

MINUTES
SENATE STATE AFFAIRS COMMITTEE

- DATE:** Friday, March 22, 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) to order at 8:02 a.m. with a quorum present.
- MOTION:** **Senator Siddoway** moved to approve the minutes of March 1. **Senator Werk** seconded the motion. The motion carried by **voice vote**.
- PASSED THE GAVEL:** **Chairman McKenzie** passed the gavel to **Senator Lodge** who announced that **HCR 27** was before the Committee.
- HCR 27** A House Concurrent Resolution to print the session laws presented by Chairman McKenzie.
Chairman McKenzie stated that **HCR 27** authorizes the printing, binding and distribution of the 2013 Session Laws by Caxton Printers, LTD at a cost of \$30,000 paid from the legislative fund.
- MOTION:** **Senator Siddoway** moved to send **HCR 27** to the Senate floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**. **Senator Hill** will carry **HCR 27** on the Senate floor.
- PASSED THE GAVEL:** **Senator Lodge** returned the gavel to Chairman McKenzie.
- HCR 29** A House Concurrent Resolution to recognize the Idaho Public Utilities Commission (PUC) presented by Representative George Eskridge.
Representative Eskridge said that on May 8, 1913, the PUC was created to regulate Idaho's investor-owned electric, natural gas, telecommunications and water utilities in order to ensure adequate service at just, reasonable and sufficient rates. **HCR 29** provides for recognition of the history and achievements of the PUC on its 100th anniversary.
- MOTION:** **Senator Lodge** moved to send **HCR 29** to the Senate floor with a **do pass** recommendation. **Senator Werk** seconded the motion. The motion carried by **voice vote**. **Chairman McKenzie** will carry **HCR 29** on the Senate floor.
- RS 22307C1** Relating to Initiative and Referendum Elections presented by Tim Hurst, Chief Deputy, Secretary of State's Office.
Mr. Hurst stated that this is a trailer bill to S 1108 to address a concern that arose during the hearings on that bill. Page 2, line 36 of the bill eliminates the requirement that the petitions must be circulated by legislative district. The petitions will be circulated by county and the county clerk will determine which legislative district that person lives in. That information will be recorded in the voter registration database and the required certificate will be attached. It has nothing to do with the six percent requirement, it only means the petitioners won't be carrying multiple signature boards.

Senator Stennett asked if the burden was on the county clerks to determine the legislative district. **Mr. Hurst** responded affirmatively. When the county clerk verifies the signatures, they can also view the legislative district which is listed right beside the signature.

Senator Werk raised questions on three issues:

- 1) People will still have to track signatures to ascertain the six percent.
- 2) Presuming there is a deadline, what is the time frame?
- 3) Are there associated issues with validating the signatures?

Mr. Hurst responded that referendum petitions can be checked throughout the process so timing is not an issue. The Secretary of State's Office can tell how many petition signatures have been gathered in each of the legislative districts and that data would be available within a day.

MOTION: **Senator Davis** moved to send **RS 22307C1** to be printed, assigned a bill number and have a committee report prepared sending it directly to the floor with a **do pass** recommendation without coming back to the Committee. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**. **Chairman McKenzie** will carry **RS 22307C1** on the Senate floor.

H 90AA Relating to the retail sale of liquor by the drink licensing presented by Captain Charlie Spencer, Idaho State Police.

Captain Spencer explained that **HB 90aa** cleans up the Idaho liquor licensing statute to clarify the transferability of certain licenses as well as to number the paragraphs in 23-903. The basis of this bill is to clarify that there are some specialty licenses that must stay with that specific facility but can be transferred to a new owner of that facility. **Captain Spencer** deferred to Pam Eaton who is representing the Idaho Lodging and Restaurants Association, to answer any further questions.

Senator Werk asked if the amendments to this bill are a substantial alteration in current policies and statutes relating to liquor licenses. **Ms. Eaton** responded that it does not.

Senator Hill noted that they have not heard **H 90** so they need to know about that bill before getting to **H 90aa**.

