organized. He is connected with a national organization, ISRI. He also has a major problem with not being consulted or taken into consideration before the bill got this far. As Mike explained, they are already getting documentation today from customers in all five of the facilities in the state of Idaho.

TESTIMONY: **Rich Hahn**, representing Idaho Power, said he had pictures to show the committee (Attachment 1.) that might answer some of their questions. They were identified as follows:

1. copper wire (this would not come in from the general public)
2. transformer showing copper wire missing going to the insulators (energized at 12,000 volts)
3. another apparatus missing copper wire (also energized at 12,000 volts)
4. a ground rod with ground wire detached - cut off wood transmission pole
5. fencing cut for access to training facility for linemen
6. another hole in the fence in secluded area of substation
7. representation of substation in remote area
8. ground wire taken off fence
9. apparatus with missing ground wire, insulator carries high voltage to substation and is dangerous and not protected
10. same apparatus as No. 9
11. cement holding tank for control wires, with copper wire cut and missing

Senator Werk asked if he believed adding a felony for committing this crime would be a deterrent. **Mr. Hahn** said he believed so.

Will Hart of Idaho Consumer Utilities Association and Dennis Tanikuni of the Idaho Farm Bureau also support the bill.

MOTION: **Vice Chairman Vick** moved to send **H 241** to the floor with a **do pass** recommendation. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**.

H 292 **Relating to Assault and Battery - Representative Malek** explained this is a bill relating to assault and battery on health care providers. He said Idaho's health care providers are required to treat patients who come to them in need, even when patients are unruly or violent. Often, patients, under the influence of drugs or with stress-induced anger, assault the very professionals who are tasked with helping them. **Representative Malek** referred to Idaho Code § 18-915, that protects social workers, EMS personnel, police officers and certain others who are regularly in harm's way. This bill extends a similar protection to health care professionals who are assaulted because of their profession. It does not apply to assault by a person who lacks the ability to form intent due to mental illness or defect.

Senator Werk asked about a definition of mental illness since there was none in this code. **Representative Malek** said there is a definition in title 66-317, subpart 12. **Vice Chairman Vick** asked how they arrived at the fiscal note with no impact. **Representative Malek** said there was no impact to the general fund, but it might impact the counties. He admitted that it may have been neglected. **Senator Bock** wanted to know exactly what the procedure was to correct the fiscal note, in committee or on the floor. He wanted to be clear of the consequences of not accepting the fiscal note. **Chairman Lodge** said she thought it could be done on the floor. **Senator Werk** thought it would be a revised SOP and given to everyone on the floor. It would be attached to the bill and doesn't change the legislation.

TESTIMONY: **Dr. Mark Urban**, Pediatric Emergency Room (ER) doctor for St. Luke's, said he had trained in a facility in Arizona where it was a felony to assault a health care worker. In Boise he has been assaulted once verbally and once physically while on duty. He said with the increased prescription drug abuse problem that is seen across the country, more and more assaults are committed on health care workers as they confront patients and refuse to provide those medications in certain instances. He cited an incident that was caused by an intoxicated man. The only deterrent they have is to call a security person.

TESTIMONY: **David Lehman**, representing Kootenai Medical Center, said there were a number of individuals who frequent ER seeking narcotics and prescription drugs. One of the reasons for this legislation is because of the significant number of assaults that occur, with 75 percent to non-licensed personnel. **Mr. Lehman** shared some statistics from the Emergency Nurses Association National Survey, which is done every two years. Because of the significant increase in violence, there has been an increase in days taken off work, so there have been cost implications. He mentioned the state of Arizona, where felony charges act as a leverage to get these people into treatment programs.

Senator Hagedorn questioned the statistics that show making this a felony would reduce the attacks. **Mr. Lehman** cited the Arizona legislation and said there was knowledge that the threat of a felony was a deterrent and it was also a positive tool to use to push people into treatment. **Senator Hagedorn** was still concerned and questioned what the hospitals were doing to keep this from happening. **Mr. Lehman** said there were a number of activities including increasing security, flagging frequent visitors and better training so employees can identify potential attacks.

TESTIMONY: **Karen Gussie** from St. Luke's testified that she had been assaulted and the cost to her was a change in career. She had started her career in mental health, but in that case there were processes in place to deal with the issues. She was assaulted in ER and in the Critical Care Unit, and she was deterred from filing a complaint with various responses, i.e., that it would look bad, it wouldn't be worth her time, etc. The assaults had cost her time off work. She was not sure if a felony would stop this from happening, but there should be some recourse.

TESTIMONY: **Representative Margaret Henbest**, executive director of Nursing of Idaho, said her research of this happening in Idaho showed nothing. However, her email response was different with stories of severe injuries including a broken neck, torn rotator cup, choking, black eyes, teeth knocked out, concussions, lacerations requiring stitches, broken noses, attempted rape, etc. The concern was there was a cultural tolerance that health care workers had to accept this because it was part of their job. Some that had filed police reports said nothing happened; there was no action against the perpetrator. Hospitals have the responsibility for creating an environment that is safe, providing security, training for staff, appropriate management and staffing level, robust reporting practices, and zero tolerance. She said that at small critical care centers, there was no security or resources available.

MOTION: **Senator Lakey** moved to send **H 292** to the floor with a **do pass** recommendation. **Senator Bock** seconded the motion. **Senator Hagedorn** didn't want to send a false sense of security around the state. He said it was important that the hospitals and management take action. **Senator Werk** said although he would support the motion, he was hesitant because it could be drafted better by including a reference to the definition of mental illness. He added that he had sent the committee members a 50 state survey of criminal laws protecting health professionals that is online. He is also hesitant to add felonies, especially in the broad sense of this statute. He also noted that the fiscal note needed to be changed. **Vice Chairman Vick** echoed Senator Werk's sentiments. The motion carried by **voice vote**.

H 274

Relating to Traffic Safety Education Programs - Representative Lynn Luker explained this bill has been worked on for a couple of years and has the consensus of the courts and the cities. Some years ago some cities began to offer safety driving schools as a method to avoid issuing a citation and the cities would also collect a fee. The problem is it is outside the uniform citation process so there is no tracking of would-be citations, and it diverts funds away from the normal structure. This bill recognizes the benefit of some of these driving schools as there is some evidence that it refreshes people's memory of safe driving. A city can pass an ordinance to adopt this process, a citation will be issued, it will stay on ISTARs, and an option can be given to the driver to attend the driving school for not more than \$25. There are a couple of restrictions; (1) excludes commercial drivers, and (2) anyone who has received a point reduction in the past three years. The benefit is they get the education and they don't get points on their record.

MOTION:

Senator Hagedorn moved to send **H 274** to the floor with a **do pass** recommendation. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business, **Chairman Lodge** adjourned the meeting at 3:08 p.m.

Senator Lodge
Chairman

Leigh Hinds
Secretary