

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Monday, January 21, 2013

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman McKenzie, Senators Davis, Fulcher, Hill, Winder, Lodge, Siddoway, Stennett and Werk

ABSENT/ EXCUSED:

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 McKenzie** called the Senate State Affairs Committee (Committee) meeting to order at 8:00 a.m. on Friday, January 21, 2013 with a quorum present.

VOTE ON GUBERNATORIAL APPOINTMENT: **Chairman McKenzie** called for a vote on the recommendation for confirmation of Brandon Woolf as Idaho State Controller.

MOTION: **Senator Davis** moved to send the gubernatorial appointment of Brandon Woolf as State Controller to the floor with the recommendation that it be confirmed by the Senate. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Chairman McKenzie** welcomed Kevin Settles who was appointed to the Human Rights Commission.

Mr. Settles explained that he is an owner/operator of the Bardenay Restaurants and Distilleries. He has been politically active in areas that directly affect his facilities and employees. He has three operating principles: 1) Treat employees well; 2) Provide good value to customers; and, 3) Be a good member of the community. When considering this appointment he looked at the diversity of the 170 employees working for their company and decided that this assignment fit in his arena. There may be some controversial things but it would be well worth his time.

Senator Hill asked what comes to Mr. Settles' mind when he hears the term "human rights" and what are those rights? What do you think may be controversial? **Mr. Settles** stated that human rights means that he should treat everyone as he expects to be treated. As for controversial issues, "Add the Words" was controversial last year. Also, age discrimination in his industry is hard because, as people age, it is harder to keep up the pace. He would better understand how the law applies to age.

Chairman McKenzie asked if any meetings have been held since his appointment and when is the next meeting scheduled? **Mr. Settles** said February 2nd will be the next meeting. He has not had an opportunity to attend a meeting.

Chairman McKenzie thanked Mr. Settles for his past community service and willingness to serve on this commission. The Committee will vote at the next meeting.

RS 21753 **Relating to the Initiative and Referendum Elections** presented by Russ Hendricks, representing the Idaho Farm Bureau Federation.

Mr. Hendricks stated that **RS 21753** seeks to ensure that there is broad support for an issue before it is placed on the ballot. Current state law requires that six percent of Idaho's registered voters sign a petition in order to get an issue on the ballot. In 1997 a bill was passed that said six percent of the registered voters in 22 counties must sign. Subsequently, that law was overturned by the Federal Court and upheld by the Ninth Circuit Court of Appeals because it did not follow the one man, one vote rule so it was held to be unconstitutional. However, in a writing for the majority, it was stated that the same end could be achieved by using legislative districts as a requirement rather than counties. **RS 21753** requires six percent of the registered voters in 22 legislative districts with an overall six percent of the registered voters statewide to qualify an issue for the ballot.

Senator Winder asked if this would take away the ability to take action on a regional legislative issue without going statewide. **Mr. Hendricks** said that it would.

Senator Davis referred to the Statement of Purpose (SOP), fifth paragraph and asked Chairman McKenzie if the Ninth Circuit Court of Appeals focused on the interpretation of the Idaho Constitution or was it relying on a federal analysis of one man, one vote? **Chairman McKenzie** will review his copy of that case. If it is more of a federal analysis, we may want to change the language in the SOP.

Senator Hill stated his concern with the length of the SOP. The SOP should state what the bill does and not go into the reasons behind it.

Senator Werk questioned the existence of a problem. **Mr. Hendricks** explained that currently, as well as in 1997 when the original legislation was passed and later overturned, the required six percent of the registered voters in the state could be met in the Treasure Valley. There was not an opportunity for people across the state to participate in the process. **RS 21753** ensures that there is widespread support across the state prior to qualifying an issue for the ballot.

Senator Winder followed up on the wording of the SOP; would Russ be willing to change it and must it be changed before going for print? **Mr. Hendricks** stated that they would be more than happy to change it.

MOTION:

Senator Lodge moved to send **RS 21753** to print. **Senator Fulcher** seconded the motion.

Senator Werk stated he would vote to print the RS. However, it is making it more difficult for people to have a say when elections come around. He will need something compelling to determine if there has been abuse of the system and if there are issues to be resolved.

The motion carried by **voice vote**.

RS 21762

Relating to the County Option Kitchen and Table Wine Act to provide for the revision of the size of a container of wine that a distributor or importer is allowed to purchase, receive or sell.

