

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Friday, March 10, 2023

TIME: 1:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Foreman, Senators Lee, Anthon, Ricks, Hart, Hartgen, Wintrow, and Ruchti

**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 & Rules Committee (Committee) to order at 1:00 p.m.

S 1148 **STATE JUDICIARY. Senator Abby Lee** stated there was a similar bill last year that the Governor vetoed. A working group was organized during the legislative interim comprised of three legislators, three people appointed by the Governor and three people selected by the Judiciary. This bill represented about 90 percent of the agreement on the project they were assigned. **Senator Lee** explained the first change related to the judicial council membership. The current structure required the State Bar Board of Commissioners to nominate a district judge, a non-public employee attorney, and a non-public employed attorney. The proposed Judicial Council membership had the Supreme Court send a nominee, a district judge and a magistrate judge straight to the Senate. The Supreme Court would still nominate three names for a district judge, three names for a magistrate judge, whomever they chose. The Governor needed to select one person from that list. The new plan allowed the public defenders or public prosecutors to be considered for one of those positions. Two of the individuals could not be from the same area of practice. Three of those individuals would be nominated by the State Bar and then selected by the Governor and begin serving immediately on the Judicial Council. **Senator Lee** continued that this new legislation also added one more public member so that there was a balance of power between the public members and the attorneys. The Chief Justice of the Idaho Supreme Court remained the chair of this Committee. The members changed from seven to nine members and the terms of service changed from six years to four years. The new bill allowed for a staggering of new appointments. If a new confirmation was made before July 1, 2023, the term of service would go from six years to four years. **Senator Lee** discussed some of the differences between the current Judicial Selection Process and the proposed Judicial Selection Process. The current selection process required the Governor to choose a judge from the list of names submitted by the Judicial Council. The Council also determined a failed search if there were not enough applicants. The proposed selection process allowed a list of names submitted to the Governor for his consideration. If he was not satisfied with the list, a second could be initiated. The second list could be submitted along with the original list of names. The Judicial Council also determined a failed search if an appropriate applicant was not found. **Senator Lee** stated she saw significant improvement on the surveys. Currently, surveys were sent to all Bar members requesting feedback. The public was also allowed to submit anonymous comments. The Council used those comments as part of their deliberation in choosing finalists. The Governor was allowed to see them; the applicant was not. The proposed survey process would continue to

send all Bar members requests for feedback and comments about the applicants. The public also submitted comments. The comments were still confidential to the candidates but they could still see them just not know who wrote them. If a candidate recognized himself in the comments, he may choose to withdraw from the process. A new concept that was added to this proposal was the fact that our Constitution required our judges to be elected. There was a clear incumbency advantage. This proposal would say that third judicial district court judges would have two names, choose one, and then those who were unopposed would just have that name (see Attachment 1). **Senator Lee** responded to Chairman Lakey that the type of people wanted for the Judicial Council membership they were interested in, were regular people because they were looking at selection versus election.

DISCUSSION: **Senator Hart** asked if the elections for judges were going to be in May. He also asked if there were any discussion about changing it to November. **Senator Lee** said there had been no discussion of a ballot. **Senator Ruchti** commented he was part of the working group who participated on the committee last summer. He stated he saw a few differences which were discussed that the committee felt were better than what were in **S 1148**. One of the things the committee felt was important was that not all of the nominees ran through the same person. In the bill now you will see, other than the chief justice who automatically served every one else in some way, was touched by the Governor. The bill encouraged the Idaho State Bar to nominate, then send that name directly to the Senate. The thinking was to separate it out, because you could have one person picking every one and they could really stack the deck, giving no diversity of thought. The surveys were pretty close to what the committee discussed. The lawyers filled out the surveys when a potential applicant was getting ready to be chosen. They were filled out online and questions related to characteristics such as wisdom, intelligence, hard work, and similar characteristics were asked. The fear was that if one had a bad experience and was specific about it, the candidate may figure out who filled out the questionnaire. That may result in attorneys not being forthright or even being willing to fill out the questionnaire. The last difference was the committee wanted to have no more than four nominees to be from any political party. The legislature seemed to feel five was more appropriate.

