

MINUTES  
JOINT MEETING  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Friday, March 08, 2024

**TIME:** 1:00 P.M.

**PLACE:** Room WW54

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

**ABSENT/ EXCUSED:** Anthon

**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.

**MINUTES APPROVAL:** **Senator Lee** moved to approve the Minutes of January 22, 2024. **Senator Hartgen** seconded the motion. The motion carried by **voice vote**.

**MINUTES APPROVAL:** **Senator Hartgen** moved to approve the Minutes of January 29, 2024. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**MINUTES APPROVAL:** **Vice Chairman Foreman** moved to approve the Minutes of January 31, 2024. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**MINUTES APPROVAL:** **Senator Wintrow** moved to approve the Minutes of February 5, 2024. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**GUBERNATORIAL APPOINTMENT:** **Committee Consideration of the Gubernatorial Appointment of Scott Madison** of Boise, Idaho, to the Idaho Judicial Council to serve a term commencing February 8, 2024 and expiring July 1, 2027. *[Mr. Madison's microphone was not turned on, therefore, his introduction could not be heard.]*

**DISCUSSION:** In response to Committee questions, **Mr. Madison** explained that during his time on the Judicial Council he gained a significant level of respect for the judiciary process in Idaho and how it was managed since the reform in the 1970s compared to when he was on the committee. When he compared the process in Idaho to other states, he learned that other states were much more political. That knowledge increased his level of respect for the judiciary in Idaho and how it was managed for the past 40 years.

**Chairman Lakey** thanked Mr. Madison and after no further questions explained that a vote on the gubernatorial appointment would be taken up at their subsequent meeting.

**S 1347** **Judges - Amends existing law to revise provisions regarding the retirement of judges and to provide that a judicial vacancy shall remain vacant until the next judicial election in certain instances.** **Senator Lee** presented **S 1347** and stated that Supreme Court Justices, Justices of the Court of Appeals, and District Judges who served as of April 1, 2024 would be able to retain Plan B retirement. Judges who retired after that date would be ineligible for Plan B retirement. This legislation also stated that approval of senior judge status was within the discretion of the Supreme Court. It would not impact retirement status for judges who were not applying for Plan B status. It also did not impact magistrate judges as they were ineligible for Plan B status.

**DISCUSSION:** **Senator Ruchti** asked clarifying questions regarding the obligation of the Governor to appoint judges in case of a vacancy. He asked how this would work with this legislation. **Senator Lee** responded that this legislation would narrow this obligation.

**TESTIMONY:** **Judge Eric Wildman**, Administrative District Judge for the Fifth Judicial District, testified against the bill. He stated that he was concerned that if an existing judge or justice took Plan B retirement before their term expired, that the seat would remain vacant until filled following the next election. The vacancy could remain unfilled for several years and could cause administrative problems with covering the docket.

**DISCUSSION:** In response to Committee questions, **Judge Wildman** stated that Plan B retirement was a benefit for judges on the bench. He stated that his concern wasn't regarding the elimination of Plan B retirement, but what the outcome would be if judges retired early and there was a vacancy.

**TESTIMONY:** **Jason Spillman**, legal counsel, Administrative Office of the Courts, testified against the bill. He stated that his concerns regarded the judge vacancies if this legislation passed.

**Don Burnett** testified against the bill. He stated this legislation went against Article One, Section Eighteen of the Idaho State Constitution. It would take away the governor's power and the Judicial Council's function.

**DISCUSSION:** In response to Committee questions, **Mr. Burnett** stated that he felt there was an assault upon the independence and impartiality of the judicial branch. He stated that Plan B retirement assisted with the vacancies being filled because judges could cost effectively handle these gaps. He saw this legislation as a separation of functions issue as the judicial branch did not make policy determination based on constituency interests.

**DISCUSSION:** In response to Committee questions, **Senator Lee** stated that a vacant judicial seat would not have to sit empty and a senior judge could be appointed for that seat.

**Chairman Lakey** asked Mr. Spillman how senior judges and Plan B retirement function. He stated that these judges receive an additional 2.5 percent of what they earned per year on their retirement for a five year period. These judges committed to 60 days of service to fill in when needed.

**Judge Wildman** stated that he agreed with Mr. Spillman and stated that the real problem was that the vacancies from judges could make cases unfair when judges were switched out regularly during a case.

