

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, February 12, 2018
TIME: 1:30 P.M.
PLACE: Room WW54
MEMBERS PRESENT: Chairman Lodge, Vice Chairman Lee, Senators Hagedorn, Anthon, Foreman, Potts, Burgoyne, and Nye
ABSENT/ EXCUSED: Senator Lakey

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: **Chairman Lodge** convened the meeting of the Senate Judiciary and Rules Committee (Committee) at 1:32 P.M.

RS 26148C1 **Relating to Labor; Amending Idaho Code § 44-2802 Adding New Section Regarding Requirements for Employers to Provide Exemptions.** Senator Buckner-Webb presented this Routing Slip (RS). **Senator Buckner-Webb** noted this "Ban the Box" legislation would provide Idahoans with workforce opportunities post incarceration and increase their ability to contribute to Idaho's growing economy rather than being a drain on the economy. She elaborated on what this "Ban the Box" legislation was intended to do. She described how job applications have a check box asking applicants to disclose if they have a criminal record. Checking the box often reduces the likelihood of a callback or an offer of any kind for nearly 50 percent of those who apply. She commented how the lack of employment critically affected people who are trying valiantly to rebuild their lives and provide for their families after release from incarceration. She commented on the national statistics of those released from prisons and those who will re-enter their communities.

Senator Buckner-Webb emphasized how many Idahoans have a previous criminal record and how Idaho can remedy those in need of employment by "banning the box." She noted the importance of racial disparities for those who will face increased barriers in accessing employment upon release from prison. She noted the importance of contributing to society as a returning participant in community after incarceration.

Senator Buckner-Webb described the process with which employers would view applications from prospective applicants banning the box from people with criminal records. She noted the intention was not to remove the record, but to delay the review of criminal history for the consideration of an applicant's criminal records in a job related context. She noted this would give members of Idaho communities a chance to reduce recidivism. (Attachment: NELP Fact Sheet).

DISCUSSION: **Vice Chairman Lee** inquired as to the ramifications an employers can expect if this proposal is violated. **Senator Buckner-Webb** responded she would investigate and follow up on that inquiry.

Senator Foreman asked about knowing up front about applicant's past history as a prospective employer to delay the potential costs associating with meeting the applicant. He noted the importance of knowing ahead of time if an interviewee was convicted of a crime. He noted how knowing how the prospective applicant has changed and rectified their past criminal behaviors is also integral. He commented he would refrain from having the person go through the process, however costly to an employer, and ultimately that results in an unfavorable decision anyway.

Senator Hagedorn expressed concern about employers ability to hire individuals with a criminal background due the employment position requiring a certain level of clearance. **Senator Buckner-Webb** explained conditional employment would allow individuals to have more opportunities and chances to find successful employment. **Senator Hagedorn** commented that it might make sense to find middle ground with this legislation.

Senator Potts stated that creating a protected class of citizens may potentially create legal ramifications for employers. **Senator Burgoyne** commented on the importance of approach to criminal justice and the employees in trivial employment circumstances.

MOTION: **Vice Chairman Lee** send **RS 26148C1** to print. **Senator Potts** seconded. The motion passed by **voice vote**.

RS 26136 **Relating to Fire Districts; Amending Idaho Code § 31-1409 to Clarify That Certain Notice Shall Be Required for a Temporary Vacancy of a Commissioner.** Vice Chairman Lee presented this Routing Slip (RS). **Vice Chairman Lee** noted the lack of a specific provision which would ensure for proper notification if a temporary vacancy occurred on Fire Commissions in a specific fire district.

MOTION: **Senator Nye** moved to send **RS 26136** to print. **Senator Burgoyne** seconded. The motion passed by **voice vote**.

RS 26006 **Relating to Protection of Public Employees; Amending Idaho Code § 6-2105 Revising a Provision Regarding Employees who Bring Civil Action.** Mike Kane, Idaho Counties Risk Management, presented this Routing Slip (RS). **Mr. Kane** explained this whistle-blower legislation concerns an act to sue the government. He noted the government cannot retaliate pursuant to the act. He described legislative amendments in the Whistleblower Protection Act which enacted in 1989 and enables lawsuits against governmental entities. He remarked on the lack of remedies on the part of the governmental entity in taking action against such an employee. He explained the intent of the legislation was to enact it along the same lines as the Tort Claims Act.

DISCUSSION: **Senator Burgoyne** asked why this legislation has been in circulation for some time and has not been included in the Tort Claims Act. He inquired if Mr. Kane was aware of a situation that would cause this bill to be brought at this time. **Mr. Kane** noted that several juries awarded significant damages.

MOTION: **Vice Chairman Lee** moved to send **RS 26006** to print. **Senator Hagedorn** seconded. **Senator Burgoyne** voted **nay**. The motion passed by **voice vote**.

**GUBERNATORIAL
APPOINTMENT
HEARING**

Gubernatorial Appointment of Nicole Fitzgerald as Administrator of the Office of Drug Policy (ODP). **Ms. Fitzgerald** discussed her background, education, and experience. She noted her tenure at the ODP. She remarked on her accomplishments and acknowledged the development of the prevention website. She described her vision for the ODP.

Senator Burgoyne asked Ms. Fitzgerald regarding prevention measures on tobacco and opioids. **Ms. Fitzgerald** responded that the Department of Health and Welfare addresses tobacco to avoid overlap; however, on the opioids crisis front, ODP takes lead. She noted the strategic plan and measures taken to collaborate with law enforcement. She described the system failures and noted on the overall issues regarding prescribing and marketing of those drugs. She elaborated on the measures of prevention through recovery.

Senator Burgoyne asked regarding issues arising from large pharmaceutical companies. **Ms. Fitzgerald** commented on the strategic plan which she envisioned for ODP.

Senator Potts inquired regarding ODP's stance on medical marijuana and second class of gateway drugs. **Ms. Fitzgerald** replied the ODP supports the research regarding medical marijuana. She noted the primary prevention is to prevent initiation into substance abuse by having youth strengthen their coping and resilience skills.

Senator Foreman asked regarding where the key emphasis should be placed in the war on drugs. **Ms. Fitzgerald** responded the goal is to reduce substance abuse.

Senator Anthon arrived at 2:10 P.M.

S 1225

Relating to Civil Actions; Amending Idaho Code § 10-1111 to Provide for Orders Renewing Judgment. This bill was presented by Jason Slade Spillman, Legal Counsel, Idaho Supreme Court. **Mr. Spillman** explained this bill pertains to judgments it addresses, and how that initiates the creation of a lien on a debtor's property. He elaborated that the judgment runs via the statute of limitations and the lien via the renewal process; both have a shelf life. He explained the lien expires after ten years; however, the statute of limitations runs for 11 years. He noted the current language instructs the court to re-issue a renewed judgment upon expiration and establish a new lien. Priority over the two liens can only be resolved with the one created earlier in time. He noted the problem with the present language is there are timing issues in filing, resulting in a secondary judgment. He explained the importance in priority of original lien needed to be maintained.

DISCUSSION:

Senator Anthon asked if there had been issues arising from the misinterpretation of this bill. **Mr. Spillman** noted it has been identified as a potential problem.

Senator Burgoyne asked if this bill intends to prevent a future problem and if it is necessary for a judgment to expire. **Mr. Spillman** confirmed the intent is to prevent a problem.

Senator Hagedorn commented on the frequency with which this bill was modified over time; he wondered if it will be so in the future. **Mr. Spillman** noted judges were consulted this time around to derive the language and hoped the statute would not be revisited for amendments.

MOTION:

Senator Nye moved to send **S 1225** to the floor with a **do pass** recommendation. **Senator Anthon** seconded. The motion passed by **voice vote**.

Relating to Criminal Procedure; Amending Idaho Code § 19-2525 to Provide for Refund Eligibility presented by Jason Slade Spillman, Legal Counsel, Idaho Supreme Court. **Mr. Spillman** explained, generally, defendants convicted of crimes are ordered to pay fines and restitution through the Clerk of the Court. As a result, once these fines have been paid, the defendant is entitled to some reimbursement of the monies paid. He noted the reason this is brought forth legislatively is to obviate the need for the defendant to seek reimbursement by filing a multitude of suits against the various funds. He noted this legislation seeks to implement a process by which defendants may seek reimbursement from the courts.

DISCUSSION:

Vice Chairman Lee asked if this circumstance is a rare situation. She wondered if no emergency clause is noted on the bill, who would be eligible. **Mr. Spillman** responded the statute outlines only the past two years with respect to the appeals vacated. **Vice Chairman Lee** asked if this statute gave discretion to the courts. **Mr. Spillman** replied the bill would offset creating a blanket policy whether or not a stay is more appropriate. He added that the current policy is for the court to decide upon having that defendant before via restitution order.

Senator Hagedorn asked if the restitution is the greater amount of what the defendant needed to pay. **Mr. Spillman** responded that each case varies, but confirmed that to be so. He noted victims could have a civil claim and be precluded by the court.

Senator Potts asked why the statute directs a defendant to proceeding through the General Fund. **Mr. Spillman** responded that the disbursements are fragmented and this would make the process more centralized. **Senator Potts** inquired if some of the funds are unaccounted for during the process. **Mr. Spillman** responded that once the court issues disbursements, those funds are no longer available.

Senator Burgoyne asked if, in reference to a restitution order, when an appeal and reversal judgement is made, is there also a reversal of funds paid? In such a case, what if the amount is very large? **Mr. Spillman** responded the hope is to establish a process that deals with the many possibilities. **Senator Burgoyne** noted that a new appropriation of \$20,000 was sought from the General Fund. **Mr. Spillman** responded that is the expectation as to what will result from implementing this legislation. He noted the difficulty in identifying this more precisely.

Senator Hagedorn asked if someone is wrongly convicted and this individual's conviction is reversed then is he/she entitled to get his/her monies back. **Senator Hagedorn** then inquired how the victim would receive the money through the proposed funding mechanism. **Mr. Spillman** responded there are rare circumstances.

Senator Burgoyne asked if the victim should be part of the refund process if the victim was somehow responsible. **Mr. Spillman** state if a victim makes a false accusation and the resulting conviction is vacated, the false accuser who should make the restitution. He noted that assessment of fault was what the court was not prepared to weigh in on at this time through this legislation.

MOTION **Senator Potts** moved to reject **S 1241**. **Senator Foreman** seconded.

Vice Chairman Lee noted that, after some time, perhaps it would be beneficial to bring this bill forward for additional consideration.

SUBSTITUTE MOTION: **Vice Chairman Lee** moved that **S 1241** be held in Committee until a date certain. **Senator Burgoyne** seconded.

Senator Hagedorn asked if the bill is held in Committee, will that bill be reconsidered at a later date. **Chairman Lodge** responded that would be so. **Senator Hagedorn** noted that the original motion would accomplish the same thing as the substitute motion. **Chairman Lodge** noted the original motion was to reject and not hold in Committee.

The motion passed by **voice vote**. **Senator Potts** voted **nay**.

GUBERNATORIAL APPOINTMENT VOTE: **Committee vote on the Gubernatorial Appointment of Elizabeth "Liz" Chavez to the Idaho Judicial Council.**

MOTION: **Senator Burgoyne** moved to send the gubernatorial appointment of Elizabeth "Liz" Chavez to the Judicial Council to the floor with a recommendation that she be confirmed by the Senate. **Senator Hagedorn** seconded.

Vice Chairman Lee noted a Senate Rule 39(H) disclosure due to her spouse presiding on the bench as District Judge.

Senator Burgoyne noted a Senate Rule 39(H) disclosure due to being under consideration for the Judicial Council and Ms. Chavez's participation in those proceedings.

VOICE VOTE: The motion passed by **voice vote**

ADJOURNED: There being no further business, **Chairman Lodge** adjourned the meeting at 3:02 P.M.

Senator Lodge
Chair

Anna Wroblewski-Jones
Secretary