Ms. Eaton reviewed **H 90aa** step by step because **H 90** did not address the original intention. She explained that in 2002, when legislation was drafted to add a specialty license, some language was put at the end of the entire section of the liquor by the drink statute that said licenses could not be sold or transferred. The intent of the language was that specialty licenses were nontransferable. However, the location of that language meant that all licenses would be nontransferable which included the basic liquor by the drink licenses and those have always been for sale and transferable. The error came to light during the 2012 session along with the realization that, if the statute was enforced, all liquor licenses would not be saleable or transferable.

Senator Davis reiterated, step by step, subpart by subpart for both subpart (1) and subpart (2), the changes that would make it clear what **H 90aa** meant. **Ms. Eaton** agreed with his explanations or, where necessary, clarified and further defined them.

Senator Davis emphasized that the intent of the 2002 legislature was only to restrict the ability to transfer a specialty license and was not intended to apply to what is now subpart (1); the concern is that the language is being construed to apply to licenses under subpart (1). **Ms. Eaton** answered that it has not been enforced but it is construed. **Senator Davis** asked if one of the primary purposes of this bill is to provide limitations or restrictions on specialty liquor licenses but to make it very plain that those restrictions do not apply to the licenses under subpart (1). The question

is, do we believe that, as a public policy, there should be a restriction on the ability to transfer specialty licenses and, if so, define what those restrictions are going to be? **Ms. Eaton** agreed.

Ms. Eaton continued to explain that language was inserted on page 4, line 50 and page 5, lines 1 and 2 to say that the traditional licenses in the section may be transferable and that all other licenses in this section, which are specialty licenses, are not transferable except the change on line 2, page 5 which added the language "to any other location, facility or premise." This clarified that the license could be transferred between owners at the same property but the license could not be moved somewhere else.

Other clean-up efforts removed any existing nontransferable language in those individual subparts for each specialty license. This language is not needed since the language in subpart (12) applies to all specialty licenses.

TESTIMONY: **RaeLeen Welton**, Idaho License Beverage Association, testified in support of H 90aa.

Senator Lodge asked if the quota system licenses in subpart (1) will be more valuable since they can continue to be sold. **Ms. Welton** confirmed that quota system licenses are transferable.

Senator Davis referred to page 4, subpart (12), with two issues:

1) How are sections 23-910 and 23-904 relevant?

2) Why wasn't the exception language put into its own subpart (13)?

Ms. Welton deferred to Russ Westerberg.

Mr. Westerberg, Hagadone Corporation (hospitality), responded that 23-904 pertains to the background check which every liquor license holder must pass. The sale of a new property with a specialty license can only transfer that license with the condition that the new owner must pass the background check just as everyone else does. Section 23-910 refers to the fees that go with those licenses and, currently, those fees are the same as for golf courses.

Mr. Westerberg also addressed Senator Lodge's question on the value of the licenses. **H 90aa** adds nothing to the value of the quota licenses that have always been there by common understanding. There was a codification error in 2002 putting that nontransferable language at the end of the section. The removal of that language maintains the value but doesn't add any value.

MOTION: **Senator Werk** moved to send **H 90aa** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**. **Chairman McKenzie** will sponsor **H 90aa** on the Senate floor.

H 176

Relating to Absentee Voting presented by Representative Kathy Sims.

Representative Sims explained that **H 176** amends section 34-1001, voting by absentee ballot. It defines the terms and voting requirements for the overseas elector as set forth under section 34-107.

Section 34-107 defines a resident as one who has a principle, primary place of habitation with the intent to remain there although, sometimes absent. If that resident has moved to another state or territory with the intention of making it permanent, he or she shall lose residency in Idaho. The intent of **H 176** is to clarify that someone with dual citizenship does not qualify as a resident under 34-107 but they are allowed to vote in federal elections. Military personnel, students or missionaries can vote in all elections. This bill clarifies for county officials, that dual citizenship voters should only receive a Uniformed and Overseas Citizens Absentee (UOCAVA) ballot.

Senator Stennett asked why those absentee residents should not have a vote in local entities when they contribute to the community as property owners and, as such, pay taxes that support the community? **Representative Sims** stated that, according

to current code, they must qualify as a resident to vote. This bill does not change definitions, it just clarifies to the clerks the code definitions that dual citizens should only receive the UOCAVA ballots.