**MOTION:** **Senator Hart** moved to send **S 1347** to the floor with a **do pass recommendation**. **Senator Ricks** seconded the motion. **Senator Lakey** called for a **roll call vote**. **Senators Lee, Ricks, and Hart** voted aye. **Chairman Lakey, Vice Chairman Foreman and Senators Wintrow, Hartgen, and Ruchti** voted nay. The motion failed.

**H 408** **PARTIES TO ACTIONS - Adds to existing law to provide for the immunity of volunteer ski and bike patrollers in certain instances.** **Senator Lee** stated this bill would protect volunteer patrollers from exposure to liability. She explained that she was not an attorney and would like to have Bill Myers explain the bill from his personal and professional perspective.

**TESTIMONY:**

**Bill Myers**, attorney with Holland and Hart, Boise, Idaho, explained that his day job was working as an attorney and that on the weekends he worked as a volunteer with the Bogus Basin Ski Patrol and had been volunteering for 11 years. He asked if Idaho wanted its volunteers who were helping guests on the mountains to respond quickly and professionally to their needs, be it illness or trauma, or if the skiers wanted them to hesitate and think about the liability that they may be incurring even though they had volunteered to take on that position. He explained that ski patrollers and bike patrollers provided the first line of safety for ski resorts with first aid and emergency transportation down the hill to better levels of care in both the winter and summer.

He described the history of ski patrol, the number of volunteer ski patrols in Idaho, and type of training and recertification they received. He stated that if this bill was enacted, it would bring ski patrollers within the State's measure of protection from negligence lawsuits. He explained that nine other states had enacted similar legislation, and he encouraged the Committee to send this to the floor with a do pass recommendation.

**DISCUSSION:**

**Chairman Lakey** asked how this would correlate, compare, or relate to Idaho's Good Samaritan statutes. **Mr. Myers** explained that every state in the Union had a Good Samaritan statute and law professors had studied and considered the statutes at length. He read one study by Journal of Biometrics and Health in which they ranked Good Samaritan statutes across the United States by percentiles into five percentiles, 20 percent each. Idaho statute came in the fourth percentile or next to the bottom as far as the protection that it provided to volunteers who stepped into a situation to help someone else due to how narrow it was drawn.

He explained that the Idaho Good Samaritan statute protected an individual if they helped someone who was injured in an accident. The Idaho Supreme Court said the same in a 1986 decision. He then explained that what ski patrollers did on the hill could go well beyond accidental trauma. They have helped individuals who had non-emergency trauma such as a sprained knee. It would not be an emergency, but they could not ski down the hill. They also helped individuals who had medical issues, both emergency such as a heart attack, or non-emergency such as altitude sickness. Those individuals also needed to be assisted, but they were not covered by the Good Samaritan statute since it was focused on emergency trauma situations. They also had a facility at the base of the mountain in which they had treated people that had been brought down in toboggans.

He explained that the Good Samaritan Statute in Idaho specifically exempted those facilities from its coverage and that the examples showed how the statute did not offer the coverage needed.

**Senator Ricks** asked if there were any lawsuits or liability issues in Idaho. **Mr. Myers** explained that he had not seen any Idaho cases, but he had read about a case in California where the ski patrol were training ski patrol candidates and a terrible accident resulted in the death of one candidate and a serious injury to another. Those individuals and the state brought an action against the ski patrol for wrongful death and personal injury. The ski patrol was found not liable as they had met the standard of care. He explained that it was not the threat of litigation, but rather the litigation process itself.

His colleagues on the ski patrol would not be able to afford the transactional cost of litigating a claim. It was the fear that they would have their personal finances wiped out by an unsubstantiated claim that caused them to either not volunteer or leave the patrol early.

**Senator Ricks** stated that since ski patrollers were volunteers that they would likely receive a ski pass, discount on food, or other benefits. He asked why the ski resort would not cover the liability costs. **Mr. Myers** explained that the issue of insurance was one that was a contractual agreement between the ski resort and its insurance provider. He said the concern was that ski hills were trying to ward off litigation. It would not provide solace to volunteers to have insurance coverage once a person was being litigated; the transactional cost would be ruinous. He had researched this with the National Ski Patrol. They did not know of any insurance products that would specifically cater to volunteer ski patrols.

**Senator Ricks** wanted to know about the skier. For example, if somebody purchased a ticket and then was injured and the ski patrol helped them out, but the skier was further injured during the rescue. He asked what the recourse would be for the injured skier. **Mr. Myers** explained that if he were representing the skier, he would have sued the mountain and the entity that ran the hill. He would want to make it understood that it was not the ski patrol, and that they were in the service of the entity.

