

IN THE SENATE

SENATE CONCURRENT RESOLUTION NO. 122

BY JUDICIARY AND RULES COMMITTEE

A CONCURRENT RESOLUTION

1
2 STATING FINDINGS OF THE LEGISLATURE AND AUTHORIZING THE LEGISLATIVE COUN-
3 CIL TO APPOINT AN INTERIM COMMITTEE TO CONTINUE WITH A STUDY OF POTEN-
4 TIAL APPROACHES TO MITIGATING THE RISK OF BIAS IN CONTESTED CASE PRO-
5 CEEDINGS.

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

7 WHEREAS, the Second Regular Session of the Sixty-third Idaho Legisla-
8 ture adopted Senate Concurrent Resolution No. 151, which authorized the ap-
9 pointment of a committee to undertake and complete a study of potential ap-
10 proaches to mitigating the risk of bias in contested case proceedings in-
11 cluding, but not limited to: the assignment of agency directors, boards and
12 administrative hearing officers for the conduct and decision of contested
13 cases; the appointment and compensation of administrative hearing officers;
14 and appropriate means to mitigate actual and perceived bias, conflicts of
15 interest and any other factors undermining the actual and perceived unfair-
16 ness of contested case proceedings; and

17 WHEREAS, the committee met in Boise on September 20, October 25, and
18 November 21. The committee received testimony from the legal community and
19 state agencies, and during its final meeting conducted discussions relating
20 to the formulation of findings and recommendations; and

21 WHEREAS, the committee recommended that proposed legislation address
22 adoption of provisions of the National Conference of Commissioners on Uni-
23 form State Laws' Model State Administrative Procedure Act. Such legisla-
24 tion, specifically Senate Bill 1155, has been introduced and is pending be-
25 fore the First Regular Session of the Sixty-fourth Idaho Legislature; and

26 WHEREAS, the committee recommended amending the contested case provi-
27 sions of the Administrative Procedures Act, which has led to the introduc-
28 tion of Senate Bill 1155 late in this session, on which comment continues
29 to be received indicating a need for further consideration beyond the end of
30 this session; and

31 WHEREAS, the committee also recommended that the First Regular Session
32 of the Sixty-fourth Idaho Legislature approve a reconstructed Administra-
33 tive Hearing Officer Interim Committee to examine and make recommendations
34 regarding contested case reforms including, but not limited to: (a) the po-
35 tential of creating a central panel of hearing officers or administrative
36 law judges; (b) the determination of where such a central panel would be lo-
37 cated; and (c) the determination of the types of agency contested cases that
38 should be exempted from such a panel; and

39 WHEREAS, the committee's official term expired on November 30, 2016,
40 and numerous issues associated with administrative hearings in Idaho con-
41 tinue to persist; and

42 NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular
43 Session of the Sixty-fourth Idaho Legislature, the Senate and the House of

1 Representatives concurring therein, that we urge the Legislative Council to
2 approve a reconstructed Administrative Hearing Officer Interim Committee
3 to examine and make recommendations regarding contested case reforms in-
4 cluding, but not limited to: (a) the potential of creating a central panel
5 of hearing officers or administrative law judges; (b) the determination of
6 where such a central panel would be located; (c) the determination of the
7 types of agency contested cases that should be exempted from such a panel;
8 and (d) the further determination of appropriate amendments to the Admin-
9 istrative Procedures Act. The committee shall consist of ten legislators,
10 with five from the Senate and five from the House of Representatives. The
11 political party affiliations of the committee members from each legislative
12 body shall be in the same proportions as they are in the legislative body in
13 which such members serve. The Legislative Council shall authorize the com-
14 mittee to receive input, advice and assistance from interested and affected
15 parties who are not members of the Legislature.

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

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

23 BE IT FURTHER RESOLVED that the committee shall report its findings,
24 recommendations and proposed legislation, if any, to the Second Regular
25 Session of the Sixty-fourth Idaho Legislature.