

IN THE SENATE

SENATE CONCURRENT RESOLUTION NO. 151

BY JUDICIARY AND RULES COMMITTEE

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND AUTHORIZING THE LEGISLATIVE COUNCIL TO APPOINT AN INTERIM COMMITTEE TO UNDERTAKE AND COMPLETE A STUDY OF POTENTIAL APPROACHES TO MITIGATING THE RISK OF BIAS IN CONTESTED CASES.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, state agencies and members of the public are often opposing parties in a contested case administrative hearing; and

WHEREAS, an order issued in such a contested case can determine legal rights, duties, privileges, immunities and other legal interests; and

WHEREAS, agency directors, boards and administrative hearing officers play an integral role in determining the outcome of contested cases and any orders that are issued; and

WHEREAS, those who adjudicate contested cases should have the independence and expertise to conduct fair and thorough hearings; and

WHEREAS, the Office of Performance Evaluations (OPE) on February 22, 2016, issued its study "Risk of Bias in Administrative Hearings"; and

WHEREAS, OPE found that the types of actions involving administrative hearings total 93 and, of that number, 48 of these actions, or 52%, present moderate or high risk for bias; and

WHEREAS, one recommendation of OPE was to consider whether current safeguards could be strengthened or new safeguards implemented to help mitigate the risk of bias as well as promote greater consistency in hearing procedures; and

WHEREAS, another recommendation of OPE was for the Legislature to consider whether a central panel is appropriate to mitigating the risk of bias in contested cases; and

WHEREAS, a further recommendation of OPE was that the Legislature should consider establishing an interim committee to study possible contested case changes; and

WHEREAS, the Legislature finds that 48 of 93 types of actions holding a moderate or high risk of bias is not acceptable.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Sixty-third Idaho Legislature, the Senate and the House of Representatives concurring therein, that the Legislative Council is authorized to appoint a committee to undertake and complete a study of potential approaches to mitigating the risk of bias in contested case proceedings including, but not limited to: the assignment of agency directors, boards and administrative hearing officers for the conduct and decision of contested cases; the appointment and compensation of administrative hearing officers; and appropriate means to mitigate actual and perceived bias, conflicts of interest and any other factors undermining the actual and perceived unfairness of contested case proceedings. The committee shall consist of ten legislators, with five from the Senate and five from the House of Representa-

1 tives. The political party affiliations of the committee members from each
2 legislative body shall be in the same proportions as they are in the legisla-
3 tive body in which such members serve. The Legislative Council shall autho-
4 rize the committee to receive input, advice and assistance from interested
5 and affected parties who are not members of the Legislature.

6 BE IT FURTHER RESOLVED that the cochairmen of the committee are autho-
7 rized to appoint advisors with technical expertise in the area of contested
8 case administrative hearings and hearing officers and are expected to re-
9 ceive input from stakeholders in various state agencies.

10 BE IT FURTHER RESOLVED that any advisors to the committee who are not
11 legislative members shall not be reimbursed from legislative funds for per
12 diem, mileage or other expenses and shall not have voting privileges.

13 BE IT FURTHER RESOLVED that the committee shall report its findings,
14 recommendations and proposed legislation, if any, to the First Regular Ses-
15 sion of the Sixty-fourth Idaho Legislature.