

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 10, 2014
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: None
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 1:31 p.m. and asked the secretary to call the roll.

H 509 **Relating to Court Technology - Patti Tobias** Administrative Director of the Courts, This bill, along with multiple one-time, bridge funding from Joint Finance and Appropriation Committee (JFAC), will fund the five year business plan, and beyond. **H 509** provides a set of graduated civil filing fees to provide the increase in ongoing funds for court technology including: 1) \$125 increase for civil cases filed in district court; 2) \$70 increase for appearances and civil cases filed in the magistrate division; and 3) \$20 increase for miscellaneous actions. Why a one-time fee at filing—only on civil cases? Many states, as they move to E-filing, have charged transaction fees for all pleadings and documents filed, resulting in an "accounting nightmare" for the courts, attorneys, and their clients throughout the life of their case. After considerable research and input, we concluded a one-time fee, a filing, would be a much more practical, prudent, and efficient approach. We know absolutely we can save at least one hour of an attorney's hourly rate in each civil case filed in district court with the efficiencies achieved and cost savings of E-filing, E-records, and video conferencing. These time and cost savings will more than offset the one-time up-front filing fee for Idahoans. These filing fees will remain on the low side of Western states with comparable jurisdiction.

In 1997 the courts established the ISTARs technology fund. We have now stretched the software and hardware systems as far as possible. ISTARs has reached its end-of-life. The five year business plan to replace and modernize the case management system for all court cases in our trial and appellate courts, move to electronic filing and storage of all court documents, and expand video conferencing across the state. The request for proposal was issued nationwide and a new technology solution was selected called Odyssey. It is the most mature, highly developed court case management system on the market today. It has the most functionality, at the lowest overall cost.

Odyssey will serve numerous functions:

- On any given work day, nearly 17,000 new court cases are filed. More than 500 clerks in 53 court locations accept new court documents, schedule hearing, send notices, and update case records.
- The financial management system will assist courts in collecting over \$200,000 daily in fines, fees, and restitution, totaling more than \$55 million annually, distributed to over 200 state and local entities.
- A judicial workbench will allow judges to readily access secure case information and conduct legal research from the bench.
- Our vision is to continue to serve as the hub for data exchange between state and county agencies.
- Go live for the new case management system will begin in Twin Falls County, May 2015.
- Six months later, the system will be deployed in Ada County, followed by three regional implementations.
- Electronic filing will follow 90 days after the case management system goes live in a county or region.
- We expect to achieve significant cost savings and efficiencies by:
 - No lost documents or files in the new world.
 - Time savings for court clerks.
 - Less chance for human error.
 - Frees up huge amounts of limited physical space in crowded county courthouses and storage facilities.

This was a slide presentation (see attachment 1)

Former Chief Justice Linda Cople Trout stated she was appearing as the Chair of the Supreme Courts Design and Implementation Team which is the group in charge of the implementation of the new software. This project has been a comprehensive process and because of that there will be a smooth transition from the current case management system to Odyssey and that all involved will be able to move forward together. The Idaho Supreme Court first created the Court Technology Committee several years ago. The purpose of that committee is to envision how the courts can better handle cases in a timely and efficient manner through the use of new technologies. The Design and Implementation Team is charged with working with the vendor, Tyler, to do work necessary to implement Odyssey and have a smooth transition from ISTARs. The Team has written out every practice and process for every type of court case. They then determine whether there was a gap between the way our court system functions and the way Odyssey will handle the processes. They found that the vast majority of the processes are the same or similar to what our courts do. Tyler will give a quote for further software development to handle the court processes that are not in the systems functions. The Team will prioritize the need whether it is critical, high importance or low importance. Built within the budget is an amount for software development and they are working within those dollars for additional software development.

There are a number of court committees, plus work groups from magistrate and district judges who are reviewing the business practices to find better uniformed practices for handling court cases. Included in this is standardizing our most frequently used court forms. The move to a statewide integrated software system has provided the courts with a unique opportunity to look at how they do their work and make sure they have one unified court system. They are also meeting with all of their justice partners the Department of Correction, Health and Welfare, Department of Juvenile Corrections, Prosecutors, etc. to evaluate how the new software can do a better job in transferring information back forth.

Judge Wood stated that the Committee had before them a hand-out (see attachment 3) which presents a summary of eight sections which will amend an existing statute.

Senator Davis asked if this software is an off-the-shelf product and will this make us vendor dependent on Odyssey. **Patti Tobias** responded that the courts will be vendor dependant on Odyssey, but were also vendor dependent for 25 years on ISTARs. **Chief Justice Trout** explained one of the advantages to the Odyssey product is that it is highly configurable. The software will afford the courts the opportunity to go in as there are changes to the law or staff and make those changes in-house without having to rely on the vendor, which is a dramatic change from the process that they have depended on for the last 25 years. **Senator Bock** stated on lines 35, 36 on page 4, there is a reference to \$120 being the fee for the magistrates division. How is the \$120 based upon the numbers on page 5 of the bill? **Judge Wood** answered \$10 plus \$70 equals the \$80. The remainder of the money is fees along with the technical fee. **Senator Nuxoll** asked when were these fees last reviewed and raised? **Patti Tobias** replied that she could trace the court technology fee for ISTAR. These fees were first established in 1997 and a \$5 fee was established on all criminal, infractions and civil cases. In 2006 that fee was increased to \$10. This year as part of **H 509** the fees are being increased only on the civil side.

Senator Nuxoll asked is this how the courts usually pay for their technology needs? **Ms. Tobias** answered that the Idaho Legislature first established the court technology fund in the 1990s to pay for statewide court technology for all of the district and magistrate divisions. By statute the counties have that responsibility to provide personal, facilities and operating expenses. The Idaho Legislature believed it was important for the third branch of government to be able to administer a statewide system of court technology so the State of Idaho could maintain accurate records of all court proceedings. To be able to transmit those records in an electronic fashion to all of the many entities that they work with. The Committee increased the court technology fund and requested multiple one-time bridge funding from the JFAC. **Vice Chairman Vick** asked could you explain how the courts arrived at the new fees? **Ms. Tobias** responded that they looked at the most complex and detailed work where the software upgrade would save them the most time. In district court there are many more filings, documents, pleadings, records, and hearing scheduled so they chose this court for the fee increase. In magistrate court there are cases that do require significant case processing time, entries and scheduling. They balanced the number of cases being filed versus the complexity and volume of documents.

MOTION:

Senator Mortimer moved to send **H 509** to the floor with a do pass recommendation. Seconded by **Senator Davis**. The motion carried by **voice vote**.

S 1394

Relating to Salaries of Judges - Senator Davis stated the bill before you today is intended to be the front loading of two years of compensation for the judiciary. The principle target was to address the issue of recruitment of judges and what they pay a magistrate versus a district court judge. In the recruitment of district judges the delta of \$5,000 has not been enough to encourage them to apply for magistrate judges positions. The adjusted judicial salaries were taken to the joint majority leadership for their recommendation. This legislation adjusts judicial salaries and increases the differences between justices and judges holding office at different levels within the judiciary. It increases pay for magistrate judges by 2.5% from \$109,300 to 112,000. This bill also increases the difference between the rate of pay for district judges and magistrate judges from \$5,000 to \$12,000 per year, resulting in an 8.5% increase for district judges.

Beginning in FY 2015, the Supreme Court Justices will receive a 10.7% increase to \$135,000 with the Chief Justice receiving \$2,000 more than the other justices. The Court of Appeals judges will receive a 7.5% increase to \$130,000, with the Chief Judge receiving differential pay for the first time of \$2,000 more than what the other Court of Appeals Judges are paid.

