

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Monday, March 20, 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.

MINUTES APPROVAL: **Senator Ruchti** moved to approve the Minutes of February 20, 2023. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Hartgen** moved to approve the Minutes of February 22, 2023. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Anthon** moved to approve the Minutes of February 27, 2023. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Ricks** moved to approve the Minutes of March 1, 2023. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

Chairman Lakey indicated that due to scheduling issues the Gubernatorial Reappointments would be taken out of order.

GUBERNATORIAL REAPPOINTMENT: **Reappointment of Eric Fredericksen to the State Public Defense Commission** to serve a term commencing July 1, 2020 and expiring July 1, 2023. **Mr. Fredericksen** informed the Committee that he sat as the Vice Chair on the Public Defense Commission, and had served on the Commission for the last seven years.

DISCUSSION: **Senator Anthon** remarked that Mr. Fredericksen was perhaps the most confirmed person by the Idaho State Senate, and that he was well-vetted.

GUBERNATORIAL APPOINTMENT: **Appointment of Keely Duke to the Judicial Council** to serve a term commencing July 1, 2022 and expiring June 30, 2027. **Ms. Duke** informed the Committee that she was nominated by the State Bar to the Judicial Council for a vacant position as a result of the prior nominee's failed confirmation. She highlighted her 23-year career as an attorney, which included the representation of businesses small and large, and medical practitioners. She said she previously served as President of the State Bar, on the State Defense Association for Idaho, and President of the Idaho chapter of the Federal Bar Association. **Ms. Duke** said, at present, she served on the Board of Directors for U.S. Law. She said she operated her own firm with nine trial attorneys that represented clients in every corner of the State.

DISCUSSION:

Senator Anthon asked Ms. Duke to describe the political nature of the Judicial Council, and how politics should affect appointments. **Ms. Duke** said politics had no place in the process, but recognized that it played a role since elected officials determined appointments. She said another element of the position that was seen as political was the role of Judicial Council members in the selection of replacements when someone left a position mid term. Ms. Duke concluded with a statement about the strength of her convictions, and how she had no problem telling others on the Council, if she were confirmed, when she disagreed with their opinions, even if it was unpopular.

Senator Lee asked for confirmation that Ms. Duke already served on the Judicial Council. **Ms. Duke** confirmed she had been since she was recommended by the Bar. **Senator Lee** noted there were a multitude of great candidates for positions on the Council in the past that did not get confirmed, and asked what was needed to ensure candidates did not feel discouraged from applying or reapplying. **Ms. Duke** stated her belief that people were left behind, even if there was disagreement over the failure of certain candidates advancement in the appointment process. She then described an ideal candidate for the Council as one that was highly competent, had a clean record, maintained a good temperament in the Courtroom, and showed clients respect. **Senator Lee** asked if Ms. Duke thought the Judicial Council was better-suited for the judge selection process than the electorate. **Ms. Duke** said she did not believe the Council were better for judge selection. She said she believed the appropriate role for the Council was to fill vacancies when needed, but the Constitution ultimately determined the electorate made the ultimate decision about who they wanted at the conclusion of each term.

Senator Ruchti commended Ms. Duke's reputation as an attorney and the degree of respect she commanded in the legal community as a result of her qualifications and success.

Senator Wintrow asked Ms. Duke what criteria or requirements the Judicial Council established for the review of potential appointees to refer to the Governor. **Ms. Duke** referred her response to Senator Anthon's question, where the Council looked for in candidates, subject-matter competency, understanding of law and its application, a high degree of professionalism, and the ability to make a stand against popular opinions when they know it was wrong.

Senator Hart asked what the role of the Senate was in the appointment process, and how Ms. Duke saw it. **Ms. Duke** said the role of the Committee was not to simply rubber stamp an appointment, because they had the authority to decide if it was worthy of consideration from the full Senate, which an appointment also had to clear.

**GUBERNATORIAL
REAPPOINTMENT:**

Reappointment of Angela Barkell to the State Public Defense Commission to serve a term commencing January 1, 2020 and expiring July 1, 2023. **Ms. Barkell** said she was appointed to the Office of the Clerk at the District Court in Owyhee County in 2013, and had served on the Public Defense Commission since May, 2019.