Roger Batt, representing the Idaho Grape and Wine Producers, said that **RS 21762** amends current law to increase the maximum wine container size from a one gallon container to a 15 gallon container without having to receive permission from the Director of the Idaho State Police.

The industry is requesting this change for the following reasons:

- The current language is archaic.
- The Idaho wine industry is growing.
- Wineries are receiving numerous requests for larger containers.
- Some wineries are selling five gallon containers but must obtain permission to do so each time a sale over a one gallon container is made.
- Other states are selling wines in excess of one gallon containers giving them a competitive edge over Idaho wineries.
- There is no fiscal impact to the General Fund.
- The industry will likely see an increase in revenues to business owners.

Mr. Batt asked for support of **RS 21762** and stood for questions.

MOTION:

Senator Fulcher moved to send **RS 21762** to print. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

PENDING RULES:

Chairman McKenzie introduced Jeff Anderson, Executive Director, Idaho State Lottery, to present the pending rules.

Mr. Anderson introduced Becky Schroeder, Chief Operating Officer, Idaho Lottery; Zeke Chemodurow, General Manager, Intralot; and Tim Davis, the Attorney General's Office, to answer technical questions.

**DOCKET NO.
52-0103-1201**

Pending Fee Rule: Idaho State Lottery 52.01.03 - Rules Governing Operations; pages 22-31 of the 2013 Pending Fee Rule book.

Mr. Anderson requested that the Committee approve the Idaho State Lottery (Lottery) negotiated pending fee rule that authorizes the Lottery to collect a cost recovery fee for the convenience of using a pin-protected debit card in the vending machines. Currently those machines accept only cash. There were no comments received during the negotiated rulemaking.

Last year, the Federal Reserve reported that cash transactions are no longer the majority method of payment. Electronic payments now account for over half of the transactions incurring additional costs (transaction fees). Vending machines represent 20 percent of the instant ticket sales and four percent of the draw game sales; nearly \$26 million. Many retailers allow for various forms of payment at the counter and other state agencies capture similar cost recovery fees for electronic forms of payment.

The convenience fee described on page 31 restricts the Lottery from capturing usage fees from third party payment processors. Approval of the rule will provide greater customer service and enhance dividends to the citizens by reducing costs for payment processing.

Senator Winder asked if only debit cards could be used and not credit cards. **Mr. Anderson** said that is correct.

Senator Hill inquired if this allowed debit cards to be used where they couldn't be used in the past or if it just allow that a fee be charged for using them. Does this expand the use of debit cards for purposes of the lottery? **Mr. Anderson** answered that they could use debit cards according to the current rule but they choose not too because of the transaction costs.

Senator Davis observed that Subsection 23 states "The Lottery may collect ... a fee" in an amount decided by the Lottery. Normally, if there is a fee, it is an amount certain. Why is this good public policy? **Mr. Anderson** responded that they did not state the exact amount of the fee since it is not meant to be a revenue stream for the Lottery, only to recover the cost of the transactions. According to current transaction schedules, the cost is determined by the dollar amount and could be anywhere between \$.30 and \$.70. They chose to start with \$.50 and do an audit each year then make adjustments. **Senator Davis** said that those numbers are not in this fee rule. **Mr. Anderson** agreed. With the revolving federal legislation as it relates to restrictions on transaction fees, it is very difficult to state the exact amount that should be charged. The only goal is to capture the amount of the fee that a third party processor charges. **Senator Davis** observed that is not what the rule says. **Mr. Anderson** stated that they are asking for the Lottery Commission to be given the authority to set the cost recovery fee. **Senator Davis** said "nor does it say it is limited to an exact amount ... " **Mr. Anderson** said that is correct because they wanted the flexibility to adjust each year as fees go up or down.

Senator Lodge asked if they would accept Electronic Benefit Transfer (EBT) cards that are also debit cards. **Mr. Anderson** replied "absolutely not."

Senator Fulcher commented that there is no framework for the fees and that is a problem. **Mr. Anderson** explained that this does not give the director the authority to set the fee, it comes through the Lottery Commission during public meetings.

**DOCKET NO.
52-0102-1201**

Pending Rule: Idaho State Lottery 52.01.02 - Gaming Rules; pages 47-50 of the 2013 Pending Rule book.

Mr. Anderson requested the approval of the pending rule to adjust the allowable maximum expense for licensed charitable games so they would conform to the legislation that was passed during the last session. S 1286 amended Idaho Codes §§ 67- 7709 and 67-7710 for Bingos and Raffles. This request came from operators through the Bingo Raffle Advisory Board and through the Idaho State Lottery Commission (Commission). The 20 percent to charity would remain the same for Bingo games but allow operators to pay out larger percentages in prizes. Many of the operators in both Bingo and Raffle charitable games have been struggling with rising costs for printing, marketing, labor, rent, etc. The change would allow them some relief.

Senator Davis asked if the only thing this does is to restate the percentages that are in S 1286. **Mr. Anderson** said that is correct.

**DOCKET NO.
52-0103-1202**

Pending Rule: Idaho State Lottery 52.01.03 - Rules Covering Operations; pages 51-67 of the 2013 Pending Rule book.

This rule does two things:

1. Clarifies how multiple winners claiming one ticket may divide their winnings.

Pages 57-58 relative to claiming prizes dictates that winners must state their percentage of the prize when there are multiple claimants prior to the Lottery processing the claim. This resolves an issue of a claimant changing their payout percentage when they discover there is a welfare or tax liability due the state. This change was recommended by the Attorney General.

2. Addresses technology changes for in-state drawings relative to the need for draw device inspections.

Page 60 required that the old ball machines had to be inspected and maintained prior to each drawing. Those devices are not used anymore. The current method is a random number generator computer that requires no physical inspection. It

provides for greater security, integrity and detailed audit trails. These are audited and reviewed after each drawing.

Senator Davis referred back to S 1286 where it stated a "maximum of 18 percent of gross revenues may be used for administrative expenses." Your rule says 20 percent. **Mr. Anderson** clarified that there are two issues: One is for Bingo which limits expenses to 18 percent and the other is for raffles which are limited to 20 percent.

Senator Davis asked for further explanation of the Attorney General's request. **Mr. Anderson** said current rule calls for a request and release form. This rule clarifies that multiple winners must fill out a claim form stating what their expected share is prior to the lottery processing the claim so if there is an offset for taxes or health and welfare, it can be collected and transferred to the appropriate agency.

Senator Hill asked if multiple winners came in and disagreed about the percentage, how is that dealt with? **Mr. Anderson** responded that they would disperse the winnings in equal shares.

**DOCKET NO.
52-0103-1203**

Pending Rule: Idaho State Lottery 52.01.03 - Rules Covering Operations; pages 51-67 of the 2013 Pending Rule book.

The Idaho State Lottery Commission is requesting the approval of the negotiated pending rule that allows for instant ticket games to be played through dispensing devices that currently offer only draw games such as Power Ball and Mega Millions. The only comments came from a gaming system vender and they were considered.

The games restrict the play styles to that of an instant ticket game as currently provided in rule. There are several provisions that the tickets must include. The games must have a finite pool of tickets, a predetermined and guaranteed prize structure and the tickets must be dispensed in sequence from a retailer based device. The games create competition among the venders, they are secure, they operate on a closed system platform and will only be offered in social situations.

Mr. Anderson emphasized that wagers will not be taken over the internet and this does not authorize internet gaming. **Senator Davis** asked for a simple, detailed explanation of what is occurring now and what changes will be made.

Mr. Anderson explained how the operation functions at this time and what would happen if these rules were implemented. In answer to further questions, he went on to explain that these are not like tribal video gaming machines. They are scratch games played on a screen in electronic form instead of being scratched on a piece of paper.

Senator Werk asked if there were machines of this type located in bars or bingo halls where lottery games are allowed. **Mr. Anderson** stated that there are none that offer instant ticket games as described here but electronic touch tab games are offered. **Senator Werk** asked what the operative difference is between a scratch game and a pull tab game. **Mr. Anderson** explained that they offer three types of games: draw games where numbers are picked and they have a predesignated draw time, instant scratch tickets that have a finite pool of tickets in a game and pull tab games where a tab is pulled. **Senator Werk** asked if an electronic scratch ticket game would be added under this rule. Would he see any difference between the scratch or pull tab electronic games? **Mr. Anderson** said that there would be a profound difference. The touch tab machines mimic the paper games that are available in those locations. The instant ticket is quite different. There are many different games within the arena of the scratch ticket games. The scratch area on the electronic screen would be a touch type device.

Chairman McKenzie noted that there is a pilot program in place for an electronic touch tab dispensing device; about 313 of these devices are in bars at this time. Do those currently accept debit transactions and if not, would the pending fee rule change the intent of the Lottery Commission to allow debit cards as well as cash to play those electronic games? **Mr. Anderson** did not envision debit cards being available for touch tab dispensing devices. They could be made available in the multi purpose devices in addition to the regular big box vending machines.

Senator Hill stated that approving this rule would allow for online terminals to be placed in retail outlets which are defined as businesses authorized by the Lottery to sell online tickets. The discretion of where these will be placed is completely within the hands of the Lottery. If we approve this rule, we are expanding what online gambling is and where it is located. Is that correct? **Mr. Anderson** suggested that there may be confusion with the terminology that is used when we say "online." What that means is a highly secured, closed system terminal that connects to the central gaming system for the purpose of selling games to the public. Right now that is draw games (power ball, mega millions, etc.). What is being proposed is to have a rule that restricts the type of instant ticket game that can be played on a terminal at a retail location. It is not expanding but is restricting the games that can be played on the online terminal to now include highly secure instant tickets as well as draw games.

Senator Siddoway thought it looked like the rules allow for a casino type atmosphere which isn't the case today. **Mr. Anderson** said he would not characterize it that way. These devices exist in locations selling draw games already. These do not mimic casino games.

Senator Siddoway asked what type of social setting the rules would allow versus what is in place now. **Mr. Anderson** stated that the social setting are bingo halls and age controlled bars and taverns. Typically, there are no more than one to three devices throughout the establishment depending on its size. Two vending machines in an area is not like the multiple slot machines in a casino. These are instant ticket games that are currently on the market in paper form that would be made available on devices that are already placed in locations that are currently selling only draw games. The type of games would be restricted.

Senator Siddoway asked what regulates the number of machines in an area. **Mr. Anderson** stated it is determined by market demand.

Senator Lodge asked for a definition for a social situation. **Mr. Anderson** replied that there is a policy the commission follows but not a definition in the rules. These devices were designed and delivered initially to relieve pressure when jackpots were large to help move customers through the lines. It was a self service terminal for the draw games. **Senator Lodge** said that bowling alleys, pool halls and private clubs could be considered social situations. **Mr. Anderson** said they could be but the devices must be in age restricted locations.

Senator Winder asked if there was a place to see a demonstration of these terminals. **Mr. Chemodurow** answered that those devices are in several locations i.e., the Crescent Bar. He will provide a list of locations.

Senator Werk asked if these devices would be "screaming" or "quiet and enticing." **Mr. Anderson** responded that they are programmed based on location.

Senator Hill stated that the age restricted environment is a policy of the Lottery Commission but isn't in the rules; is that correct? **Mr. Anderson** agreed.

Chairman McKenzie indicated that Mike Duff, President, United Families Idaho, signed up to testify. His written testimony in opposition to the rules will be accepted instead.

Senator Stennett suggested that it would be helpful to have a demonstration. **Mr. Anderson** said he would be happy to do that.

Senator Davis asked if the rules were going to be voted on at this meeting. **Chairman McKenzie** would defer if it was the desire of the Committee.

Senator Davis could not find the administrative 20 percent for the raffle in **S 1286**. Is it in that bill or in another code section? **Mr. Anderson** answered that the raffle is addressed in 67-7710 and states that 80 percent goes to non profit organizations. The remaining 20 percent goes to administration. **Senator Davis** notes it was a math calculation.

Senator Fulcher commented that **Docket 52-0103-1203** should be held until they get more information or have a demonstration. **Chairman McKenzie** deferred the vote until Monday, January 28th.

MOTION: **Senator Davis** moved to reject **Docket No. 52-0103-1201** in the Pending Fee Rules. **Senator Werk** seconded the motion.

Senator Davis noted that it is contrary to how fee rules should be written. There is language in the descriptive part of the rule that should be incorporated into the body of the rule.

The motion carried by **voice vote**.

MOTION: **Senator Davis** moved to adopt **Docket Nos. 52-0102-1201** and **52-0103-1202**. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

Chairman McKenzie stated that there would be a further hearing on **Docket No. 52-0103-1203** on Monday, January 28th.

ADJOURNED: Being no further business, **Chairman McKenzie** adjourned the meeting at 9:25 a.m.

Senator McKenzie
Chairman

Twyla Melton
Secretary