In FY 2017, the salaries for the Justices of the Supreme Court will increase by 3.7% up to \$140,000, and the Chief Justice's salary will increase by 3.6% up to \$142,000. The Legislature is making three large investments in the judiciary this year: 1) technology bill; 2) judicial salary increases; and 3) increased costs associated with the shift of the judges retirement fund to Public Employee Retirement System of Idaho (PERSI). **Senator Hagedorn** asked did they look at the pay for performance angle when the salaries were reviewed. **Senator Davis** answered that the judges would prefer not to be on some pay for performance system historically the judiciary has asked the Legislature to follow this model. **Senator Mortimer** asked when was the last raise given and is the state employees one and one this year calculated into the salaries. **Senator Davis** replied that the budget that has been approved by the Employee Compensation Committee (CEC) to increase the state employee salaries is not for the benefit of the judiciary.

MOTION:

Senator Werk moved to send **S 1394** to the floor with a do pass recommendation. Seconded by **Senator Hagedorn**. **Senator Lodge** stated pursuant to Rules of the Senate 39 (H), of the Idaho State Legislature, she has a conflict but still wishes to vote on **S 1394**. **Senator Bock** stated pursuant to Rules of the Senate 39 (H), of the Idaho State Legislature, he has a conflict but still wishes to vote on **S 1394**. The motion carried by **voice vote**.

H 461

Relating to Being Under the influence of Alcohol of Drugs - Representative Malek stated that the State has an incarceration problem and this legislation will allow courts and counties to administer a 24/7 testing program as an alternative to being incarcerated while under the preview of the court. Offenders may voluntarily sign up for the program in lieu of being incarcerated. They would be tested twice a day so they can go back to work and continue on with life as they are under the jurisdiction of the court. These offenders will be tested twice a day and will pay a nominal fee to support the program. **Senator Hagedorn** said typically when a person gets a DUI they lose their license for the first 30 days. How would these people test twice a day. **Representative Malek** replied that would be up to them. They would have to get a ride or use public transportation. **Paul Panther** - Chief of the Criminal Law Division of the Attorney Generals Office led the Committee through the bill. **Vice Chairman Vick** asked what will be the procedure for developing the fee for this program. **Vice Chairman Vick** stated do you have an idea of what this fee might be?

Mr. Panther stated it varies from state to state but the top end is \$2 per test. **Senator Hagedorn** asked do the courts have the ability to not suspend a license for a DUI. **Mr. Panther** answered a court can issue a judgement and suspend the license, but this bill in Subsection 4 gives specific authority not to suspend the license. **Senator Hagedorn** clarified that an individual who chooses to do the testing because of their DUI does not lose their license and may drive to the testing. **Mr. Panther** replied that is the idea of this legislation.

Judge Wood testified to how important drug and alcohol testing is to the courts, public and the defendant. The Idaho Courts are strong proponents of additional drug and alcohol testing in all stages of the criminal process from pre-trial release to monitoring probation. The courts believe that this frequent drug and alcohol testing of the criminal justice population is good public policy for many reasons. First, there is a very positive cost to benefit ratio. Drug and alcohol testing is a regular component of jail release conditions whether pre-trial, awaiting sentencing or on probation. Reliable testing programs give judges alternatives to keeping some of these defendants in jail awaiting the next judicial proceedings. In the right cases, releasing individuals out in the community is a better procedure then putting them in jail. His experience, while serving as a trial judge, was that a twice a day testing cost was much less then a day in jail. Drug and alcohol testing provides a deterrent to future use and rapidly confirms offender compliance with conditions and guides responses to reward abstinence guiding rapid response to relapse. Drug and alcohol testing is also integral to treatment by providing offenders with external accountability as they refine their coping and refusal skills. Within the recovery community itself abstinence serves as a role model to others in that same community. Testing of this type also serves as adjunct to community based treatment and rehabilitation in other ways by improving public safety, offender accountability to employers, and families and can allows the offender to be in a community and be productive by earning a wage, paying taxes, supporting dependants and purchasing goods and services with the wages they earn which they could not earn if they were sitting in jail. Lastly, Idaho's Problem Solving Courts have adopted statewide standards that endorse frequent random drug and alcohol testing as essential for offender monitoring and rehabilitation. The standards recognize that alcohol testing may be necessary on a more frequent basis due to the shorter window of attention time for use. This 24/7 program allows for this attention in our community where such programs are not available.

MOTION: **Senator Hagedorn** moved to send **H 461** to the floor with a do pass recommendation. Seconded by **Senator Nuxoll**. The motion carried by **voice vote**.

H 462 **Relating to Responsibilities of Ski Area - Representative Malek** explained this legislation deals with amendments to the current Ski Liability Act in the State of Idaho. The current act has not been updated since its adoption in 1979 and much has changed in the realm of skiing since its adoption. The amendments are intended to modernize the terms within the Act. The amendments clarify four issues: 1) the definition of skiers includes snow boarders and tubers/sledders; 2) the definition of a terrain park; 3) a terrain park falls within the inherent risks in skiing; and 4) snow immersions and inbound avalanches qualify as inherent risks. **Senator Davis** asked for clarification on page 3, the current statute states "any skier expressly assumes the risk of and legal responsibility for any injury to person or property" and understands the assumption of risk. The phrasing on line 4, "any movement of snow including, but not limited to" does that mean that the ski hill operator who has foreseeable knowledge of a avalanche assumes no duty to protect the skiers on the hill.

Representative Malek answered that there are nine affirmative steps, which are listed in Section 2, that must be adhered to by the operators but there is no requirement for the operator to reduce the risk other than losing people in an avalanche would be bad for business. There is not always the ability for the operator to mitigate a risk that they cannot foresee, there are inbound slides that do take place at these ski resorts. **Senator Davis** asked about the policy of not imposing any standard of responsibility of care for things that are reasonably foreseeable, identifiable or reckless on the ski hill. **Representative Malek** said the policy side of this legislation is that snow conditions are constantly changing and the risks are always inherent, there are no standards when it comes to managing snow. Snow often confounds the best experts so for the operators to have foreseeable liability is not good policy for the State of Idaho. **Senator Davis** asked what about at least including a reckless disregard standard. **Representative Malek** answered snow conditions are completely unpredictable so to place any burden on the operators, even a reckless standard, would be imprudent. Snow is in mother natures control. On the policy side they would argue that this is not good policy and on the law side that there is no applicable standard.

Senator Werk asked under Section 3, § 6-1106 duties of skiers, skiing is a hazardous sport "says any movement of snow including man-made." This speaks to man moving snow and balances that against the standard in Section 2 (10) "not intentionally or cause injury." If the operator does something negligent they will not be held responsible. The skier would assume the risk and legal responsibility for running into the snow that was moved by the ski resort. **Representative Malek** answered that there is no way to create a standard for the safest way to handle snow movement. The resort could put snow in one place and it could be safe one year and the conditions could change and the next year and create an unsafe condition. **Senator Werk** stated under Section 1, § 6-1102 there is a definition for freestyle terrain. Under Section 2, § 6-1103 (10) states "not to intentionally or negligently cause injury to any person" and every person who skis assumes the risk. If a resort decides to build a jump in a terrain park, but they don't build it correctly and it collapses, in this legislation all responsibility has been shifted over to the skier that uses the feature. **Representative Malek** stated that there are no standards for terrain parks. For a skier that is injured accusing the resort that the feature was not constructed correctly; there are no standards nationwide to hold the operators to the liability. **Senator Bock** said let's assume there is a hill in a resort that is in an area where avalanches have happened in prior seasons and there are certain kinds of conditions that make this hill prone to avalanche danger. The operator is aware that in past ski seasons this hill is prone to avalanche activity and the snow conditions are such on a particular day that they might need to close down the hill but the operator chooses not to take this precaution. Under the language of this legislation "any movement of snow" even if it is predictable would absolve the operator from liability. **Representative Malek** restated that there is no way to create a standard that is applicable to snow so an operator cannot be held liable for its unpredictability. Snow conditions can change so fast and it is so inherently dangerous, that a standard is impossible. **Senator Bock** stated that if this language is included in this statute it will mean that nobody is going to be able to put on evidence of what kind of conditions to establish. **Representative Malek** responded that this is the crux of the issue, which is will they err on the side of skiers assuming this risk or operators owning the risk. From a policy perspective since skiers have strapped skis to their shoes they have assumed the risk for the dangerous conditions of the sport. If operators assumed the liability that would create liability situations that would be detrimental to Idaho businesses and would open up every injury on the ski hill to liability and a trial.

Matt Walters testified on behalf of the Idaho Skier Association, stating since the passage of this legislation in 1979 determining that skiing has inherent risks and there must be protection for the ski area operators. In this legislation there are nine duties that the operator must assume to operate the ski hill and provide compliance with the MT Standard for the Aerial Tramways. They gave the expressed assumption under § 6-1106 of the duties that the skiers assume. Movement of snow language came from other state's ski operators legislation. The purpose of this language is to address inbound avalanches. There are no accepted guidelines in avalanche maintenance. If you make a standard reasonably foreseeable you have changed the Act, it will not be summary judgment; no protection for ski operators. There are no accepted standards for terrain parks because snow is ever changing. **Senator Davis** stated his concerns dealt with the "any movement of snow" by the operator grooming the snow and thus causing injury to a skier. **Mr. Walters** explained that grooming is already covered by the Act there are only nine duties for operators in this legislation. **Senator Werk** stated if there is no responsibility there is no reason to take care. This legislation says to resorts no rules. **Mr. Walters** answered your question is why the Act was enacted. If you put a standard of care when you are grooming snow the operator will be facing lawsuits.

Kurt Holzer - ITLA, asked the Committee to hold this bill in Committee stating that there are problems with the language. This bill fundamentally changes the nature of the immunities offer. The terrain park element under this legislation does not hold the operator liable. The severity and frequency of injuries are much higher on these terrain park features than in hill skiing. This legislation discourages the search for safer better practices in constructing the features in the terrain parks. **Senator Davis** reminded the Committee that skiing is a big industry for our State and we are competing with other states for the business. Some of the modifications that are being made to ski hills today are to draw visitors to our hills.

Phil Edholm - President/CEO of Look Out Pass and President of Idaho Ski Association, stated that all 18 Idaho Ski Area Association members support this **H 462**. This legislation is their efforts to modernize the Act to reflect the changes in the industry from 1979. Since there are inherent risks in the sport of skiing, which are impossible to eliminate, it is important to define those areas of responsibility for the ski areas and to define those risks which the skier expressly assumes, for which there can be no recovery. The protection provided by the Act is critical to the operation of ski areas in Idaho. **Alan Moore** - Operator of Bogus Basin, stated that there are two areas in a ski area that have high injury rates: 1) the learn to ski area and 2) terrain parks which basically attract teenage boys. The injury rate at Bogus Basin has been 3/10th of 1 percent this year. The terrain parks have not increased the overall injury rate at their ski area and they try to be extremely careful. **Skip Smyser** representing Idaho Ski Area Association, stated that in the process of crafting the legislation they have worked closely with the insurance industry, the National Ski Area Association, and the Idaho Trial Lawyers who made suggestions in the legislation that were adopted. What is currently happening on the ski slopes is dramatically different then 20 years ago. Much of the new methods of skiing come from the skateboard parks. They believe that this is a modernization of the Act and appropriate at this point in time.

MOTION:

Senator Davis moved to send **H 462** to the floor with a do pass recommendation. Seconded by **Senator Nuxoll**. The motion carried by **voice vote**.

**PASSING OF
GAVEL:**

Senator Lodge passed the gavel to Vice Chairman Vick.

S 1393 **Relating to the Special Committee on Criminal Justice Reinvestment Oversight - Senator Davis** stated that the Committee has had a very robust explanation of **S 1393** at the print hearing and unless there is some reason to repeat the testimony he will make a motion.

MOTION: **Senator Davis** moved to send **S 1393** to the floor with a do pass recommendation. Seconded by **Senator Lakey**. The motion carried by **voice vote**.

PASSING OF GAVEL: Vice Chairman Vick passed the gavel to Senator Lodge.

ADJOURNED: There being no further business, the meeting adjourned at 3:54 p.m.

Senator Lodge
Chair

Carol Deis
Secretary