DISCUSSION: **Senator Wintrow** commended Ms. Barkell for her professionalism and work ethic. She then asked if there was anything else the Committee should know as they considered the reappointment. **Ms. Barkell** emphasized how great a learning experience her service on the Commission was, and that Idaho counties had fantastic judges with plenty of experience.

Senator Ricks asked why Ms. Barkell's reappointment consideration came so late in the term. **Kathleen Elliott**, Public Defense Commission, reported Ms. Barkell was confirmed in 2019, and the hearing took place in 2020.

GUBERNATORIAL REAPPOINTMENT: **Reappointment of Paula Garay to the Sexual Offender Management Board** to serve a term commencing January 1, 2023 and expiring January 1, 2026. **Ms. Garay** said her service began in 2011 when the Board was first established. She said her work in that area began in 2000, when she worked at a residential treatment center in Mountain Home, ID. After that, she transitioned to work at a private practice in 2015 that primarily served adolescents with sexual behavior issues.

RS 30628 **Income Tax Administrative Rules.** **Senator Ricks** said **RS 30628** was a rejection of rules in the Senate Local Government & Taxation committee. He said the desire was to have the bill introduced and then referred to that committee.

MOTION: **Vice Chairman Foreman** moved to send **RS 30628** to print. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

H 117 **SEXUAL OFFENDER REGISTRATION - Amends existing law to revise a provision regarding release from registration requirements.** **Eric Fredericksen**, Idaho State Appellate Public Defender, said **H 117** offered a non-substantive change to State Code to clarify the terms of supervised probation for offenses that required sex offender registration.

DISCUSSION: **Chairman Lakey** asked if the requirement those people completed all mandatory conditions remained in the proposed rewrite of that section of Code. **Mr. Fredericksen** confirmed offenses still required registration.

Senator Ricks asked for a high-level overview of that process of registration and supervised probation. **Mr. Fredericksen** said an individual's attempt for removal of registration status required Board approval. In order to achieve that goal, the individual was required to complete all terms of their supervised probationary period. He said the legislation was introduced because there was concern that a non-registered offense under all the terms of existing Code before its amendment, such as a drug offense, had potential for the unintended removal of people from the registry.

Senator Wintrow said she wanted to ensure the legislation was aimed to address the offense(s) that resulted in placement of people on the registry and not anything else.

MOTION: **Senator Wintrow** moved to send **H 117** to the floor with a **do pass** recommendation. **Vice Chairman Foreman** seconded the motion. The motion carried by **voice vote**.

H 262

JUVENILE CORRECTIONS ACT - Amends existing law to revise provisions regarding expungement of juvenile records. Representative Handy said H 262 adjusted the duration of the display of juvenile offenses on a criminal record prior to an expungement request. He said the current duration of five years was a long time, and the bill changed the requirements to the date the offender turned 18 or completed their time in a juvenile detention facility. **Representative Handy** stated his belief that many youth with great potential had their aspirations dashed because their juvenile record prevented them from access to career opportunities.

MOTION: **Senator Ricks** moved to send **H 262** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion.

DISCUSSION: **Senator Ricks** said it was appropriate that youth with juvenile records had an opportunity to improve themselves after their detention period and did not have past mistakes affect the rest of their lives.

VOICE VOTE: The motion carried by **voice vote**.

RS 30739 **Regarding Liquor Licenses. Senator Anthon** said **RS 30739** tried to address a couple of issues in Idaho related to liquor licenses. He said there was a provision of State Code that required business owners that acquired a liquor license to sell liquor almost immediately after acquisition. **Senator Anthon** declared a Rule 39(H) and cited an example where the City of Rupert acquired a building that contained a bar that held a liquor license to carry out its economic development objectives, but was forced by Code to sell liquor because they had to purchase the liquor license. He said **RS 30739** established a three-year window for local units of government to hold a liquor license to carry out economic development activities. Another part of Code that the bill would change was a reduction in the frequency in which special liquor license holders had to purchase liquor.

MOTION: **Vice Chairman Foreman** moved to send **RS 30739** to print. **Senator Hartgen** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 1:43 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

Kieran Sprague
Assistant Secretary