

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 09, 2015

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Vice Chairman Hagedorn, Senators Davis, Tippetts, Johnson (6), Bayer, Souza, Johnson (Lodge, 11) Werk and Burgoyne

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: **Vice Chairman Hagedorn** called the Senate Judiciary and Rules Committee (Committee) to order at 1:30.

DOCKET NO. 06-0102-1401 **Vice Chairman Hagadorn** recognized Andrea Sprengel, Services Manager, Correctional Industries.

Ms. Sprengel stated that this is the first rulemaking ever done by Correctional Industries. The purpose was to comply with Idaho Code § 20-413A which gave Correctional Industries the ability to enter into contracts with private agricultural employers for the use of inmate labor.

Ms. Sprengel explained that this rule will ensure that displacement of non-inmate workers does not occur and that inmate safety and security needs are met by the contract agriculture employers. The contract will reflect the responsibilities and expectations to alleviate these issues (see attachment 1).

Correctional Industries will receive annually from the Department of Labor the prevailing wage for the type of work the inmates will perform. The billing rate to the employer will include the prevailing wage plus other costs the employer avoids by using inmate labor.

DOCKET NO. 06-0102-1501 **Andrea Sprengel** also presented this docket prior to discussion as the two are related. **Ms. Sprengel** explained that this section addresses inmate compensation and the disbursement of funds received from the private agricultural employer. She then outlined the process by which the money received would be dispersed (see attachment 1).

Senator Werk said he understood the funds coming in would be dispersed among program costs, Idaho Victim's Compensation Fund, the Betterment Account, Department of Corrections (IDOC), and the inmate. There is nothing outlining how the amount of disbursement for each is determined. He expressed concern that if program costs would grow, the inmates would be left with nothing.

Ms. Sprengel explained that the previous procedure paid out everything else and then the inmates received what was left over. Under this new rule the inmates will be compensated for a specific amount, so they will receive a wage on which they can depend.

Senator Werk said he interpreted the language as meaning the money would come in, everybody would get their part, and then at the very bottom would be the inmates. He commented that if the inmates are going to have a set wage, that is not apparent the way the rules are written.

Ms. Sprengel related the details of how the process works. The employers are charged a specific rate. The inmates are paid a set wage lower than the rate paid by the employer. Inmates receive their share first. Then about 30 to 35 percent is paid to the DOC, 5 percent to the Victims' Compensation Fund, and all the rest goes into the Correctional Industries Betterment Account. If the costs start to grow the rate to the private agricultural employer would be increased to ensure that everybody is covered and the inmates receive their wages.

Senator Tippetts was concerned about the use of the term "such activities" when there are no activities to which to refer. **Ms. Sprengel** explained that the activities needed to be related to harvesting and processing perishable food items.

Senator Tippetts pointed out that the language was not clear. He suggested the text should be specific and identify the activities **Ms. Sprengel** indicated. He then inquired about the term "exclusively by that individual" as opposed to someone hired or the operator of the business. **Ms. Sprengel** replied that she did not know but would follow up with an answer.

Senator Tippetts accepted that offer. A discussion ensued regarding the use of the words "shall" and "will". He inquired if they meant the same. **Ms. Sprengel** answered that they use them interchangeably.

Senator Tippetts recommended that the language be changed to the use of only one of the words. He considers the use of two different words as implying that they are different. He expressed concern regarding the grammatical structure of the section listing three requirements for contracts with the private agricultural employer. It is not clear if all requirements need to be met or if a choice can be made. He asked if all three needed to be met. **Ms. Sprengel** replied that all three needed to be met. **Senator Tippetts** recommended that it be made clear.

Senator Burgoyne inquired if the \$2.61 per hour is for all people in custody who are paid or if there are other amounts paid depending on the job or other circumstances. **Ms. Sprengel** said that is the amount inmates in eastern Idaho are making. She stated that different amounts are paid for different jobs. **Senator Burgoyne** asked if this legislation would provide a definite amount each inmate doing farm work will be paid. **Ms. Sprengel** explained that the statute does not give a specific amount to be paid. Rather the amount paid will be in accordance with a graduated schedule based on the quality and quantity of work performed and the skill required.

Senator Burgoyne stated that he will support the rule but a schedule specifying the wages should be added in future rulemaking.

Senator Johnson (11) requested clarification on the work site evaluation. **Ms. Sprengel** explained that the contract would include security and safety provisions identified during the evaluation as well as the responsibilities of each party. **Senator Johnson (11)** then asked if there are variances among the employers as to who provides liability insurance. **Ms. Sprengel** pointed out that the insurance responsibilities were not put in the rules, but are included in the contract.

Senator Johnson (6) queried who requested that rules be established. **Ms. Sprengel** indicated that it was requested in statute. **Senator Johnson (6)** requested clarification of the contract requirements as they seemed very limited. In response, **Ms. Sprengel** proposed including the phrase "but not limited to" with the list of requirements.

Senator Davis addressed several other language issues and suggested revising the wording.

Vice Chairman Hagadorn requested that Ms. Sprengel have new wording and more focus next year.

Ms. Sprengel affirmed that the changes would be made.