TESTIMONY: **Kim Wickstrom**, Ada County State Committee Woman, explained her position and her responsibilities. She stated that part of her job was to stay in contact with the county voters and help them understand the processes through the legislative session. People wanted to know who to vote for when voting happens. She stated that Idaho was a representative form of government and officials were elected to do the heavy lifting on things. It made her question under the current law, who was appointing the judges and were they accountable to the people of Idaho. She did research and found that under current law the State Bar seemed to dominate the process of appointing judges. If that was the case, where was their accountability to the people of Idaho. **S 1148** transferred much of the power to the elected officials to our Governor and our senators, which was where it should be. They could be kept accountable with our voting. **S 1148** was a good bill.

Barrett Tetlow, Eagle, Idaho, stated **S 1148** was mild but necessary overdue reform. He added that according to the Idaho Constitution, judges were to be elected by the people. When there was a vacancy, selecting a replacement should be done by the people who were elected and accountable to the people. This bill required the Governor and the Senate, who were elected and accountable to the people, to be involved in the process of selecting judges.

Kristoffer Sperry, Meridian, Idaho, State Bar Member, commented that this was about the power of appointment and the transparency of the process. He believed the responsibility should stay with elected members of our government and not private entities.

Ken McClure, attorney at Givens Pursley, on behalf of the Idaho Liability Reform Coalition. Their concern was about accountability and transparency. The Constitution said judges were elected. In Idaho they were currently being selected and there was a need for the process to be evaluated. **Mr. McClure** shared the view that something as important as a Judiciary needed to have some public ownership and there needed to be accountability to someone for it. He spoke very positively about **H 1148** and stated that there was a very useful function to have quality control here and the Judicial Council does. The accountability of having the Governor more involved in the "who" was actually accountable to the people, will improve the relatively closed system now being used.

Senator Lee concluded stating the solution was really about the accountability and transparency that had been mentioned so many times during the discussion. There were some things missing including the judicial salaries, but the legislation was the light touch that would hopefully have more individuals willing to apply for the positions as they opened or became vacant.

MOTION: **Senator Ricks** moved to send **S 1148** to the floor with a **do pass** recommendation. **Senator Foreman** seconded the motion.

DISCUSSION: **Senator Hartgen** stated that this was a much better bill than last year and she would be voting for it. She added that Idaho had many wonderful judges who were appointed, stood for reelection and found many legislators that had been appointed and then were reelected.

Senator Ruchti said he would be voting against **S 1148** since it was not what the committee decided on. He added that as a member of the Bar, he had a vested interest in making sure that really good judges served because they serve our clients and they maintain the system of a fair judicial system. He had always felt it was appropriate that the Bar play a significant role in the judicial system process. He also felt the Governor appreciated the role they had been taking.

Senator Hart said he would be voting for **S 1148**. He was very pleased with the legislation and the changes that were made.

Chairman Lakey thanked Senator Lee for her hard work in getting the legislation to this point. She had to work with the committee and try to manage both sides of the rotunda and the Governor to get to this point with **S 1148**. A lot of time, patience and effort were required.

MOTION VOTE: **Senator Lakey** said that a motion was made by **Senator Ricks** to send **S 1148** to the floor with a **do pass** recommendation. The motion carried by **voice vote**. **Senators Ruchti** and **Wintrow** were recorded as voting nay.

PASSED THE GAVEL: Chairman Lakey passed the gavel to Vice Chairman Foreman.

DOCKET NO. 11-0702-2201 **Rules Governing Safety Glazing Material (Chapter Repeal) - Proposed Rule.** **Chairman Lakey** stated the presentation for this by the Idaho State Police (ISP) essentially repealed the section in its entirety. The vote was held because the window glazing bill was presented on the floor and the outcome was important. The bill was amended to take out the reference to the CFR and it passed. **Senator Wintrow** questioned if Idaho State Police were comfortable with these changes. **Chairman Lakey** indicated they were supportive of the amendment and this rule approval.

MOTION: **Senator Lee** moved to approve **Docket No. 11-0702-2201**. **Senator Ricks** seconded the motion. The motion was approved by **voice vote**.

PASSED THE GAVEL: Vice Chairman Foreman passed the gavel to Chairman Lakey.

Chairman Lakey announced to the Committee there would be a meeting on Friday, March 17, 2023 at 1:00 p.m. The focus would be on **H 71**.

ADJOURNED: There being no further business, **Chairman Lakey** adjourned the meeting at 1:45 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary