

MINUTES  
**HOUSE STATE AFFAIRS COMMITTEE**

**DATE:** Thursday, February 18, 2021

**TIME:** 9:00 A.M.

**PLACE:** Room EW40

**MEMBERS:** Chairman Crane, Vice Chairman Armstrong, Representatives Palmer, Barbieri, Holtzclaw, Monks, Scott, Andrus, Young, Furniss, Hanks, Skaug, Gannon, Mathias

**ABSENT/  
EXCUSED:** Vice Chairman Armstrong, Representative Holtzclaw

**GUESTS:** Casey Baker, Margie Baker, and Bryan Kane, Office of the Attorney General.

**Chairman Crane** called the meeting to order at 9:00 a.m.

**H 101:** **Rep. Vander Woude** presented **H 101**, to provide flexibility for state agencies to employ attorneys other than the Attorney General's Office. Currently, only certain state agencies may choose their own attorneys to represent the State of Idaho on their behalf before courts, administrative tribunals and federal agencies. This bill will extend the right to choose legal counsel to all state offices, boards, commissions and entities. These entities may still choose to obtain legal services from the Attorney General. The Attorney General and the Board of Examiners will no longer be required to screen and pre-qualify attorneys who desire to perform contract legal services for the State of Idaho. Agencies will be required to inform the AG's office of their intent to hire outside council by August 1 and it must be reflected in their agency budgets.

In response to questions, **Rep. Vander Woude** clarified that anyone may ask for an opinion from the Attorney General. He stated it is less common for attorneys to be general practitioners and more common for them to specialize. This bill would allow agencies to hire the most qualified attorney for their cause. The cost per hour may be higher but the attorney would most likely be hired for a contracted amount of time. Currently, only executive offices may hire an outside attorney. **Rep. Vander Woude** stated that the projected costs of hiring an outside attorney must fall within an agency's budget. He could not say how many agencies would plan to utilize the current Deputy Attorneys General (DAG's) assigned by the Attorney General's Office and how many would opt for outside attorneys. There are currently 127 Deputy Attorneys General working in Idaho's state agencies and the agencies reimburse the AG's office for their services. There is no intent for agencies to hire outside counsel for criminal prosecution.

There was comment that the fiscal note needs to be more specific. **Rep. Vander Woude** stated it is difficult to budget for unknown situations. He indicated this legislation is not meant to hurt the Attorney General's office but rather provide an opportunity to have the best legal representation available.

**Margie Baker, Casey Baker** and **Johnathan Oppenheimer**, Idaho Conservation League spoke **in opposition** to **H 101**. Their concerns included the fiscal note not being clear and opportunities for agency directors to hire their friends, creating a buddy system. A desire to review past costs incurred was also expressed.

**Brian Kane**, Attorney General's Office also spoke **in opposition** to **H 101**. He said there is already a straightforward process to hire outside counsel when needed. He stated that legislators have not sat down with the Attorney General's Office to discuss the perceived problem. The fiscal note does not indicate what the cost to the state would be. A 2015 study conducted by the Office of Performance Evaluation recommended the state should look inward for legal services rather than outside. Mr. Kane invited committee members to sit down for a discussion, outside of the legislative session, before creating a huge budget uncertainty. He shared that the attorneys working in his office have a passion for public service. They have litigated with attorneys from every major law firm. They teach, lecture and serve our state proudly. An added value exists with a pool of attorneys, as it does with the collective knowledge of 105 legislators.

In closing, **Rep. Skaug** stated the Attorney General needs to approve the hire of outside representation. On occasion, an agency simply needs an expert attorney. He said that he will work on the fiscal note prior to going to the House floor. He encouraged the committee to allow agencies to make decisions about hiring outside counsel.

**Rep. Skaug** and **Rep. Gannon** declared a Rule 80.

**MOTION:** **Rep. Babieri** made a motion to send **H 101** to the floor with a **DO PASS** recommendation.

During discussion, it was suggested that pre-decision advice seems to be one-sided. The Attorney General represents the state and not the people. Conflict of interest is enough for agencies to be able to hire their own counsel. Sometimes an agency does not need a full-time DAG. There was a concern about when an opinion is issued pre-trial because it is public. If an outside attorney has a different opinion, it can be hard to overcome. It was expressed that this bill is over-kill. It is not about what is being added, it is about what is being taken away. **H 101** would remove all of the checks and balances to ensure the quality of attorneys being hired. It was noted that the DAG's do move from agency to agency frequently, therefore, they become experts in their fields.

**VOTE ON MOTION:** **Motion carried on a voice vote. Rep. Vander Woude** will sponsor the bill on the floor.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 10:19 a.m.

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Representative Crane  
Chair

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Kelly Staskey  
Secretary