

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Monday, March 04, 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 8:01 a.m. with a quorum present.

MOTION: **Senator Siddoway** moved to send the reappointment of Roger L. Jones to the Idaho Lottery Commission to the floor with the recommendation that he be confirmed by the Senate. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

RS 22144 Relating to the Local Planning Act to provide clear decision-making criteria and a process of review to ensure protection of private property rights and due process.

Senator Tippetts explained that **RS 22144** will resolve concerns that decisions rendered pursuant to the Local Land Use Planning Act (LLUPA) have failed to address clearly expressed decision criteria. Some decisions have caused jurisdictional conflicts with state or federal agencies and have brought about a need for expensive and time-consuming appeals. **Senator Tippetts** said amendments to LLUPA would require specific standards to overlay zoning districts and prohibit overlay districts from causing regulatory taking; Forbid abrogation of health district, state or federal jurisdiction by local ordinance; Require that written land use decisions expressly address approval decision criteria; and, Provide an expeditious reconsideration process to allow affected persons to contest a final decision before a judicial appeal.

Specifically, **RS 22144** amends Idaho Code § 67-6511 to provide that overlay zoning districts have specific standards; Idaho Code § 67-6522 provides that in no event shall the governing board by local ordinance enact provisions that abrogate the statutory authority of a public health district, state and/or federal agency; Idaho Code § 67-6535 enumerates express standards regarding the Local Planning Act, to provide procedures for reconsideration; and Idaho Code §§ 31-1425 and 31-3908 A provide correct code references.

MOTION: **Senator Davis** moved to print **RS 22144**. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

S 1029

Relating to codifier and technical corrections to the Idaho Code to provide for the correction of errors found in names, grammar and punctuation as identified by the Legislative Services staff.

Katherine Gerrity, Legislative Services, explained the current process in making codifier and technical corrections. In the case of codifier corrections, the codifier notifies the editors of the code sections affected and the changes are included in Legislative Services' codifier bill. In terms of technical corrections, those corrections are identified by Legislative Services staff and include changes involving grammar and punctuation. Codifier and technical corrections are often made the next time an affected code section is amended. **Ms. Gerrity** said **S 1029** would address the changes immediately rather than wait for future amendments to the specific sections.

MOTION:

Senator Davis moved to send **S 1029** to the floor with a **do pass** recommendation. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.

H 55

Relating to the Idaho Telephone Solicitation Act to conform Idaho's statute to regulations governing the National Do-Not-Call Registry, which has been designated as Idaho's list.

Jim Clark, representing Frontier Communications, opened his remarks on **H 55** by reviewing the history of the 2000 do-not-call rule. The law added three exemptions, one of which prohibited telephone companies from calling their customers. He said **H 55** removes the language that disallows this exemption and also adds a consumer protection provision of an "opt-out" clause, which does not now exist in Idaho law.

Senator Werk asked Mr. Clark to explain the current language compared with the new language contained in the amendment. **Mr. Clark** reviewed the explanation contained in the Statement of Purpose and recapped the position that telephone companies are simply asking to be able to contact their customers just as any other commercial service provider can. **Senators Hill** and **Werk** asked for more specific information and a discussion was held on customer protection, charitable and political organizations and the impact of cell phones on the do-not-call rule. **Mr. Clark** said the opt-out clause protects consumers and the amendment makes it a better law.

TESTIMONY:

Mr. Bill Roden, representing Century Link, related the history of the 2000 and 2004 do-not-call legislation and reviewed the specific rules specified on the Federal Trade Commission (FTC) web page (See Attachment I). He explained the rationale for the amendment and said that a company should be allowed to call its own customers to let them know about new products or benefits.

Brett DeLange, Office of the Attorney General, spoke in opposition to **H 55** stating that consumers have the right to privacy and protection from telemarketers and that consumers who go to the trouble of putting their names and numbers on the do-not-call list simply do not want calls. Idaho has over one million names on the no-call list and it was the first in the nation to pass legislation that made the no-call list possible. **H 55** also requires that every business maintain an internal no-call list. That is not effective.

Senator Hill asked why a telecommunications company should be treated any differently than any other company in regard to whether they should be allowed to call customers with which they have a business relationship. **Mr. DeLange** responded that they are the exception; but why should the situation be made worse by allowing communication companies to make those calls.

Senator Lodge stated that she had a cell phone and a land line; would that be considered an established business relationship with that company? **Mr. DeLange** concurred. Under current law, they can't call but this legislation will allow them to do so. **Senator Werk** asked if there was a compelling reason to keep the exemption (communication companies) to the exemption (businesses can call anyone with an established business relationship) to the no-call list. **Mr. DeLange** reiterated his earlier statements that people do not want to be called.

Further discussion was held on the pros and cons of **H 55** including types of companies affected, definition of "established relationships," and exceptions to the rule. **Senator Davis** said he feels there is a need to revise the legislation to find parity but believes there are better parity solutions; **Senator Werk** said he believed it was not good legislation to expose citizens to more solicitation calls.

Senator Lodge disclosed under 39 (h) that she had a family member who is employed by a communications company.

MOTION:

Senator Winder moved to send **H 55** to the floor with a **do pass** recommendation. **Senator Hill** seconded the motion. **Senator Werk** requested a roll call vote.