**Senator Ricks** clarified that only the ski patrols who had gone through training and learned good practices were being discussed. **Mr. Myers** confirmed that was correct. He explained that this was a limited waiver, if the ski patroller acted recklessly, willfully, or wantonly they would not be covered by the bill. They would be on their own.

**Senator Ruchti** asked if the ski patroller acted unreasonably and harmed a skier, would the skier have any recourse against the ski patrol individual or against the mountain because the mountain did not do anything wrong. It was the ski patrol person who acted unreasonably in how they handled the situation. **Mr. Myers** confirmed in the situation of ordinary negligence, that would be correct. It was his opinion that this bill would shield against an ordinary negligence claim. However, he disagreed that it would shield the ski area from a claim. In his opinion it could be argued that the ski area failed to adequately organize the ski patrol, or the ski area failed to make sure that they completed their training.

It was also his opinion that there would be no insulation from liability of the mountain through the legislation. **Senator Ruchti** clarified that it would be a negligent supervision claim against the ski mountain for failure to properly supervise a group of people who were doing work on their hill. **Mr. Myers** agreed that type of claim would be foreseeable.

**Senator Ruchti** clarified that on ski hills throughout the United States, there were no policies that would cover volunteer ski patrol entities like this bill contemplated. **Mr. Myers** responded that he could not answer that question. He could speak for the area where he volunteered. They did not have coverage, and from the responses he had received, other ski patrols in the state were in the same situation.

**Senator Hartgen** clarified that this was not about professional ski patrols, but volunteer patrols only. **Mr. Myers** confirmed that the bill disproportionately helped rural ski areas that relied on volunteer ski patrols. **Senator Hartgen** asked if most of the ski patrol members were medical technicians. **Mr. Myer** explained that there was a mix. They had the benefit of having retired and active medical professionals, but also had a lot of people who were not, including himself.

**TESTIMONY:** **Barbara Jorden**, Idaho Trial Lawyers Association (ITLA). **Ms. Jorden** testified against the bill. She explained that ITLA was a statewide voluntary bar association of plaintiffs' lawyers who cared deeply about the law and administration of justice. It was her opinion that justice was denied for individuals when the Legislature provided immunity to individuals, corporations, and the government. Immunity was removal of the mechanism to hold others accountable for their actions. It was about taking responsibility for their actions toward others. She explained that they worked with the bills sponsors and tried to find a compromise on language, but that they did not quite get there. A better bill would have been to require insurance providers to cover all the workers' actions, paid or volunteer.

**MOTION:** **Senator Lakey** opened the Committee for discussion or motion. **Senator Hartgen** made a motion to send **H 408** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. **Senator Foreman** supported the motion, but reserved the right to debate on the floor and change his mind.

**VOICE VOTE:** The motion to send **H 408** to the floor with a **do pass** recommendation carried by **voice vote**. **Senator Ruchti** requested to be recorded as voting nay.

**H 462** **CRIMINAL PROCEDURE - Amends existing law to revise provisions regarding the Idaho Commission of Pardons and Parole. Senator Ricks** explained that **H 462** would correct and/or fix the code that had been used for 25 years. He delegated his time to **Ashley Dowell**.

**TESTIMONY:** **Ashley Dowell**, Executive Director of the Idaho Commission of Pardons and Parole, explained that this legislation would correct some errors in the code and simplify some language throughout the statute. One thing the bill would do was move the Commission of Pardons and Parole out from under the Department of Correction umbrella into a self-governed agency. The Commission of Pardons and Parole had been a separate agency from the Department of Correction for the last 25 years. There had been a lot of confusion among the public and with other shareholders about the influence that the Department of Correction may or may not have had on Commission decision making. She stated that this allowed the Department of Correction to be the Board of Correction and their employees.

**DISCUSSION:** **Senator Wintrow** asked what the benefits of this bill would be.

**Ms. Dowell** explained that there would not be any change in the functionality of the Department. The bill would add clarifying language that the Commission of Pardons and Parole was a separate entity from the Department of Correction.

**MOTION:** **Senator Foreman** moved to send **H 462** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion.

**VOICE VOTE:** The motion to send **H 462** to the floor with a **do pass** recommendation carried by **voice vote**.

**ADJOURNED:** There being no further business at this time, **Chairman Lakey** adjourned the meeting at 3:00 p.m.

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Senator Lakey  
Chair

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Sharon Pennington  
Secretary

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Madison Schrader  
Asst. Secretary

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Debra Mulligan  
Asst. Secretary