

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 16, 2022

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Lee, Anthon, Thayn, Zito, Burgoyne, and Wintrow

ABSENT/ EXCUSED: None

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 Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:01 p.m.

GUBERNATORIAL REAPPOINTMENT: **Chairman Lakey** welcomed Dan Dinning from Boundary County (by virtual TV) and asked him to tell the Committee why he would like to continue to serve on the Public Defense Commission (Commission). **Mr. Dinning** said he had served on the Commission since 2001 and had tried to balance the effect of going forward with the things that were needed and how they affect the counties. Boundary County was a small county, therefore it had to contract with attorneys. Mr. Dinning said improvement had been made in public defense, but they were looking at ways of improving it without it becoming burdensome.

Chairman Lakey asked Mr. Dinning if he thought the counties were listened to by the Commission. **Mr. Dinning** replied in the affirmative. He added that when workload requirements increased, the counties asked the Commission to meet those standards and they were put into effect. **Mr. Dinning** stated that what was good for the institutional officers may not necessarily be good for the small counties that were contracting for public defense.

Senator Wintrow thanked Mr. Dinning for his service and also thanked him for teaching her so much during the two years that she was on the Commission. **Senator Wintrow** then asked Mr. Dinning what personal skills he possessed that were important to the position. **Mr. Dinning** said he listened and asked for a differing opinion because it causes one to reevaluate the position they may have had.

Senator Anthon thanked Mr. Dinning for his service.

S 1397 **Relating to the Idaho Administrative Procedure Act.** **Senator Anthon** said the legislation represented the ongoing struggle to improve the rulemaking and the rule review process. He received feedback and concerns about unintended consequences that could occur. **Senator Anthon** requested that **S1397** be sent to the 14th Order for possible amendment. **Vice Chairman Ricks** asked for an overview of the intent of the bill. **Senator Anthon** replied that the intent was not to have a constant administrating of the law.

MOTION: **Vice Chairman Ricks** moved that **S 1397** be referred to the **14th Order** for possible amendment. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

H 629

Relating to the Idaho Administrative Procedures Act. **Senator Lee** said the legislation deals with how administrative hearings can be improved in our state to create transparency and fairness for our citizens. The question before the Committee is whether the remaining risk of bias is compelling enough to change the current system. The Office of Performance Evaluations (OPE) report indicated there were a number of areas specifically at risk.

TESTIMONY:

Brian McCauley, Chairman, Region 4, Idaho Foster Care Citizen's Review Panel, said he was not speaking as a representative, but for himself. He shared an instance where the law was violated at a hearing. He appealed, but again, he was in front of the same seven people who had made the first decision. Mr. McCauley said an external third party administrative hearing would bring tremendous benefit to helping find and determine what is the best interest of children.

Senator Wintrow said she appreciated the persistence and leadership of Mr. McCauley in the foster care program.

Representative Caroline Troy, cosponsor of **H 629**, shared a letter (see Attachment 1) from Katherine Miller, a veterinarian in Moscow. She had an experience of being informed, by letter, she was out of compliance and would be fined and have her license suspended. After \$20,000 in attorney fees and trying to explain her situation she gave up. The hearing was unfair and very biased.

Representative Troy said agencies have the option to be the hearing officer or to contract out for one. The Attorney General's office was closely aligned with agencies with which they were assigned to work. This complicated the chance to have a fair resolution. The OPE study reached out to 13 officials and there were some who felt like the bias was built in. The new structure would be built so the bias could not exist.

Andy Snook, standing in for Brian Kane with the Attorney General's office, said they appreciate the efforts of Representative Troy and Senator Lee and were supportive of an administrative hearing system that affords due process.

Mr. Snook said **H 629** does not solve the underlying concern, which was the decisions made by those with the authority to make decisions. He asked that the amendments to be considered carve out the Department of Health and Welfare, which in turn would leave the fair hearings unit in place.

MOTION:

Senator Anthon moved to send **H 629** to the floor with a do pass recommendation. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

H 621

Relating to Public Records **Senator Woodward** stated this legislation is a proposal pertaining to the Public Records Act. **H 621** would add an additional exemption for cybersecurity records relating to the nature, location or function of cybersecurity devices, programs or systems. The focus is on those systems designed to protect computer information, information technology or communication systems against terrorists or other attacks. One added chapter would authorize a reason for an executive session in a public meeting. Many government computer systems hold personal identifiable information and it is important to protect their identities. Minimizing the risk of a breach was a method of protecting secure data.

TESTIMONY: **Kelley Packer, Executive Director, Idaho Association of Cities** testified that **H 621** brought clarity to public records related to cybersecurity. It proposed a user friendly section of the act that would exempt cybersecurity records from release. It would allow cities, counties and other government entities to go into executive session to discuss the topic. **Director Packer** stated this bill strikes a balance in protecting the safety of the public at large. This legislation was a cost effective way to reduce cyber liability for Idahoans.

MOTION: **Senator Anthon** moved to send **H 621** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

H 596 **Representative James Ruchti** stated **H 596** repeals a code section that had been unconstitutional since 1974; the law was inconsistent. Idaho Code stated that one could not sue the driver of a vehicle if that person was a passenger in an accident. The law states the driver can be sued if it was partly or totally the driver's fault. A person must get insurance from the driver's insurance company before the person can look to his/her own underinsured motorist coverage.

MOTION: **Senator Wintrow** moved to send **H 596** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Lakey** adjourned the meeting at 1:53 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary