

MINUTES
(Subject to Approval by the Committee)
Judiciary and Rules Working Group
Friday, August 14, 2020
9:00 A.M.
EW42 (Remote Electronic Meeting)
Boise, Idaho

Cochair Chaney called the meeting to order at 9:00 a.m.; a silent roll was requested.

Members present: Cochair Representative Greg Chaney and Representatives Jason Monks, Ryan Kerby, Paul Amador, Christy Zito, Bryan Zollinger, Barbara Ehardt, Heather Scott, Bill Goesling, Linda Hartgen, Gary Marshall, Doug Ricks, Caroline Troy, Julianne Young, John Gannon, John McCrostie, Melissa Wintrow, and Muffy Davis; Cochair Senator Todd Lakey and Senators Abby Lee, Patti Anne Lodge, Kelly Anthon, Steven Thayn, C. Scott Grow, Don Cheatham, Grant Burgoyne, and Mark Nye; Legislative Services Staff (LSO) Ryan Bush, Jared Hoskins, Soren Jacobsen, Shelley Sheridan, Jennifer Kish, and Jackie Gunn.

Note: Presentations and handouts provided by the presenters/speakers are posted to the Idaho Legislature website <https://legislature.idaho.gov/sessioninfo/2020/interim>; and copies of those are on file at the Legislative Services Office in the State Capitol.

Opening Remarks

Cochair Representative Chaney welcomed the members and discussed the process for submitting questions and motions to the cochairs. Senator Anthon moved to adopt the meeting minutes for July 28, 2020, as written. Representative Goesling seconded the motion. The motion passed by unanimous consent. Addressing a point of order, Senator Burgoyne recalled that at the last meeting, a motion to approve draft DRRCB011, now [RS 28044](#), was passed, which resulted in a majority and a minority report being submitted. Any effort made now to change that vote, by creating an amendment for it, requires a timely notice of intent to make a motion for reconsideration. He noted time has passed and there has been no notice, so a motion now would be untimely and out of order. He suggested the only way to reconsider would be by unanimous consent. Senator Burgoyne then elaborated, stating the several conditions that must be in place necessary for him to support a unanimous consent request. Cochair Chaney put the meeting at ease.

Cochair Chaney ruled the meeting agenda does not amend the committee report, as it is a subsequent or addendum report, adding that there is no limitation to the number of reports the committee can issue. Senator Burgoyne asked if there were rules to support his ruling. Cochair Chaney explained that based on the call of the committee, there are no limitations on the number of reports that they can issue - there is firm Mason's precedence for permitting the chairman to set an agenda. Addressing a point of order, Representative Scott asked for assurance that the immunity proposed in the amendments under consideration today would not affect her county's lawsuit against the governor. Cochair Chaney stated that the lawsuit is in federal court, so it falls under federal law. Cochair Chaney added that amendment RS28044-7 clarifies we are not trying to interfere in that sort of lawsuit. Representative Scott followed up, asking if draft DRRCB011 covers either the governor's council or the governor. Cochair Chaney responded it covers neither, explaining that Section 6-904(1), Idaho Code, already covers the governor and the governor's council.

Senator Burgoyne objected to the chair's ruling on his point of order and moved that the committee overrule his ruling. Cochair Chaney ruled Senator Burgoyne out of order, explaining that joint committees are governed by Senate Rule 20(E) and a corresponding section of Mason's on which the House of Representatives relies. Senator Burgoyne asserted the committee was operating without rules and Cochair Chaney ruled Senator Burgoyne out of order, explaining the committee was operating with rules and that his decision is not appealable.

Representative Wintrow asked for details regarding how the amendments were submitted, indicating she had received no notification regarding how to submit amendments. Cochair Chaney stated that he and Cochair Lakey discussed the various issues that had been presented on the original recommended piece of legislation and distilled them into the amendments on today's agenda. Additionally, there was an email sent out to members asking for feedback after the July 28th meeting and another sent out about a week ago, which indicated that the cochairs were entertaining and reviewing amendments. Following up, Representative Wintrow asked if there were any amendments submitted that weren't considered. Cochair Chaney answered there were submissions not considered, adding that on agenda items 2, 3, and 4, that if any of them pass, then the other two agenda items would not be considered because they are in conflict.

Addressing a point of order, Senator Burgoyne averred the rules of reconsideration apply if they are operating under the Rules of the Senate and the Rules of the House. Cochair Chaney ruled the point of order to be out of order, and stated that according to Rule 20(H) of the Senate, his ruling is not appealable.

Cochair Lakey explained he would briefly describe and provide background for amendments RS 28044-1, RS 28044-2, and RS 28044-3. He shared that he and Cochair Chaney attempted to more narrowly define the emergency declarations. He noted that the three options were mutually exclusive. After providing more details regarding the effect of amendment [RS 28044-1](#), Cochair Lakey moved to vote on RS 28044-1, an amendment limiting the scope of suggested legislation to emergency declarations arising from pandemics and epidemics. Senator Lee seconded the motion. Representative Young stated that her concerns have not been addressed in any of the amendments on the agenda. She asked if members can make substitute motions, so that the members can have a thorough vetting of the topic. Cochair Chaney responded that the written amendments are before the committee, so all the motions are still available, but striking and inserting is not available; specifically, Senate Rule 29 covers striking and inserting only on the amending order and there are similar provisions in the House of Representatives.

Representative Young suggested that the committee is really limited in their function. She commented that she wants to address narrowing the specific liability waiver we are extending, so that business owners know exactly what they need to do to be covered. She added that after more consideration, it can be expanded at a later date, but she emphasized the present language is too broad. She indicated that she had proposed language that would accomplish the narrowing of the waiver. She averred we shouldn't be voting for broad civil immunity at this time; especially when that broad civil immunity applies to businesses that are making decisions related to the pandemic and to agencies and departments that are making those decisions. She stated her support for amendment RS 28044-2, but noted that language should be added to extend liability for negligence that proximately causes damage through exposure to the coronavirus.

Representative Gannon asked if working group members can make a substitute motion or a motion to amend an amendment. Cochair Chaney indicated there was no House Rule that allows for that, specifying that House Rule 54 is analogous to Senate Rule 29, where it says that strike and insert is a motion that can only be made in the committee of the whole. He added that he did not say you couldn't make a substitute motion. Representative Gannon called for a substitute motion vote to set aside amendment RS 28044-1, to take up amendment [RS 28044-3](#) for work group consideration. Representative McCrostie seconded the motion.

Representative Gannon stated that this amendment specifically addresses the virus issue. The only way we can make people safe when they go to businesses is with a bill that says "open your business but you have to open it subject to the orders, rules, and statutes that exist." Speaking to the pending motion, Senator Burgoyne remarked that though he supports it, he continues to believe the committee is being deprived an opportunity to work in an efficient and appropriate way to express its will. Representative Davis echoed the statements of Senator Burgoyne, and

she indicated her support for this proposed motion. She added that to protect the rights of our citizens, it is vital that we not pass too broad a bill - it should be specific to COVID-19. Cochair Chaney called for a vote on the substitute motion. **SUBSTITUTE MOTION: To set aside amendment RS 28044-1, to take up amendment RS 28044-3 for work group consideration.** The motion failed in the Senate by majority vote. The motion failed.

Representative Monks asked for more details regarding the process that will be in place during a special session, specifically related to a committee member's ability to make changes to the bill during the RS committee hearing and to their ability to make amendments. Cochair Lakey agreed that the regular process will be in place, stating as long as we stay within the confines of the subject of the call the normal rules and procedures apply. Cochair Chaney offered that if we are going to ask the governor to have a special session on this topic, he and Cochair Lakey would prefer not to have significant deviations.

Representative Zollinger called for a substitute motion to set aside 28044-1, to take up amendment [RS 28044-2](#) for working group consideration. Senator Burgoyne seconded the motion. Representative Zollinger stated that the term "coronavirus" is a little more broad than the term "COVID" so it would cover more of the mutations of the virus. Cochair Chaney moved to vote on the substitute motion. **SUBSTITUTE MOTION: To set aside amendment RS 28044-1, to take up amendment RS 28044-2 for working group consideration.** The motion passed by majority vote.

Cochair Lakey summarized amendment RS 28044-2, highlighting that it speaks to COVID-19 and any mutations or modifications of that strain. Representative Monks asked if there is a definition for "epidemic" in the legislation and Cochair Lakey identified that it is on page 2, subsection 8, and the definition for "epidemic" is in subsection 9, and the terms are consistent throughout the three versions. Representative Wintrow asked why the COVID-19 language is broad compared to the language in amendment RS 28044-3. Cochair Lakey responded that this amendment is an effort to provide a scientific recognition that there could be a mutation to the coronavirus. Cochair Chaney added the emergency statute as currently written requires that before an emergency declaration could be issued, the outbreak would have to reach the level of an epidemic. Indicating her support of this amendment over the other two amendments, Representative Young clarified that her primary concern has always been to narrow this to the coronavirus in an appropriate and responsible way.

Representative Scott stated her concerns for the whole process of committee decision, indicating that the committee is being suppressed on what it can discuss. She asked the chair to clarify his earlier stated phrase "no significant deviation can be made in a special session." She commented that she feels like they are being ramrodded by being told what the committee can and can not vote on. Cochair Chaney clarified that his comment reflected his preference, remarking if we are going to, as a committee say we are ready for a special session, that we be generally ready to go and have areas of consensus. He added that changing a comma, or rephrasing something in committee or when we come to session, would not be a potential problem. He indicated his desire is to not even request a special session unless what we send up truly reflects a level of philosophical agreement on big issues. Following up, Representative Scott asked why then is the committee not allowed to fully discuss our ideas or amendments. Cochair Chaney explained that the meeting was called on the issue areas that we felt the committee deserved a chance for an up/down vote on. He emphasized that there is a time crunch and there is a general need that happens any time a chairman schedules an RS to define the universe of specific issues and have time to vet them, which is done in the interest of bringing the people's interests to the fore.

Representative Kerby moved to adopt RS 28044-2, an amendment limiting the scope of suggested legislation to emergency declarations arising from epidemics and pandemics arising from any variety of coronavirus. Representative Monks seconded the motion. Representative Young clarified her position of support for the amendment, stating her desire for the members to have the discussion regarding the narrowing of the waiver. Representative Gannon asked for clarity on the amendment

consideration process. Cochair Chaney explained that the first motion was set aside, and we have taken up a completely separate agenda item with no motion on the floor. Representative Wintrow stated her reluctant support for the second amendment, as it is more distinct and well defined than the first amendment we tabled but she prefers the third amendment. She added that she still is not sure that this is necessary, but if we take action it should be as narrow as possible. Senator Burgoyne voiced support for amendment RS 28044-2, but cautioned that vote does not guarantee his vote during the special session. Representative Amador observed that at the beginning of the pandemic, many health care workers were forced to reuse Personal Protective Equipment (PPE). He asked how this will affect their liability. Cochair Lakey responded that he did not see that action rising to the level of wanton and reckless. The amendment is intended to help those entities that are trying to do their best by following the guidelines and recommendations, and their actions seem to fit that requirement. Senator Grow stated that he believes there needs to be some limited liability, but not be wide open like in amendment RS28044-1. He voiced support for amendment RS 28044-2. Cochair Chaney called for a vote on RS 28044-2. **MOTION: To adopt RS 28044-2, an amendment limiting the scope of suggest legislation to emergency declarations arising from epidemics and pandemics arising from any variety of coronavirus.** The motion passed by majority vote.

Cochair Lakey summarized amendment [RS28044-4](#), and then moved to adopt RS 28044-4, an amendment clarifying that suggested legislation is only to affect actions in tort. Representative Gannon seconded the motion. Senator Burgoyne stated he would not support this amendment due to its weaknesses in two areas: (1) the reference of "civil liability" on page 1, line 30, and (2) the "unless" clause on page 1, beginning on line 31. He proposed that the amendment that he and Representative Young submitted is the approach that should be taken. Cochair Lakey indicated that it is a "wanton and reckless" standard not a "negligence" standard, and that subsection (7) is very clear that it doesn't apply to contracts, that it applies to torts. Cochair Chaney called for a vote on RS 28044-4. **MOTION: To adopt RS 28044-4, an amendment clarifying that suggested legislation is only to affect actions in tort.** The motion passed by majority vote.

Cochair Lakey summarized [RS 28044-5](#), an amendment exempting vaccine manufacturers from heightened immunity. He explained there was a concern raised that this additional protection not be provided to those who develop or produce, distribute, or administer vaccines for COVID-19. He also recognized there are already significant federal protections in place regarding vaccines. Senator Lee commented that she sees the amendment as broad and will not support it. Representative Gannon stated we should be supporting our health care providers, as well as the development of a vaccine that is workable. He averred excising them from this bill is totally inappropriate.

Representative Young identified that this is a new topic the working group is asked to weigh in on, and she cautioned against extending broad immunity here when we don't know the landscape, where we haven't had an opportunity to research the subject, or know the implications of offering this broad civil immunity. She stated her support for this amendment because it leaves liability in the same situation it's currently in. Because there would not be a vaccine developed until after the session starts, Senator Thayn suggested the amendment is not necessary for the special session to address. Senator Burgoyne discussed the language in the subsection (2) of the amendment, particularly as it relates to a federal program already in place that covers this same issue.

Representative Gannon stated his concern is for the people who administer the vaccine. He emphasized there has to be good faith in order to qualify for immunity. He commented that this particular exception is not appropriate, as we must take into account that it is an emergency and our health care workers must have confidence that their good faith actions will protect them.

Senator Nye moved that the amendment RS28044-5, an amendment exempting vaccine manufacturers from heightened immunity, be rejected. The motion was seconded by Senator Lodge. Senator Nye explained the amendment takes away immunity and it should not be approved. Senator Burgoyne observed that subsection (7) takes back the immunity as to vaccines and leaves the

production, distribution, and administration of the COVID-19 vaccine potentially liable under Idaho law. Representative Young asked for clarification, noting that by federal law vaccine manufacturers are already exempt from liability, so if they are already exempt, why would it be a problem to exempt them from this broad civil immunity. She stated that this vaccine should operate on the same legal playing field that every other vaccine operates on, unless someone can give us a good reason why it should be different.

Representative Zollinger moved for a substitute motion to adopt RS 28044-5, an amendment exempting vaccine manufacturers from heightened immunity. Representative Ehardt seconded the motion. Representative Zollinger supported Representative Young's remarks, and reiterated that the system in place seems to be working for vaccine companies that are administering and distributing the vaccines, so further exemptions are not necessary. Senator Wintrow opined this amendment isn't necessary given that federal law already exists. Senator Burgoyne commented he wished he knew more about the federal law. He suggested there is a need for research on areas like this one. He added he is rethinking his position on this amendment.

Representative Gannon identified this to be a qualified immunity statute, explaining you don't get the immunity unless you comply with statutes, rules, and orders. Representative Ricks averred amendment RS 28044-5 is over broad. The amendment's language could exempt from immunity nurses, doctors, nurse practitioners, and other folks, like hospitals, that did not have any responsibility in producing the vaccine. He stated this could do some real damage and he indicated for this reason he would be voting "no." Representative Young clarified her position, stating it makes the most sense to support this amendment with the assumption that this is not leaving health care workers out to dry, but rather that it is leaving them in the same situation they are already in. Senator Nye pointed to the language in the amendment that states "the immunity shall not apply" to the distribution and administration, and he indicated he will oppose the motion because it is taking away immunity.

Senator Thayne agreed with Senator Nye perspective that the amendment takes away immunity. He reiterated that the vaccine will probably not be available until after the session so this can be put off to the regular session. For this reason, he indicated he will be opposing the substitute motion. Representative Wintrow observed that this is a complex issue and she believes it is important for the group to address the myths and misunderstandings surrounding lawsuits in our country. Additionally, she is concerned that they are picking and choosing who will be given immunity. She suggested that this is a topic to take up during the regular session, when there would be more opportunity for debate and testimony to consider these things. Cochair Chaney called for a vote on the substitute motion. **SUBSTITUTE MOTION: To adopt RS 28044-5, an amendment exempting vaccine manufacturers from heightened immunity.** The motion failed in the Senate. Motion failed. Cochair Chaney called for unanimous to withdraw the original motion. **UNANIMOUS CONSENT REQUEST: To withdraw the original motion to not advance RS 28044-5.** By unanimous consent the original motion was withdrawn.

Cochair Lakey summarized amendment [RS 28044-6](#), explaining it arose out of concerns voiced at the last meeting regarding whether this immunity should apply to China and its proxies. Senator Burgoyne stated that he is troubled by the wording in the amendment; specifically noting it is incorrect to identify the entity as "the People's Republic of China" as it is impossible to serve a lawsuit to that entity. Cochair Chaney pointed to the definition of "person" on page 2, subsection (4), and stated this definition does not include the federal or foreign government. So, he continued, this legislation would still not include those foreign governments. Representative Young commented that the message she is hearing from the public is they don't want state government to be in a position to act where they can act irresponsibly. She opined this amendment deserves additional discussion. She reiterated her support for a narrower immunity.

Representative Gannon asked why this amendment is limited to China. Cochair Chaney stated that it was a response to commentary from our last meeting. Senator Burgoyne asked if the cochair

would accept a substitute motion that has different language. Cochair Chaney stated that if there are grammatical changes in an RS hearing, those changes would be possible to consider; however, in the interest of consistency, he will not allow a substitute motion that changes "what was said." Senator Burgoyne responded that alternative language crafted by the committee could get us to a bill that could actually pass in the special session. He added that he wondered why we could not make a substitute motion with alternative language if most of the committee members agree it would be better. Senator Nye indicated that he urged for inclusion of this amendment for committee consideration and he summarized his concerns regarding providing immunity to entities from outside of the United States.

Representative Scott asked for clarification regarding the cochair's comment "grammatical changes only for the language of an RS." Cochair Chaney indicated that from his perspective rephrasing is possible, as long as it doesn't change "what" is being said from the group's recommendation. Cochair Chaney stated that he wished to be consistent with his judgments; however, he indicated that the committee can do anything it wants to by unanimous consent. Senator Thayne noted that the foreign entities topic is very narrow and may be different than changing the base of the bill. Representative Young noted that in the definition of "person" the statute's language is "and shall include but not be limited to..." which could potentially include foreign governments. She pointed to this as an example of the broad nature of this bill, which expands broad immunity for any actions or omissions related to COVID-19 to anyone .

After a five minute break, Cochair Chaney, stated that in the interest of consistency, he will confine the approval to the draft before the committee; however, he reiterated that grammatical improvements made to the RS are not going to be pushed back on by either cochair. Senator Nye moved to approve RS 28044-6, an amendment exempting China and its proxies from heightened immunity. The motion was seconded by Cochair Lakey. Senator Burgoyne moved for a substitute motion to approve in concept RS 28044-6, an amendment exempting China and its proxies from heightened immunity, with the understanding that the phrasing is not final. The motion was seconded by Senator Lee. Cochair Chaney agreed to allow this with an asterisk. Representative McCrostie stated he is not supporting either the substitute motion or the main motion. Cochair Chaney moved for a vote on the substitute motion. **SUBSTITUTE MOTION: To approve in concept RS 28044-6, an amendment exempting China and its proxies from heightened immunity, with the understanding the phrasing is not final.** The substitute motion passed by majority vote.

Cochair Lakey summarized [RS 28044-7](#), indicating that it is an amendment that clarifies that the immunity does not apply to causes of action brought against the State of Idaho, its officers, agencies, or political subdivisions challenging the legality or constitutionality of any declaration of emergency, agency rule, regulation, statute, ordinance or public health order irrespective of the remedy sought. Cochair Lakey moved to adopt RS 28044-7. The motion was seconded by Representative Goesling. Senator Burgoyne indicated that the right to challenge is not the right to sue for damages and to recover damages if the government harms you through an unconstitutional or unlawful order. With this in mind, he stated he can not agree with the amendment as it is worded. Representative Young commented that the amendment does not adequately represent the concerns of her constituents. She stated there is a need to account for the opportunity to recover damages in situations where there are poor decisions made that cause harm. Cochair Chaney responded to Senator Burgoyne's point about suing for damages, remarking that's why the specific remedy is not confined to suits for injunctive relief only and it does not apply irrespective of the remedy sought. Also, citing Section 6-904, Idaho Code, he noted the statute has not been amended since 1988; and, Section 6-904(1), already exempts bad decision making. He emphasized that we are not extending anything by not including that, as it's already been exempted for years. Additionally, he explained subsection (2) of Section 6-904, Idaho Code, already offers complete immunity to matters related to quarantine.

Senator Burgoyne stated he can not support the amendment. He offered that his approach would be to rely on the limitations of liability with respect to the State of Idaho and its agencies with respect

to the issue of damages and liability and exempt the school districts from exposure to liability under the terms of this legislation. And, he added the federal government would not enjoy any protection from this legislation. Representative Gannon asked the cochairs to discuss whether this amendment would modify the Tort Claims Act. Cochair Lakey responded there are multiple provisions in the Tort Claims Act and some of them provide stronger immunity than others. The intent is that this not reduce or modify their existing protections. Referring to page 2, subsection (6), just above the underscored language, Cochair Lakey read: "The immunity provided in this section shall be in addition to any other immunity protections that may apply in state or federal law."

Representative Zito stated she is very uncomfortable being so narrowed in the definition of what we are going to do here and she is very uncomfortable that we don't have public input. She moved for a substitute motion, to accept in concept RS 28044-7, an amendment exempting actions to challenge legality and constitutionality of orders, rules, and declarations from new section of code, with the understanding that it can be rewritten within the scope of what it currently covers as written. Representative Scott seconded the motion. Representative Zito asked if there will be public input allowed in our committee hearings during the special session. Cochair Chaney stated that it would be allowed. Senator Lee stated her support for the original motion and cautioned that every time we add additional words it leaves us open for interpretation.

Senator Burgoyne noted that under Article IV, Section 9, of the Constitution of the State of Idaho, a legislative session is convened on "subjects" and he understands that the session will be a regular session in the sense that bills may be amended in the regular processes and radiator capping is possible. And, he pointed to the use of the word "scope" in Representative Zito's substitute motion. He opined that in special session, they will have to rely on the 14th Order to make the appropriate changes, unless we can come to some understanding today about how we might do that now. Representative Gannon echoed Senator Burgoyne analysis, and asked specifically about the RS process and whether they would be able to submit more than one RS for consideration to the House Judiciary and Rules Committee. Cochair Chaney replied that it is up to the governor to decide if there is a special session in the first place - if we're going to start tweaking things on our own amending orders and then sending it over to see if the other side is going to swallow what we've done, then we don't have the level of consensus necessary to in good faith look to the governor and tell him we need a special session for this.

Representative Gannon asked if they shouldn't decide the language now, instead of leaving it open ended. Cochair Chaney stated that if there is a way of saying the same thing, he didn't think that would shake our ability to make a consensus. Cochair Lakey reiterated that there was no intent to broaden that scope. He clarified that he will not support the substitute motion and is satisfied with the scope of the original motion. Representative Scott voiced her concern that the language in the bill was not written by the working group and, by not allowing us to amend the language, the people's concerns are not being considered. Representative Zito stated that she would like to make it so that there are guarantees in place when we are in special session, so that we can make changes and be able to respond to the citizens who come to testify at our committee hearings.

Representative Young stated that what we've done with this bill is cast a broad net in terms of immunity, and now we're trying to pick a few fish out. Her constituents want the protection from immunity for harm done by exposure to the disease. She suggested it is wise to provide the Legislature with a bill that is more narrow that we know has broad agreement. Senator Burgoyne stated that legislators have a responsibility in the special session to look at each piece of legislation before them and determine if it should pass. Representative McCrostie stated that consensus is important and though there are some amendments we've voted on today that appear to have consensus, the subject of the bill should be a reasonable justification for holding a special session.

Cochair Lakey stated he still feels there is a need for a special session, remarking that their call was to look at ways to protect these individuals and entities that are trying to deal with these challenges.

Cochair Chaney called for a vote on the substitute motion. **SUBSTITUTE MOTION: To accept in concept RS 28044-7, an amendment exempting actions to challenge legality and constitutionality of orders, rules, and declarations from new section of code, with the understanding that it can be rewritten within the scope of what it currently covers as written.** The motion failed.

Cochair Chaney called for a vote on the original motion. **MOTION: To adopt RS 28044-7, an amendment exempting actions to challenge legality and constitutionality of orders, rules, and declarations from new section of code.** The motion passed by majority vote.

Cochair Lakey summarized [RS 28044-8](#), an amendment providing a sunset date of July 1, 2023. Cochair Lakey moved to approve the amendment. Senator Nye seconded the motion. Representative Gannon asked why the sunset is for three years. Cochair Lakey responded three years would be sufficient. Representative Gannon asked for an amendment to make the sunset two years in duration. Cochair Chaney considered that motion inappropriate as it would be a strike and insert. Representative Gannon asked if he could move to replace the entire amendment and Cochair Chaney stated that it wouldn't be consistent with the earlier ruling. Cochair Chaney asked if other members wished to discuss the length of the sunset provision. Senator Davis stated her support for two years, not three. Senator Lee suggested that the duration of the sunset can be determined at the regular session, and the issue they should determine now is "can we agree on including a sunset?"

Representative Young commented that she supported considering other concepts beyond just grammar while we are here in the working group, instead of putting them off to the special session or until January. She added that she would not be offended if the group considered Representative Gannon's suggestion. Representative Kerby stated that he didn't think it mattered if it was a 2-year or 3-year sunset, since we have narrowed the scope to just one disease that has an uncertain duration. Representative Scott remarked if this amendment can be changed, then out of fairness we need to go back and address the amendments we previously considered. Senator Amador stated that he doesn't necessarily care if the sunset is two or three years in duration. Cochair Chaney called for a vote on 28044-8. **MOTION: To adopt RS 28044-8, an amendment providing a sunset date of July 1, 2023.** The motion passed by majority vote.

Cochair Chaney called for a vote on the question, "Would you support the adoption of the committee' suggested legislation - as written and as amended today - in a special legislative session?" Cochair Chaney explained that this vote result would suggest to the governor how close we are to having a consensus on a path forward. Representative McCrostie asked for a summary of the amendments passed by the working group. Cochair Chaney indicated amendment RS 28044-4 passed; amendment RS 28044-5 failed; amendment RS 28044-6 passed; amendment RS 28044-7 passed; and amendment RS 28044-8 passed.

Representative Young stated she struggles with the language of the advisory question. She stated that if an affirmative vote on this advisory question means that she is committing to support this as written in a special session, then she thinks this makes a mockery of the whole process. She emphasized that she would want the opportunity in special session to narrow the scope of the bill. Cochair Chaney responded that increasing or decreasing the scope might not make it through. He clarified that the aim of the advisory question is to see if the actions taken on the amendments today represent a consensus on a path forward. Senator Burgoyne stated he will not support the motion because there has been no attempt to work out differences with stakeholders. He added that the process used today has not been fair, nor has it been effective. He opined that there was a foreordained result desired and nothing was going to get the train onto a siding for amendment. He reiterated that having a special session and saying "no" to a piece of legislation is not a failure and that there is not a thing in the world wrong with it. He indicated that there will be meaningful testimony in a special session at the committee hearings, and so wonders why there is such a determination to launch this bill forward to special session, when we know we will hear things that will change our minds on parts of this bill.

Representative Scott asked if we are taking the temperature of the committee for leadership, for the governor, or for the chairmen. Cochair Chaney responded that this polling of the members was the chair's request to know if we made any progress today toward any consensus around a piece of legislation. Representative Scott echoed Senator Burgoyne's comments, stating it is unacceptable that the group can not discuss the issues the citizens have, that we have a predetermined agenda, and there is no wiggle room. She added that the group was not given an opportunity to bring other ideas forward. She averred this is an idea coming from someone who is ramrodding it through the committee and she is completely against it. Representative Wintrow reflected that today she has voted for things that were the lesser of two evils, so as a whole, she does not feel comfortable with moving forward with this bill and will probably vote "no."

Cochair Lakey stated that the question was put on the agenda in an attempt to determine whether you are supportive of this proposed legislation to a sufficient degree to put it forward and give it strong consideration. He agreed that initially for him the focus was on getting the schools open again but he added that we didn't hear from just the schools, stating for him it isn't just about the schools, it is also about the small businessmen who are worried about getting sued when they are doing their best to try to comply and provide an appropriate environment in the current pandemic situation. And, it is about the local governments trying to do the same thing - we heard from hospitals and lots of folks (through the testimony process) who support this qualified immunity. As well, he recognized there were some in opposition, but noted they were a smaller group. He observed that the emergency doesn't apply just to the schools, but also to those that are trying to do business and function under the current situation. He stated his support for calling a special session with the proposed legislation.

Representative Kerby stated his support for a special session. He commented that the working group has made some pretty significant changes, including: narrowing the scope to coronavirus; taking out some of the government provisions; and putting in a sunset date. While noting that the process was an interesting opportunity for him to hear what his fellow members have to say, he stated that one downside to this type of meeting (remote electronic) is not having the opportunity to walk down the hall and talk to fellow members. He emphasized that he is looking forward to having this opportunity during the special session, because in this way the committee members can really listen to each other, come to a consensus, and get a bill through. He cautioned that if this working group doesn't put a bill forward, there won't be a special session.

Representative Ehardt remarked that her constituents and businesses sent her with a directive to do something about liability. Parents concerned about schools wanted her to represent them and make it clear that they wanted this. She opined the bill is not perfect, but she does not want to walk away from this without having the opportunity to have a special session and deal with liability. Additionally, she asked the group to remember that the biggest thing we have to do going forward is to make sure that we cover the fall, because once we get to the regular session we can take up a lot more things then. She stated that she is generally saying "yes" to the question presented.

Representative Young asked if there was a chance of getting an amended motion. Cochair Chaney stated that the working group's previous determination that we are recommending a special session is not being amended. He clarified that this question is his attempt to check the working group's specific comfort level with this legislation now that we've spent four hours working on changing it.

Representative Gannon asked whether, at the special session, an alternative RS that tweaks this bill would be allowed to be considered. Cochair Chaney answered that his preference would be to consider one piece of legislation at a time. Following up, Representative Gannon stated that this basically means the legislation that has been put together today is the only RS that we would see if there is a special session of the Legislature. Cochair Chaney stated his preference would be to get an "up/down" approach on this, expressing we are going to have to get a majority vote behind an RS at some point. Directing a response to Representative Gannon, Cochair Chaney offered if the

scope needs to be broader or smaller for you to support it, then that indicates that he may feel it necessary to vote "no."

Senator Anthon asked the cochair to clarify the vote process for this agenda item. Cochair Chaney indicated that this agenda item is a less formal process, it is a vote in summary after all of the changes that were made today. He also suggested the term "poll" might better reflect his intention. Following up, Senator Anthon concurred with Representative Ehardt, restating we need to move something to the special session. He rejected any claim that there would not be public input in that process because what we are advancing is an RS, and as such would not preclude input or consideration by the Legislature or amendment. He stated his support for advancing something that the governor will look at as a subject-area possibility to bring about a special session. He also voiced his appreciation for the efforts made by the cochairs to help the members narrow this down as we go, understanding that as a working group we are never going to get unanimity.

Representative Troy also expressed support for Representative Ehardt's remarks. She added that we really need our Idaho businesses to stay in business and we really need our schools to have enough confidence to go back into session. This legislation does ensure a fraction of confidence that can help our businesses proceed forward and our school districts to proceed forward. She opined that though she did not think anyone was happy with this legislation, everyone appreciates how important it is for those Idahoans we represent.

Cochair Chaney called for the vote on the question. **QUESTION: Would you support the adoption of the committee's suggested legislation - as written and as amended today - in a special legislative session?** The advisory question passed by majority vote: Senate 7 Ayes, 2 Nays; House 11 Ayes, 6 Nays, 1 Absent.

The cochairs thanked the working group for their thoughts and comments and the work that has been put in. The meeting was adjourned at 1:15 p.m.