

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 04, 2020

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lakey, Vice Chairman Lee, Senators Lodge, Anthon, Thayn, Grow, Cheatham, Burgoyne, and Nye

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 Judiciary and Rules Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Cheatham** moved to approve the Minutes of February 14, 2020. **Senator Thayn** seconded the motion. The motion passed by **voice vote**.

Senator Lodge moved to approve the Minutes of February 17, 2020. **Senator Anthon** seconded the motion. The motion passed by voice vote.

Senator Cheatham moved to approve the Minutes of February 24, 2020. **Senator Thayn** seconded the motion. The motion passed by voice vote.

RS 27908 **Senator Patrick** presented **RS 27908**, Senate Concurrent Resolution Honoring John Rosholt. This is a Resolution to honor Mr. Rosholt, who was one of the first water attorneys in the state, a strong supporter of the University of Idaho, and had an active political presence in Idaho. **Senator Patrick** stated that he would like to present the Resolution to the Senate and reported that Representative Lickley would carry it in the House.

MOTION: **Vice Chairman Lee** moved to send **RS 27908** to print. **Senator Anthon** seconded the motion. The motion passed by **voice vote**.

S 1362 **Senator Hill** presented **S 1362**; Relating to Open Meetings. He explained that the proposed legislation allows community citizens to petition the Attorney General's Office (AG) to investigate alleged violations of Idaho's open meeting law when the prosecuting attorney fails to act on a complaint. He said currently the only option for a citizen, if the prosecutor does not act, is to make a complaint to the court.

Senator Hill outlined the proposed legislation reporting progression for an open meeting violation. The proposed legislation states that if the AG believes there is probable cause, they will refer the complaint back to the prosecuting attorney's office allowing them to decide whether they would like to act on the complaint. He stated this proposed legislation does not change the court process but instead provides resolution to the problem.

TESTIMONY: **Holly Koole-Reboltz**, Idaho Prosecuting Attorneys Association (Association), spoke in opposition to **S 1362**. She stated that the Association would prefer that all the complaint cases be referred to the AG's office rather than having the option of choosing either the AG's office or the Prosecutor's Office.

Shawna Dunn, Ada County Prosecutor's Office, announced she was speaking on behalf of the Association. She explained the investigative process that is taken when an open meeting violation has occurred and outlined how the complaints are treated. She stated this bill would create a redundancy of efforts and said that it is her recommendation to have the AG oversee the investigation. The Association is unable to support **S 1362** as it is written.

DISCUSSION: In response to questions from the Committee, **Ms. Dunn** explained the current process of referring open meeting violation investigations to other counties and detailed the current procedure where there is a limited appeals option if the complainant is not pleased with the outcome. The proposed legislation gives the AG the "direction to act" and the non-judicial remedies are aimed at the prosecutor rather than the offending body.

Ms. Dunn stated this proposed legislation comes close to violating the Idaho Constitution, because there are certain actions that are not under the current oversight of the AG. She stated the Association has some discomfort with the proposed legislation in that arena.

Senator Hill clarified the remedies of the proposed legislation, which are to go against the violation, not the prosecuting attorney. He said the non-judicial remedies in **S 1362** speak to the violation. He explained the reasoning for the AG reviewing the complaint. He reviewed the fiscal note and spoke about the allocation of the funds.

When asked about the constitutionality of the proposed legislation, **Senator Hill** stated he worked closely with the AG to develop the language for **S 1362** and if there is a problem, both he and the AG are unaware of it.

MOTION: **Vice Chairman Lee** moved to send **S 1362** to the floor with a **do pass** recommendation. **Senator Cheatham** seconded the motion.

DISCUSSION: **Vice Chairman Lee** stated that the proposed legislation may not meet all the needs of the problem, but will provide more accountability and is a good policy piece. She said for those districts in Idaho without necessary resources, the open meeting violation has become a political issue. She said this legislation should work to change behaviors.

Senator Burgoyne explained his experience with trying to address open meeting violations. He said he will vote no on **S 1362** because he believes that this will lead to unnecessary frustration and statutorily there is already a system to address these conflicts. He stated he is also concerned about the constitutionality of the proposed legislation.

Senator Nye said he cannot support the legislation because he believes it invades the discretion of the prosecutor. He voiced his concerns about no AG opinion on the proposed legislation and stated that the fiscal note is too high.

Senator Lakey said he appreciates the efforts to bring this legislation forward. He stated the overseer either needs to be the prosecutor or the AG. Having the AG overseeing the prosecutor impinges on the elected official's responsibility. He will not be supporting **S 1362**.

ROLL CALL VOTE: **Chairman Lakey** called for a roll call vote. **Vice Chairman Lee**, and **Senators Lodge, Anthon**, and **Cheatham** voted aye. **Senators Grow, Burgoyne, Nye**, and **Chairman Lakey** voted nay. The motion failed.

MOTION: **Senator Anthon** moved to send **S 1362** to the 14th Order of Business for possible amendment. **Vice Chairman Lee** seconded the motion.

- DISCUSSION:** **Senator Anthon** stated that **S 1362** is worthy of discussion from the Senate. He said in the 14th Order there could be an amendment that could bring more consensus to the subject.
- SUBSTITUTE MOTION:** **Senator Burgoyne** moved to hold **S 1362** at the Call of the Chair, so that amendments could come forward and some resolution to the constitutional issue would be determined. **Senator Nye** seconded the motion.
- DISCUSSION:** **Senator Burgoyne** commented that possible amendments could resolve the constitutional issue. **Senator Nye** stated that he assumes that both motions address the constitutionality of a prosecutor and that neither motion addresses how **S 1362** would be amended.
- WITHDRAWAL OF MOTION:** **Senator Burgoyne** asked to withdraw his motion. **Senator Nye** agreed to withdraw his second.
- DISCUSSION:** **Senator Nye** explained the process of a complaint and how the AG gets involved. He said if there is a conflict in the beginning, another agency is asked to address the problem. He stated he believes the proposed legislation came from an individual incident and it should be left alone.
- Senator Lakey** explained that the prosecutor is a constitutional officer and they are designated by statute to review the complaint. He said that portion could be shifted to the AG's office without it becoming a constitutional issue.
- Senator Anthon** said the referral to the 14th Order does not always include a perfect set of amendments nor does it imply that if it is unconstitutional a resolution cannot be found. He asked for the Committee's support of the motion.
- VOICE VOTE:** The motion to send **S 1362** to the 14th Order of Business for possible amendment passed by **voice vote**.
- S 1380** **Senator Winder** presented **S 1380**; Relating to Tort Claims Against Governmental Entities. He said the proposed legislation is to provide public defenders as defined in Idaho Code § 19-851 the ability to not have personal liability. He detailed the public defenders' role and the importance of them not being held liable. He stated the update is to rectify an oversight of not including "public defender" while other individual roles have been named in the statute.
- In response to questions from the Committee, **Senator Winder** stated the proposed legislation is to protect the individual public defender. The current statute lists many positions which are protected, however, the public defender is not on the list. He stated **S 1380** is to rectify that omission.
- After much discussion about contract employees, **Senator Winder** detailed how this legislation would also protect them from liabilities.
- TESTIMONY:** **Seth Grigg**, Executive Director, Idaho Association of Counties, spoke in support of **S 1380**. He explained a lawsuit in Ada County in which the judge and prosecutor were immune from allegations but the public defender was not. He emphasized the importance of the language to protect a public defending attorney.
- DISCUSSION:** In response to malpractice insurance protecting the public defender, **Mr. Grigg** said all public defending attorneys should be treated equally and have protection from a tort suit.
- MOTION** **Senator Grow** moved to send **S 1380** to the floor with a **do pass** recommendation. **Senator Nye** seconded the motion.
- DISCUSSION:** **Senator Burgoyne** said he will need more information before he makes his floor vote, but for now, he will support the motion in Committee.

VOICE VOTE: The motion to send **S 1380** to the floor with a **do pass** recommendation passed by **voice vote**.

Chairman Lakey stated that, due to time constraints, **H 402** would be heard March 6, 2020.

H 435 **Senator Anthon** presented **H 435**, Relating to Adoption. He stated the proposed legislation clarifies Idaho Code regarding the adoption of an adult. He stated that Idaho law allows for the adoption of adults. He explained the cases that were referred to the Idaho Supreme Court and it was there where the discrepancies in the code were discovered. He said the changes are bifurcating the code by making a section that will refer to an adult.

Senator Anthon explained the changes that will put Idaho more in line with the national standards for notice and consent requirements. He said the adoptee's spouse, if there is one, will need to consent to the adoption and explained why the biological parents' consent has been removed.

In response to questions from the Committee, **Senator Anthon** explained the provision is for incapacitated adults who would like to be adopted. He stated Idaho laws give the incapacitated adult many liberties and explained their rights. He said that if the incapacitated adult is married, the spouse must agree to the adoption which is common in code across the country.

Vice Chairman Lee agreed that the least restrictive language is necessary for incapacitated adults. They are different than a child and have more rights. She stated that she was comfortable with the language in **H 435**.

MOTION: **Senator Burgoyne** moved to send **H 435** to the floor with a **do pass** recommendation. **Vice Chairman Lee** seconded the motion. The motion passed by **voice vote**.

Chairman Lakey announced that the remainder of the agenda will be moved to Friday, March 6, 2020.

ADJOURNED: There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:58 p.m.

Senator Lakey
Chair

Sharon Pennington
Secretary

LeAnn Mohr
Assistant Secretary