

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

- DATE:** Friday, January 30, 2015
- TIME:** 1:30 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson (6), Johnson (Lodge, 11), Werk, and Burgoyne
- ABSENT/ EXCUSED:** Senators Bayer and Souza
- 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:** **Vice Chairman Hagedorn** called the Senate Judiciary and Rules Committee (Committee) to order at 1:30 p.m.
- RS 23192** **Vice Chairman Hagedorn** introduced Mike Brassey to introduce the RS.
- Mike Brassey**, Idaho Uniform Law Commission (Commission), explained that **RS 23192** is a recodification of the existing laws relating to business organizations, not a change in substance. The recodification will make the law more usable for attorneys and others and will modernize it without changing the meaning of the statutes. **Mr. Brassey** explained the establishment and purpose of the Commission.
- Mr. Brassey** informed the Committee that this RS was a project by the Commission. The purpose of the proposal is to take all unincorporated business organization laws, and redo them so common issues are considered in one location. To assure that the law would address Idaho's needs a committee from the Business and Corporate Law section of the Bar drafted the bill. **Mr. Brassey** did not go through the details of the legislation as it has been heard twice before. He requested that the Committee introduce **RS 23192** with a correction of a typographical error on page twenty, line 43, where the fee is \$30 and should be \$20.
- MOTION:** **Senator Davis** moved to print **RS 23192** with the correction referenced by Mr. Brassey. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.
- RS 23348** **Michael Henderson**, Counsel, Idaho Supreme Court (Court), explained that the Court has a constitutional responsibility to report to the Governor annually on defects and omissions in the law and to transmit the report to the Legislature for consideration.
- The first defect deals with the penalty for felony driving under the influence of alcohol or drugs (DUI). A third DUI within ten years constitutes a felony DUI. The law addresses the period of incarceration, the fine, the surrender or the driver's license to the court, and the suspension of driving privileges. The section regarding suspension of driving privileges has confusing and possibly contradictory implications. **Mr. Henderson** asked that the Legislature give the judges some clarification on their intent for this bill. **RS 23348** expresses the language the judges think will reflect the legislative intent, that the court can set the period of absolute loss of driving privileges anywhere from one to five years. Within that five-year period the court could grant restricted driving privileges.
- MOTION:** **Senator Werk** moved to print **RS 23348**. The motion was seconded by **Senator Johnson (6)**. The motion carried by **voice vote**.

Michael Henderson, Counsel, Idaho Supreme Court (Court), indicated that this RS involves the outside activities of senior judges. Senior judges are retired judges who provide a certain number of days each year in helping deal with the case load. Currently senior judges are prohibited from accepting a position in another branch or subdivision of state government nor in the government of the United States. As written, senior judges cannot serve in military reserve nor could they teach courses at state colleges or universities. The RS removes this language from the law and requires that the senior judges comply with all applicable provision of the Idaho Code of Judicial Conduct (Code).

Senator Johnson (6) inquired if the Code prevents a senior judge from practicing law as the language being struck from statute addresses this issue.

Mr. Henderson replied that there is a section stating which provisions are applicable to senior judges. It states that senior judges shall not engage in the practice of law.

Senator Davis expressed concern regarding striking several issues already in the Code. He asked if those issues could be left in the statute and add the provisions of the Code.

Mr. Henderson explained that if this legislation passes, the Judicial Council and the Court would clarify some of the provisions in the Code. The issues of the practice of law, mediation and arbitration could be clarified in the Code rather than having them frozen in statute.

Senator Davis stated that in the practice of law, mediation and arbitration the senior judges are still receiving a fee in addition to the retirement benefits and other benefits they enjoy. He asked if this is a healthy public policy.

Mr. Henderson answered that policy in engaging in these activities should be set by the Code. If it is in the Code, the Judicial Council and the Court, with input from others, can decide what the limits should be rather than having the blanket statement now in statute.

Senator Davis expressed concern regarding senior judges, particularly senior magistrate judges who work in a county where they were not elected. He agrees with the Court and respects its position that this practice has saved the State a great deal, and Idaho cannot afford to accomplish what it has under this system.

Mr. Henderson replied that this is a matter of resources. He explained that senior judges serving outside of the district in which they were elected provide a valuable service. The budget allotment for them and their duties are considered by the Legislature from year to year.

Senator Burgoyne queried Mr. Henderson about the amount of time the senior judges work. He pointed out that these judges are part-time as opposed to sitting judges and so would be more likely to want to do outside work. He stated that he appreciates the commitment of time a senior judge makes.

Mr. Henderson answered that the time varies. He explained that some work a few weeks a year; some work two or three months a year. The cap on the amount they receive is 85 percent of a district judge's salary plus their retirement benefit. Their total compensation cannot equal the pay received by a sitting judge.

Senator Burgoyne explained that a former Chief Justice sat on the Boise Parks and Recreation Board and asked if that was within the Judicial Canon (Canon). He stated that being part of the community is important for judges. **Senator Burgoyne** expressed concern that the Canon might preclude a senior judge from participating in some policymaking governmental activities.

Mr. Henderson indicated that the Canon permits service on boards in organizations that are non-governmental.

MOTION: **Senator Davis** moved to print **RS 23349**. The motion was seconded by **Senator Bayer**. The motion carried by **voice vote**.

RS 23350 **Mr. Henderson** explained that this RS has to do with speed limits. Under Idaho Code § 49-201 the Transportation Board (Board) may determine reasonable and safe maximum speed limits on interstate highways not exceeding 75 miles per hour, with 80 miles per hour in some circumstances. The Board can also set limits not exceeding 65 miles per hour on state highways, with 70 miles per hour in some circumstances. The term "not exceeding" means a limit lower than those maximum limits can be set, but there is nothing referring to exceeding limits below those maximums as being an infraction. Idaho Code § 49-654 defines speeding infractions. This legislation would add "unless otherwise posted" to Idaho Code § 49-654 so exceeding those lower limits can be enforced as traffic infractions. A discussion ensued regarding the use of white and yellow signs.

MOTION: **Senator Davis** moved to print **RS 23350**. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

RS 23351 **Mr. Henderson** stated that this RS corrects an omission regarding financial transaction cards (FTC). He pointed out that under Idaho Code § 18-3125 it is a felony to acquire or receive a FTC or FTC number without the consent of the owner. The correction would add "with the intent to use to defraud" and would add the element of intent.

MOTION: **Senator Tippets** moved to print **RS 23351**. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: **Senator Hagedorn** adjourned the meeting at 2:10 p.m.

Senator Marv Hagedorn
Vice Chairman

Carol Cornwall
Secretary