MOTION: **Senator Tippetts** moved to approve **Docket No. 06-0102-1401**. **Senator Davis** seconded the motion. Passed by **voice vote**.

Senator Tippetts pointed out that he does not understand what is intended with "private agricultural employer" and requested that it be made clear by next year.

MOTION: **Senator Johnson (6)** moved to approve **Docket No. 06-0102-1501**. **Senator Bayer** seconded the motion. The motion passed by **voice vote**.

DOCKET NO. 06-0201-1501 **Henry Atencio**, Deputy Director, Idaho Department of Correction (IDOC) explained that **Docket No. 06-0201-1501** is a new chapter creating new rules for supervision of offenders on probation or parole by IDOC's Probation and Parole Division. These rules identify requirements and standards for supervision of offenders, and establish a standard of swift and certain justice using a graduated sanctions response matrix for positive and negative behavior of offenders. These new rules comply with and carry out requirements of the Justice Reinvestment Act of 2014.

Senator Davis questioned the 48 hour standard mentioned in the rule and how it was determined. He also asked for clarification on the graduated sanctions along with the policy of assessment. **Mr. Atencio** answered the 48 hour standard was set after talking with Idaho Supreme Court and magistrate judges for a swift response.

Senator Davis asked if the increments could be imposed more than once. **Mr. Atencio** clarified by stating that the probation officer can use 48 hours without judicial approval. If the sanctions need to extend past the 48 hour time period the judge of record will be contacted for an extension of that time. This is a standard operation for IDOC procedure on how to comply and enforce the IDAPA rule.

Senator Davis asked that the charge be easier to read as the print is very small on the second page. **Mr. Atencio** said he would get a bigger chart for the Committee.

Senator Johnson (11) asked for a copy of the matrix and wondered if parolees are getting copies of this matrix. **Mr. Atencio** affirmed that when parolees meet with a parole officer they review the chart and receive a copy.

MOTION: **Senator Johnson (6)** moved to hold **Docket No. 06-0201-1501** in Committee to a time certain. **Senator Bayer** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 06-0202-1501 **Henry Atencio**, Deputy Director, Idaho Department of Correction (IDOC) explained that **Docket No. 06-0202-1501** is a new chapter to the rules. It establishes a limited supervision unit within IDOC's Probation and Parole Division. These rules include the qualifying criteria for placement on the limited supervision unit. It gives disqualifying criteria and monitoring requirements along with payment requirements.

Senator Burgoyne questioned if the groups who were consulted when making the rules understood the end results. **Mr. Atencio** replied they did.

Vice Chairman Hagedorn asked if those consulted made changes to the docket. **Mr. Atencio** commented that each group along the way helped make changes to the rules.

Senator Burgoyne asked if those groups were all comfortable with the final wording. **Mr. Atencio** answered yes. When the final version was presented they were satisfied.

Senator Davis expressed concern regarding the use of the word "policy" on page 23, Section 04, and asked if there will be a statement that accompanies it. **Mr. Atencio** stated they intend to have a standard operating procedure for the direction of the supervising and parole officers.

Senator Davis asked for clarification on the validated actuarial assessment. **Mr. Atencio** explained their office uses Level of Service Inventory Revised (LSI-R). A risk assessment tool is a changing tool and one used for best practices. If a departure from this the rule is needed, it would require presentation before the Legislature for the change. **Senator Davis** asked that a date be added to the validated actuarial assessment. **Mr. Atencio** answered that it could be added along with revisions needed as mentioned.

MOTION: **Senator Burgoyne** moved to approve **Docket No. 06-0202-1501**. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 06-0203-1501 **Henry Atencio**, Deputy Director, Idaho Department of Correction (IDOC) said this docket is a new chapter governing the rules of readiness for release from custody. These new rules regulate an inmate's reentry into the community by identifying requirements and standards for preparing inmates for release. They ensure program completion and effective reentry strategies for timely effective and safe transitions to community supervision.

MOTION: **Senator Davis** moved to approve **Docket No. 06-0203-1501**. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 50-0101-1401 **Matt Wetherell**, Hearing Officer Supervisor, Commission of Pardons and Parole, explained that the purpose of the docket is to revise the rule to clarify and update outdated language and to rewrite rules that have not been updated for many years.

Senator Davis asked for clarification on the wording "as by" and wondered if it was the correct wording. **Mr. Wetherell** answered it will be looked at throughout. **Senator Davis** asked for consistency throughout the new rule. **Mr. Wetherell** said it would be done.

Senator Burgoyne addressed the concern that the rules in this docket speak to the laws and individual rights.

Senator Davis asked that the language be revised making sure the wording is clear and appropriate for understanding.

MOTION: **Senator Burgoyne** moved to approve **Docket No. 50-0101-1401**. **Senator Davis** seconded the motion.

Senator Werk asked that minutes deadlines be added when revising the rules.

The motion carried by **voice vote**

Vice Chairman Hagedorn noted that **Docket No. 57-0101-1401** will need to be rescheduled and presented at another time.

ADJOURNED: There being no further business, **Vice Chairman Hagedorn** adjourned the meeting at 2:57 p.m.

Senator Hagedorn
Vice Chairman

Carol Cornwall
Committee Secretary

Barbara Lewis
Assistant Secretary