The motion carried by a **roll call vote** of 5 to 4 with **Senators Hill, Winder, Lodge, Siddoway** and **Chairman McKenzie** voting **aye**; **Senators Davis, Fulcher, Stennett** and **Werk** voting **nay**.

PASSED THE GAVEL:

Chairman McKenzie passed the gavel to Senator Lodge and thanked her for her assistance.

S 1078

S 1078, relates to the addition of a new section to Chapter 1, Title 33, Idaho Code (§ 33-107D), which prohibits public universities from discriminating against religious student groups.

Chairman McKenzie introduced **S 1078** stating that it is related to religious-based student groups on public university campuses. Discussion on this topic began last May when Representative Crane, Senator Davis and the Chairman attended a religious freedom conference in Washington D.C. put on by the Ethics and Public Policy Center's American Religious Freedom Program. It addressed religious liberty for different faiths and the widespread viewpoints from diverse religions concerned with the need for religious. He said that Idaho and some other states have formed religious liberty caucuses to serve as clearing houses for issues related to religious liberty.

An Idaho caucus was formed by Senators Davis, Tippetts, Nuxoll, and Representatives Crane, Batt, and Luker to address religious liberty issues as they might come up. Subsequently, Kim Colby, Legal Counsel for the Christian Legal Society, contacted Chairman McKenzie advising him of an issue at one of Idaho's public universities. It appeared that Boise State University was considering adoption of a policy that would exclude from campus, any religious group that requires its leaders to agree with the group's religious beliefs. The Idaho Caucus, with suggestions from Ms. Colby, drafted the language in **S 1078** that specifically prohibits Idaho public postsecondary educational institutions from discriminating against a religious student group, based on that group's requirement that its leaders adhere to sincerely held religious beliefs or standards of conduct. He said the language is consistent with what other states have already done or are in the process of doing.

Chairman McKenzie said he had asked for and received an opinion letter from the Attorney General's office as to whether or not **S 1078** conflicts with Article I, Section 4 and Article IX, Section 5 of the Idaho Constitution. He summarized the Attorney General's letter which, in essence, said "the legislation, if adopted, does not appear to violate those provisions on its face."

Discussion was held on issues concerning whether the legislation would encourage the formation of terrorist groups and other violent organizations, and questions were asked as to the definition of a group leader's and its members' ideologies.

Senator Hill asked if there would be protections against certain types of inflammatory speech implied or stated elsewhere in statute. **Chairman McKenzie** responded that he couldn't answer as to what campus limits were placed on other forms of free speech. He believes that the bill, as drafted, is consistent with the current student organization's handbooks.

Senator Stennett questioned whether this bill would be more restrictive or will it still be possible to maintain an open door for those who do not necessarily believe in the same ideology as the group. **Chairman McKenzie** answered that it was open to any person who wanted to be a member, belief in the ideology is only required to hold positions of leadership.

Senator Lodge called on individuals who had signed up to testify.

TESTIMONY:

Those testifying in support of **S 1078**:

Bruce Skaug, private citizen

Julie Lynde, Cornerstone Family Council

Kyle Clifton

Kyla Cuvelier

Jared Kopczynski

Nate Jansen

Jesse Barnum, affiliated with Boise State University.

Reasons given for supporting the legislation included: (1) Avoidance of religious discrimination on campuses; (2) Benefits of advancing an open discourse of differences; and, (3) Protection and recognition of religious student groups believed to have faced religious discrimination on Idaho's campuses.

Those testifying in opposition to **S 1078**:

Kent Nelson, general counsel at the University of Idaho

Monica Hopkins, American Civil Liberties Union

Andrew Blake, representing Association of Students of University of Idaho.

Reasons given for opposing the legislation included: (1) The legislation is redundant because the law already prohibits religious discrimination; (2) The legislation would breed discrimination; and, (3) The Boise State University handbook states that personal beliefs may not be promoted.

The merits and shortcomings of the legislation were discussed. **Senator Davis** said this is not a solution in search of a problem but is a solution to a problem, and he reminded the Committee that the Attorney General's opinion letter was affirmative. **Senator Lodge** called for a vote.

MOTION:

Senator Fulcher moved to send **S 1078** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**. **Senators Stennett** and **Werk** were recorded as voting **nay**. **Chairman McKenzie** will sponsor the bill on the Senate floor.

PASSED THE GAVEL:

Senator Lodge returned the gavel to Chairman McKenzie.

S 1108 CONTINUED:

Chairman McKenzie said the vote on **S 1108** would be postponed until next meeting but due to traveling constraints, the Committee would hear testimony on the bill from two individuals.

TESTIMONY: **LeRoy Smith**, private citizen, testified in opposition to **S 1108**, primarily because of his belief that the legislation would take more rights from Idaho's citizens. He asked that the Committee vote this legislation down.

Mr. Ed Wardwell, private citizen, testified in opposition to **S 1108** stating that restricting the referendum and initiative process is a step backwards.

Chairman McKenzie thanked Mr. Smith and Mr. Wardwell for their testimonies and deferred further action on **S 1108** and, **S 1079** and **RS 22132**, to the next meeting on Wednesday, March 6.

ADJOURNED: **Chairman McKenzie** adjourned the meeting at 10:01 a.m.

Senator McKenzie
Chairman

Twyla Melton, Secretary
Assisted by Jeanne' Clayton