IN THE SENATE

SENATE CONCURRENT RESOLUTION NO. 122

BY JUDICIARY AND RULES COMMITTEE

A CONCURRENT RESOLUTION

STATING FINDINGS OF THE LEGISLATURE AND AUTHORIZING THE LEGISLATIVE COUNCIL TO APPOINT AN INTERIM COMMITTEE TO CONTINUE WITH A STUDY OF POTENTIAL APPROACHES TO MITIGATING THE RISK OF BIAS IN CONTESTED CASE PROCEEDINGS.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Second Regular Session of the Sixty-third Idaho Legislature adopted Senate Concurrent Resolution No. 151, which authorized the appointment of a committee to undertake and complete a study of potential approaches to mitigating the risk of bias in contested case proceedings including, but not limited to: the assignment of agency directors, boards and administrative hearing officers for the conduct and decision of contested cases; the appointment and compensation of administrative hearing officers; and appropriate means to mitigate actual and perceived bias, conflicts of interest and any other factors undermining the actual and perceived unfairness of contested case proceedings; and

WHEREAS, the committee met in Boise on September 20, October 25, and November 21. The committee received testimony from the legal community and state agencies, and during its final meeting conducted discussions relating to the formulation of findings and recommendations; and

WHEREAS, the committee recommended that proposed legislation address adoption of provisions of the National Conference of Commissioners on Uniform State Laws' Model State Administrative Procedure Act. Such legislation, specifically Senate Bill 1155, has been introduced and is pending before the First Regular Session of the Sixty-fourth Idaho Legislature; and

WHEREAS, the committee recommended amending the contested case provisions of the Administrative Procedures Act, which has led to the introduction of Senate Bill 1155 late in this session, on which comment continues to be received indicating a need for further consideration beyond the end of this session; and

WHEREAS, the committee also recommended that the First Regular Session of the Sixty-fourth Idaho Legislature approve a reconstructed Administrative Hearing Officer Interim Committee to examine and make recommendations regarding contested case reforms including, but not limited to: (a) the potential of creating a central panel of hearing officers or administrative law judges; (b) the determination of where such a central panel would be located; and (c) the determination of the types of agency contested cases that should be exempted from such a panel; and

WHEREAS, the committee's official term expired on November 30, 2016, and numerous issues associated with administrative hearings in Idaho continue to persist; and

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Sixty-fourth Idaho Legislature, the Senate and the House of

Representatives concurring therein, that we urge the Legislative Council to approve a reconstructed Administrative Hearing Officer Interim Committee to examine and make recommendations regarding contested case reforms including, but not limited to: (a) the potential of creating a central panel of hearing officers or administrative law judges; (b) the determination of where such a central panel would be located; (c) the determination of the types of agency contested cases that should be exempted from such a panel; and (d) the further determination of appropriate amendments to the Administrative Procedures Act. The committee shall consist of ten legislators, with five from the Senate and five from the House of Representatives. The political party affiliations of the committee members from each legislative body shall be in the same proportions as they are in the legislative body in which such members serve. The Legislative Council shall authorize the committee to receive input, advice and assistance from interested and affected parties who are not members of the Legislature.

BE IT FURTHER RESOLVED that the cochairmen of the committee are authorized to appoint advisors with technical expertise in the area of contested case administrative hearings and hearing officers and are expected to receive input from stakeholders in various state agencies.

BE IT FURTHER RESOLVED that any advisors to the committee who are not legislative members shall not be reimbursed from legislative funds for per diem, mileage or other expenses and shall not have voting privileges.

BE IT FURTHER RESOLVED that the committee shall report its findings, recommendations and proposed legislation, if any, to the Second Regular Session of the Sixty-fourth Idaho Legislature.