

MINUTES
Approved by the Committee
Administrative Hearing Officer Committee
Wednesday, February 14, 2018
1:00 P.M.
Room WW53
Boise, Idaho

Co-chair Gary Collins called the meeting to order at 1:06 p.m.; a silent roll call was taken. Committee members in attendance: Co-chair Senator Steve Vick and Co-chair Representative Gary Collins; Senators Jim Rice, Kelly Anthon and Grant Burgoyne; Representatives Lynn Luker, Stephen Hartgen, Lance Clow and John Gannon. Senator Mary Souza was absent and excused. Legislative Services Office (LSO) staff present were: Katharine Gerrity, Keith Bybee and Ana Lara.

Other attendees: Martin Bilbao - Bilbao & Co.; Emily Patchin - Risch Pisca PLLC.; and Douglas Waterman - self.

Co-chair Collins called for the approval of the November 13, 2017 minutes. Representative Luker made a motion to approve the November 13, 2017 minutes. Senator Burgoyne seconded the motion. The motion passed by voice vote.

NOTE: presentations and handouts provided by the presenters/speakers are posted on the Idaho Legislature website: www.idaho.legislature.gov; and copies of those items are on file at the Legislative Services Office located in the State Capitol.

Co-chair Collins addressed the agenda for the meeting. He commented that there had been some modifications made to the draft legislation since the last meeting and those revisions would be addressed by the subcommittee. Co-chair Vick thanked the committee for its hard work and voiced his desire for the draft legislation to receive a fair hearing.

Review of Draft KAG155

Co-chair Collins called upon Representative Luker to provide commentary regarding the revisions done to the draft legislation. Representative Luker explained that, after the last committee meeting, the subcommittee had reviewed the draft legislation with respect to the Administrative Procedure Act (APA) changes and the addition of the Central Hearing Office provisions. He stated that the subcommittee had modified some definitions to provide clarification and to better compliment the language in the draft. Representative Luker added that the definition of "preliminary review" was modified to assist agencies in distinguishing between the initial gathering of information versus when it would become a contested case proceeding.

Representative Luker stated that the counties had raised a concern and the subcommittee had considered providing an exemption to the counties. However, Representative Luker said, based on the review of some Idaho Supreme Court cases, the subcommittee didn't believe it was appropriate to do so because the draft was directed at state agencies and not local government.

Senator Burgoyne suggested that the process had allowed him to see how the original APA had some gaps, contradictions, and conceptual issues. He stated that the work product that the subcommittee had created did a more adequate job of conforming statute to practice than the existing APA did in many respects.

Senator Burgoyne referred to page 27, Section 40 of the draft and stated he was unsure whether this section had been included in the previous draft, but the subcommittee had done its best to keep the draft consistent with what it understood the committee's wishes to be.

Representative Gannon emphasized that the subcommittee had dedicated a significant amount of time into meeting with agencies to make adjustments to the draft. He added that a great deal of work had been done to produce a draft that was a compromise between stakeholders.

Senator Rice emphasized that the draft provided a positive change to the APA and addressed important issues, not just with respect to the fairness to the citizens of the State, but also to the appearance of fairness, which is lacking in the current methodology. He added that the draft provided a fair balance among stakeholders and took into account the needs of all those affected.

Committee Discussion

Representative Luker emphasized that the draft accomplished the committee's intent, which was to produce an independent fact-finding process to provide both perceptive and actual fairness but still allow department heads the policy discretion needed to review and make appropriate decisions with respect to policies. He added that the draft also provided more clarity with respect to the agencies' initial role in reviewing applications for licenses, etc. Representative Luker stated that the draft preserved the judicial review process standards and also provided more validity in the citizens' perception due to the independent fact-finding provided.

Representative Luker commented that, should the bill become law, there would need to be an initial \$1.5 million allocated for start-up costs, with billings to the agencies, which would then be self-sustaining.

Representative Luker made a motion that the committee authorize the draft to become an RS, approve its introduction, and recommend that it move forward as accomplishing the purposes the subcommittee had set out to accomplish. The motion passed by voice vote.

Senator Rice made a motion that the committee recommend the RS be taken up by the appropriate committee with the intent that it be put into policy and passed. Senator Burgoyne seconded the motion. The motion passed by voice vote.

Co-chair Collins thanked the committee, and especially the subcommittee, for all the time and effort invested in crafting the draft. Senator Burgoyne thanked the committee members for their efforts as well as those who had provided feedback to the committee. Representative Gannon thanked the subcommittee members for their extraordinary efforts. Representative Luker thanked LSO staff for their work.

The committee adjourned at 1:28 p.m.