

**MINUTES**  
**Approved by the Committee**  
**Committee on Federalism**  
**Monday, October 04, 2021**  
**9:00 A.M.**  
**Room WW02**  
**Boise, Idaho**

Cochair Dixon called the meeting to order at 9:06 a.m.; a silent roll call was requested.

Members in attendance: Cochair Representative Sage Dixon and Representatives Judy Boyle (via Zoom), Megan Blanksma, Wendy Horman, and Chris Mathias; Cochair Senator Steve Vick and Senators Daniel Johnson (via Zoom), Mark Harris (via Zoom), Carl Crabtree, and Dave Nelson (via Zoom); LSO staff Kristin Ford, Trevor Ahrens, and Jennifer Kish.

Audience sign-in: Rep. Bruce Skaug (D12); Rep. Tammy Nichols (D11); Rep. Doug Okuniewicz (D2); Rep. Gayann DeMordaunt (D14).

NOTE: Presentations and handouts provided by the presenters/speakers are posted to the Idaho Legislature's website <https://legislature.idaho.gov/sessioninfo/2021/interim> and copies of those items are on file at the Legislative Services Office in the State Capitol. Recordings of the meeting also may be found under the committee's listing on the website.

**OPENING REMARKS / APPROVAL OF MINUTES**

Cochair Dixon requested a motion for approval of the minutes. **Rep. Blanksma made a motion to approve the minutes of Sept. 28 with the edit to Clark Corbin's name and to approve the minutes of Sept. 22 without the edits proposed by Ms. Renfro. Without objection, the motion passed unanimously.**

**PRESENTATION / DISCUSSION OF DRAFT LEGISLATION**

Cochair Vick reminded those in attendance that the Committee on Federalism focused on maintaining Idaho's sovereignty from decisions made by the federal government, especially those not within its authority. He requested that presenters explain how their proposed legislation would affect the federal vaccine mandates.

Rep. Doug Okuniewicz (D2) - [DRMDD407](#) Rep. Okuniewicz explained that this piece of draft legislation would allow businesses to set vaccination requirements as a condition of employment at the point of hiring, that additional requirements could not be issued after hiring, and that a business could not discriminate or discharge an employee who would not receive immunizations in addition to those originally agreed upon at hiring.

- Sen. Crabtree asked how this legislation would affect federal employees and federal contractors in Idaho. Rep. Okuniewicz was not sure that the legislation could protect employees in those situations and surmised that the legislation would be tested in the courts.
- Rep. Horman, citing subsection (6), inquired about the legality of a law that interfered with existing contracts. She wondered whether contracts for school employees, hospital staff, and federal contractors would be affected. Rep. Okuniewicz responded that Section 16, Article I, of the Idaho Constitution protected the right that an existing contract could not be broken. He noted that this draft was written after consultation with the attorney general's office, however, he was yet to receive an opinion on this draft directly. Rep. Horman requested to see the AG opinion when it was issued. [Later in the meeting, Ms. Ford read comments

received from Andrew Snook, Division Chief - Contracts and Administrative Law in the Office of the Attorney General, explaining that the Idaho Supreme Court looked to prove whether a contractual relationship existed, whether the challenged legislative enactment impaired that relationship, and whether that impairment was substantial. Mr. Snook suggested adding language to clarify that the legislation applied only to new contracts.]

- Sen. Johnson inquired about the misdemeanor charge rather than imposing a fine. Rep. Okuniewicz reported that there was an employment law already in statute upon which it was based.
- Cochair Vick noted that many Idaho employees work "at will" and therefore this legislation would not apply. Rep. Okuniewicz hoped that this legislation would be effective for just that reason, that even those types of employees would not be discriminated against for not accepting a vaccine.

Rep. Bruce Skaug (D12) - [RS29009](#) Rep. Skaug noted that this piece of legislation was based upon legislation currently in effect in Montana. He explained that the legislation would prohibit discrimination based on one's immunization status and would make it unlawful for any state or local government or private employer to withhold services or benefits. He added that this legislation would also prohibit releasing an individual from employment based on immunization status or lack of proof of immunization status. Rep. Skaug noted that federal employees and federal contractors would not be protected under this legislation, but rather would need to look to protection under the Equal Employment Opportunity Commission (EEOC).

- Rep. Horman inquired about the treatment of an individual who did not wish to voluntarily disclose his/her vaccination status. Rep. Skaug stated that this legislation would allow for an individual who did not wish to voluntarily disclose his/her vaccination status to be treated as an unvaccinated individual. Rep. Horman, in reference to [SECTION 2, sub]section (4), asked whether this would prohibit *any* COVID-19 vaccine from being administered due to claims that all current vaccines had been identified as "emergency use." Rep. Skaug explained that subsection (4) was to protect those in nursing homes, etc. so that trial vaccines were not administered on those individuals.
- Sen. Crabtree asked how this legislation would affect federal employees and federal contractors in Idaho. Rep. Skaug surmised that the state of Idaho would need to stand behind the employees as citizens of the state.
- Cochair Vick asked whether employees of companies that work on federal projects (i.e., federal contractors) had the right to appeal compliance on a federal mandate under this legislation. Rep. Skaug stated that such employees would have the right to appeal the federal mandate through the Idaho Human Rights Commission. Cochair Vick asked whether employees of companies that received Medicaid or Medicare payments would be able to appeal the mandate under this legislation. Rep. Skaug stated that such employees would have the opportunity to appeal the mandate through the Idaho Human Rights Commission; he added that exemptions were included in the legislation for employees of medical facilities.

