

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Monday, March 16, 2020

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

**PLACE:** Room WW54

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

**ABSENT/ EXCUSED:** Senator Grow

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

**GUBERNATORIAL APPOINTMENT VOTE:** **Senator Anthon** moved to send the Gubernatorial appointment of Arnold Carlos Ponce to the Sexual Offender Management Board to the floor with the recommendation that he be confirmed by the Senate. **Senator Cheatham** seconded the motion. The motion carried by **voice vote**.

**H 431** **Relating to Charitable Organizations.** **Brian Kane**, Idaho Attorney General's (AG) Office, stated that **H 431** clarifies and defines the AG's obligation to protect charitable assets from misuse or misappropriation, and provides necessary tools in protecting such assets. This bill also ensures that the donor's intent to donate to the organization is preserved. **Mr. Kane** emphasized that **H 431** does not expand the AG's authority, although it establishes clear rules regarding the AG's capacity in safeguarding Idaho's charitable assets. He cited several instances where authorized personnel of charitable institutions misuse its assets. He detailed all the operative provisions of the bill which can be found in Idaho Code §§ 48-1906 and 48-1907. He added that **H 431** would administer a procedure for the charitable organization's application on its dissolution and termination, conversion to a profitable entity, and/or disposal of assets.

**DISCUSSION:** In response to Senator Anthon's inquiry, **Mr. Kane** assured that **H 431** does not infringe upon criminal aspects brought forward by a prosecuting or local county attorney in scenarios where there is misconduct.

**TESTIMONY:** **John McGown**, Hawley Troxell Attorneys and Counsellors, and **Bob Aldridge**, Trust and Estate Professionals of Idaho, spoke in support of **H 431**. **Mr. McGown** stated that he had sent two emails to the Committee members detailing the benefits and costs of this legislation. **Mr. Aldridge** acknowledged that there is a concern about how the bill would be administered. Despite his concerns, he indicated his support of the bill.

**MOTION:** **Senator Anthon** moved to send **H 431** to the floor with a **do pass** recommendation. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**DISCUSSION:** **Chairman Lakey** and **Senator Burgoyne** commended the effort and time of the people who developed a consensus on this legislation. **Senator Burgoyne** stressed that charitable organizations need to comply with a certain level of conduct due to the sensitivity of handling people's funds.

**H 583**

**Relating to the Protection of Public Employees from Adverse Action from an Employer. Representative Chaney**, District 10, stated that **H 583** proposes to provide a ceiling for a non-economic damages claim in cases of complaints of waste, fraud, and abuse in government agencies. This bill would set a limit on the State's liability on non-economic damages to \$372,000. He defined non-economic damages as the inconvenience, pain, and suffering that the plaintiff endured. He explained that the amount mentioned is the current adjusted cap mentioned in Idaho Code § 6-1603(1). **Representative Chaney** pointed out that the provision relating to escape value in Idaho Code § 6-1603 is not included in **H 583** for the purpose of allowing separate remuneration for non-economic damages if additional litigation is brought in.

**TESTIMONY:**

**Patricia Lowe, Gloria Lejardi, Nathan Olsen, and Grady Hepworth**, Idaho Trial Lawyers Association, spoke in opposition to **H 583**. They stated that passage of **H 583** would result in a significant decrease in the number of whistleblowers speaking out against agency malpractice. Barbara Jorden, Idaho Trial Lawyers Association, submitted written testimony requesting **H 583** be amended to add clarifying language (see attachment 1).

**Kenneth McClure**, Idaho Liability Reform Coalition; **Charlotte Cunningham; Jeremy Chou**, Idaho Association of Counties; and **Mike Kane**, Idaho Counties Risk Management Program, spoke in support of **H 583**. They agreed that **H 583** allows employees to be fully compensated on economic damages against retaliatory action of an employer, but limits the right to obtain punitive damages and places a cap on non-economic damages.

**DISCUSSION:**

**Senator Burgoyne** stated that he had a conflict of interest pursuant to Senate Rule 39(H) because he did contract legal work with a law firm that has had cases which may have motivated this bill, but intended to vote.

**Senator Burgoyne** conveyed his opposition to the bill. He expounded that **H 583** would decrease the number of whistleblowers significantly. He continued that passage of the bill would incentivize wrongful action and disregard the bravery of whistleblowers.

**MOTION:**

**Senator Burgoyne** moved that **H 583** be held in Committee. The motion failed for lack of a second.

**MOTION:**

**Vice Chairman Lee** moved to send **H 583** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**, with **Senators Burgoyne and Nye** requesting that they be recorded as voting nay.

**DISCUSSION:**

**Chairman Lakey** commented that **H 583** strikes appropriate balance between the plaintiff and the accused.

**PAGE GRADUATION:**

Senate Page **Parker Davis** expressed his gratitude to the members of the Committee. He spoke highly of the Committee members and the lessons he learned during his tenure as a page. He indicated that he learned there is nothing wrong in asking questions to get a better understanding of things. He mentioned that he plans to study at Brigham Young University this summer, carry out Church missionary programs, and get into law school eventually. **Chairman Lakey, Vice Chairman Lee, and Senators Burgoyne and Lodge** commended Mr. Davis' competence and efficiency and wished him all the best in his endeavors.

**ADJOURNED:**

There being no further business at this time, **Chairman Lakey** adjourned the meeting at 2:00 p.m.

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Senator Lakey  
Chair

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Sharon Pennington  
Secretary