

MINUTES

HOUSE JUDICIARY, RULES & ADMINISTRATION COMMITTEE

DATE: Thursday, March 01, 2018

TIME: 1:30 pm or Upon Adjournment

PLACE: Room EW42

MEMBERS: Chairman Luker, Vice Chairman Malek (Widmyer), Representatives Perry, Dayley, McDonald, Cheatham, Kerby, Nate, Chaney, Amador, Hanks, Zito, Zollinger, Ehardt, Gannon(17), McCrostie, Wintrow

**ABSENT/
EXCUSED:** None

GUESTS: The sign-in sheet will be retained with the minutes in the committee secretary's office until the end of the session. Following the end of session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.

Chairman Luker called the meeting to order at 2:57 p.m.

H 582: **Sara Thomas**, Administrative Director of the Courts, Idaho Supreme Court presented **H 582**. She stated this bill is the Change in Employment Compensation Committee (CEC) recommendation for judicial officers and the increase is in line with the CEC/JFAC recommendation for other state employees. Judges make important and difficult decisions about Idaho citizens every day. The courts strive to recruit judges of the highest caliber, but it has become difficult to do so as some judgeships remain unfilled. This bill allows for a base salary increase for all judicial officers of \$3,700 and to restore differentials between judiciary levels. The total of all increases represents a less than three percent change in overall judicial compensation.

MOTION: **Rep. Amador** made a motion to send **H 582** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Chairman Luker** will sponsor the bill on the floor.

H 623: **Sen. Burgoyne** and **Chairman Luker** presented **H 623**, which is the culmination of work by an interim legislative committee to address concerns over due process, conflicts of interest and impartiality in contested administrative proceedings. The concerns came up as a result of a 2015 Office of Evaluation report that found there was a risk of bias in Idaho administrative contested proceedings because there weren't sufficient safeguards to ensure fair hearings by neutral hearing officers. The focus of the bill changes the current system agencies use to choose and hire hearing officers. More specifically it establishes an Office of Administrative Hearings (OAH) with an independent chief hearing officer and hearing officers housed in the Department of Self Governing Agencies. All contested case proceedings will be handled through OAH with the exception of the Public Utilities Commission, Industrial Commission, Department of Water Resources and other proceedings exempt by law. Department heads continue to have final review over all policy and the ability to resolve portions of contested cases. Additionally, the bill lays out the details of procedure and oversight. In answer to questions from the Committee it was explained this was shifting positions out of the agencies and by bringing many of the processes in house rather than contracting them out, it is anticipated there will be an overall cost savings once OAH is set up.

Richard Seaman, Professor of Law, Idaho State University, and **Jeremy Chou**, Lobbyist, Givens Pursley both testified on their own behalf **in support of H 623**. Mr. Seaman requested permission to submit written testimony. (See Attachment 1) Both stated the benefits of creating due process that is independent. It enhances overall fairness and bolsters public perception and confidence in the process.

Tom Donovan, Idaho Department of Insurance spoke on behalf of department Director Dean Cameron. While the agency is not taking a position on this bill, there are some concerns. He stated they don't think there is a problem that needs to be fixed and it will require more time and cost than the current process.

Nicole McKay, Attorney General Division Chief, Idaho Department of Health and Welfare(DHW), spoke **in opposition** to **H 623**. It is unnecessary and duplicative of the departments hearing process. She explained due to a federal ruling, all DHW contested Medicaid cases needed to be transferred to the Attorney General's Office. This was time consuming and costly and does not believe the fiscal note is accurate with regard to DHW. **Chairman Luker** clarified to Ms. McKay the intent of section 67-5240 of the bill, is to exempt certain cases that are operating under other provisions of law, and the department's contested Medicaid cases would fall under this exemption. **Sen. Burgoyne** further clarified that with the exception of the three agencies listed in section 67-5240, all agencies would be subject to this legislation, with the exception of certain programs within those agencies that are subject to other provisions of law.

Shelley Davis, Attorney with Barker Roshalt & Simpson, on behalf of the Water Bar, which represents both ground water and service water attorneys. She stated there are attorneys on both sides of supporting and opposing the fact the Water Resources Board is exempted from this legislation. The common concern is there is no mechanism for their clients to lawfully challenge the Water Resources Board. **Chairman Luker** clarified to Ms. Davis that the interim committee was directed to exclude the Water Resources Board, but it has full authority to promulgate its own rules and has until January 1, 2019 to adopt any portions of the Administrative Procedures Act it chooses. This would be the time to bring concerns forward to them about the lack of process for contested cases.

MOTION: **Rep. Dayley** made a motion to send **H 623** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Gannon** and **Chairman Luker** will sponsor the bill on the floor.

Chairman Luker put the Committee at ease at 4:58 p.m.

Chairman Luker resumed the meeting at 5:15 p.m.

H 644: **Rep. Kerby** presented **H 644**, which is the replacement bill for **H 553** that he presented to the Committee on February 27, 2018. He reviewed the changes in bill that include only installing the interlock device in vehicles operated by the offender. To be eligible, participants cannot be convicted of DUI within the last 10 years, nor can they have a conviction removed as a result participating in a diversion program. It clarifies who may order a defendants' participation and who will oversee participation. This bill clarifies if a person defaults on their contract during the diversion period, the court can immediately rule they failed to comply. Upon successful completion, the court's order must note the dismissal is based on successful completion of the diversion program.

MOTION: **Rep. McDonald** made a motion to send **H 644** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Kerby** will sponsor the bill on the floor.

H 553: **Chairman Luker** stated the committee needed to dispense with **H 553**.

MOTION: **Rep. McCrostie** made a motion to **HOLD H 553** in committee. **Motion carried by voice vote.**

H 643: **Seth Grigg**, Executive Director, Idaho Association of Cities (IAC) presented **H 643**. This is a bill of compromise and collaboration and is the outcome of a working group comprised of IAC, Associations of Idaho Cities and the Administrative Office of the Court. This works to resolve the conflict between the counties and cities over who has the responsibility to fund the magistrate courts. A number of cities are paying counties for magistrate court services through a voluntary arrangement. However, other cities and counties have litigated over the responsibility of cities to fund magistrate court operations. The intent of this bill is to provide for funding of the magistrate courts throughout the state and remove the conflict over funding that has arisen. The bill establishes a unique funding formula that involves appropriating a percentage of the local share of state liquor funds, dollars from district court fees, and relieving cities of their obligation to fund district courts through the counties with a repeal of the statute that requires them to do so. The state liquor funding and transfer of funds from the cities will be phased in over five years. Directing dollars from the district court fees will be diverted immediately upon enactment of this legislation. It will have a fiscal impact to the State, however, it is the consensus that the State has some obligation in the provision of court services, as the State has a unified court system and the magistrate division is responsible for adjudicating infractions and misdemeanors. The Idaho State Police generates workflow into the courts as well.

Shawn Barigar, Mayor, City of Twin Falls; and **Jeremy Chou**, Givens Pursley, representing Ada County; spoke **in support** of **H 643**.

MOTION: **Rep. Ehardt** made a motion to send **H 643** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Chairman Luker** will sponsor the bill on the floor.

H 585: **Rep. Wintrow** presented **H 585** by stating this is a simple bill that tightens a loophole in state law. Federal law already prohibits individuals convicted of misdemeanor domestic violence from possessing a gun. This law seeks to de-escalate future acts of domestic violence through a statutory two-year prohibition on firearm possession for people convicted of misdemeanor domestic violence. If they are found in possession, own, or purchase a firearm within two years of the conviction, the person will be guilty of a misdemeanor. **Rep. Wintrow** stated victims are five times more likely to be killed when an abuser owns a firearm.

Laura Diaz and **Judy Diaz** spoke **in support** of **H 585**. They shared their story of loss when their father murdered their mother with a gun after being convicted of misdemeanor domestic abuse. They compelled the Committee to stand with victims and survivors to make a policy change.

Kieran Donahue, Sheriff, Canyon County on behalf of Idaho Sheriff's Association; **Annie Pelletier**, Director of Law and Policy, Idaho Coalition Against Sexual & Domestic Violence; **Mike Kane**, Idaho Sheriff's Association, **Kimberly Stretch**, Civil Attorney, Idaho Legal Aid; spoke **in support** of **H 585**.

ORIGINAL MOTION: **Rep. McDonald** made a motion to send **H 585** to the floor with a **DO PASS** recommendation.

SUBSTITUTE MOTION: **Rep. Ehardt** made a substitute motion to send **H 585** to General Orders.

ROLL CALL VOTE ON SUBSTITUTE MOTION: A roll call vote was requested on the substitute motion to send **H 585** to General Orders. **Substitute Motion failed by a vote of 5 AYE, 10 NAY, 2 Absent/Excused.** **Voting in favor** of the substitute motion: **Reps. Chaney, Hanks, Zito, Zollinger, Ehardt.** **Voting in opposition** to the substitute motion: **Reps. Luker, Malek, Dayley, McDonald, Cheatham, Kerby, Nate, Gannon, McCrostie, Wintrow.** **Reps. Perry** and **Amador** were Absent/Excused.

**VOTE ON
ORIGINAL
MOTION:**

Chairman Luker called for a vote on the motion to send **H 585** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Hanks** requested to be recorded as voting **NAY.** **Rep. Wintrow** will sponsor the bill on the floor.

ADJOURN:

There being no further business to come before the Committee, the meeting adjourned at 7:29 p.m.

Representative Luker
Chair

Wendy Carver-Herbert
Secretary