Rep. Tammy Nichols (D11) - [RS29011](#) Rep. Nichols explained that this piece of draft legislation would add a definition for personal medical information, would establish provisions regarding the privacy of one's personal medical information, and would ensure Idaho's sovereignty by not forcing a business to adopt a federal mandate. She provided some additional edits to the RS: 1) SECTION 2, subsection (4) to read: "...person's personal medical information..."; and 2) to add a severability clause.

- Rep. Horman inquired whether this legislation would make drug testing as a condition of employment illegal. Rep. Nichols responded that it would not, rather it would provide that one could not be coerced or forced to reveal personal medical information. Rep. Horman asked for clarification as to whether an employer could require the testing but could not access the results. Rep. Nichols responded that an employer would not be able to do so if there was

an agreement in place upon employment. Rep. Horman inquired how this legislation would work regarding certain health issues/outbreaks within an employer's business. Rep. Nichols responded that SECTION 2, subsection (3) allowed the employer to request that information but that the employee was not required to release the information.

- Rep. Blanksma noted that the ability to deny a request seemed to negate the opportunity for an employer to make a request. Rep. Nichols explained that her intention was for the legislation to protect the employee. Rep. Nichols admitted that edits could be added to make the language more clear.
- Cochair Vick asked whether this legislation would apply only to federal rules. Rep. Nichols stated that she intended it to protect from federal overreach.

Rep. Gayann DeMordaunt (D14) - [DRMDD411](#) Rep. DeMordaunt explained that this legislation would provide exemption language for adults, as has existed for children for almost 40 years.

- Rep. Horman, as a collaborator on this draft, suggested that the language in line 20 be edited to read "...infection ~~or~~ and a positive..." Rep. DeMordaunt submitted that she would seek legal counsel on that edit. She advised that the natural immunity issue was widely accepted in other countries and supported its need for recognition here in the states.
- Rep. Mathias requested whether this language would allow one to be exempt from vaccinations other than those for COVID. Rep. DeMordaunt stated that she would defer to a legal opinion on the question and welcomed any edits to the language that would make it more clear.
- Cochair Vick wondered whether the language would preclude any vaccinations for variants of the COVID virus. He also cautioned making the edit of "or" to "and" due to a personal experience where a friend had confirmed the existence of the anti-bodies but had not confirmed his infection at the time of his illness. Cochair Vick inquired whether there were any exemptions for adults in statute regarding vaccinations. Rep. DeMordaunt replied that there was not, hence adult employees were forced to use the EEOC as an avenue for appeal to the vaccine mandates. Cochair Vick wondered how this language would apply to the anticipated federal mandates. Rep. DeMordaunt explained that having this in statute in anticipation of the federal mandates would be a good starting point.

Sen. (Cochair) Steve Vick (D2) - [DRKMF656](#) Cochair Vick explained that this draft kept a narrow approach to negate any federal mandate to protect both employees and employers.

- Sen. Crabtree was in favor of this draft legislation in that it addressed the committee's charge toward federalism.
- Rep. Horman summarized that this legislation provided that the government could not issue mandates but that businesses could. She asked for clarity on the term "official." Ms. Kristin Ford, LSO Legislative Drafting Attorney, suggested that more clarity could be added by defining the term, such as was done in lines 18-20 of the draft.
- Sen. Johnson asked that the language on page 2, lines 14-17, be revisited so as not to be in conflict with those on page 2, lines 18-27. Ms. Ford explained that the language was based on the previous section's language but that it certainly could be revisited to ensure clarity.

Having heard all proposed legislation, the committee took a break at 10:25 a.m.

At 11:07 a.m., the committee reconvened.

## COMMITTEE DISCUSSION

**Rep. Blanksma made a motion that DRKMF656 with suggested edits from the earlier discussion be recommended to the full Legislature when the committee report was submitted; Sen. Crabtree seconded the motion.** Cochair Vick encouraged the legislation to be addressed prior to November 3, which would be the deadline for federal contractors to have received a first vaccination. Cochair

Dixon inquired whether additional edits could be added to improve its intentions; Rep. Blanksma was amenable to that as it was her motion. Rep. Mathias cautioned that this legislation might come into conflict with other statutes in that a person was free to choose not to be vaccinated but was not free to infect others. Sen. Nelson expressed the need to balance rights - the right not to be required to take a vaccine but also the right to a safe workplace or place of medical treatment. Sen. Johnson questioned the need for the penalty as outlined in the legislation. **The motion carried by voice vote. Rep. Mathias and Sen. Nelson were recorded as voting nay.**

**Rep. Horman made a motion that DRMDD407, DRMDD411, and RS29009 be submitted with any necessary edits for consideration to the full Legislature; Rep. Boyle seconded the motion. The motion failed by voice vote.**

Cochair Vick explained that the recommended legislation was at the discretion of the Speaker of the House and the President Pro Tempore to assign to the proper germane committee for a hearing. He noted that the occurrence of a legislative session being reconvened was also at the discretion of the Speaker and the Pro Tempore.

With no further business before the committee, and no future meeting on the calendar, the meeting was adjourned at 11:25 a.m.