Senator Werk asked, if this bill is passed, would there be a need for separate ballots for those overseas electors and how many voters would this affect? **Representative Sims** agreed it would require separate ballots but could only answer for her area along the Canadian border and that would be about three dozen. **Senator Werk** quoted the fiscal note as having no fiscal impact to the state; but, there would be a cost to the county to provide separate ballots. **Tim Hurst**, Secretary of State's office, stated that the county actually prints the ballots and there would be some additional costs but there are so few of them required, cost would be minimal.

Senator Werk referred to the "snowbirds" and asked how these provisions would affect those people who have primary residences in more than one place. **Representative Sims** responded by quoting 34-107 and said that the resident would have to decide and identify which is the permanent residence. **Senator Werk** asked about a person who was out of the country for ten years but had every intention of returning. **Representative Sims** again quoted 34-107 and noted the reference to the intention to return regardless of the length of the absence.

MOTION: **Senator Davis** moved to send **H 176** to the floor with a **do pass** recommendation. **Senator Winder** seconded the motion. The motion carried by **voice vote**. **Senators Stennett** and **Werk** were recorded as voting no. **Senator Nonini** will carry **H 176** on the Senate floor.

H 120AA Relating to the Idaho State Lottery presented by Representative Lynn Luker. **Representative Luker** explained that **H 120aa** would restrict the use of credit and debit cards for the purchase of lottery tickets through customer operated machines but would allow the use of debit cards for over-the-counter retail purchases of lottery tickets. Idaho has a constitutional provision that prohibits gambling with three exceptions: para-mutual racing, bingo and charitable gaming, and the government operated lottery. The purpose of the lottery is to accumulate educational funding but it must be balanced against the prohibition against gambling.

A study by Professor Earl Grinols, Baylor University, identified nine hidden costs related to gambling. (See Attachment I) Other studies have projected the same costs both in dollars and social costs. The National Council on Problem Gambling noted that two and one-half percent of American adults are problem gamblers which is almost equal to alcohol abuse. An article by an economist, George Logenstein, in the September 11, 2008 issue of the Scientific American provided some insight on using "plastic" versus cash.

Senator Davis said that if this became law, it would not be possible to buy gas, a donut and a lottery ticket with a debit or credit card on one transaction. The lottery ticket must be purchased with cash. **Representative Luker** said that was partially correct. If a debit card is used, it is considered as cash. The credit card could not be used for the purchase of the lottery ticket.

Representative Luker stated it is the State's obligation to protect against social costs and allow the lottery to continue to operate. That is the purpose of this bill.

TESTIMONY: **Jonathan Krutz**, a Board Member of both the Stop Predatory Gambling Foundation and Stop Predatory Gambling Idaho, testified in support of **H 120aa** and submitted a copy of his testimony in writing.

Grant Ipsen, Member of the National Board of Directors, Stop Predatory Gambling and the current President of the Idaho Chapter, spoke in support of **H 120aa** and submitted a copy of his testimony in writing.

Pam Eaton representing Idaho Retailers Association, testified in opposition of **H 120aa**. **Ms. Eaton** stated that the lottery is a legal product that the legislature has authorized and credit cards are legal tender. This bill allows government to tell retailers that they can no longer accept this legal tender in payment of this legal product. Currently, many retailers do not accept credit cards for lottery tickets because the purchases are smaller than the fee the retailer would pay on the credit card transaction. However, they do allow lottery tickets to be purchased with credit cards in conjunction with other purchases. The retailer wants to keep the line moving at the cash register. Adding the additional transaction will slow those lines down.

Ms. Eaton was not denying the problems as seen in the studies with gambling; but, it is not necessarily lottery. Many people are occasional lottery purchasers and if they have to do a separate transaction, it is not important to them so they will not buy a lottery ticket. The state will lose a lot of money that goes to fund the schools. This will not stop the problem gambler.

Senator Hill asked if there is a sign on the door that says the retailer will accept credit cards, can they deny a credit card purchase of a lottery ticket. **Ms. Eaton** stated they can put a limit on the lowest amount they would allow for a credit card transaction as long as it was posted at the cash register.

Jeremy Chou, Givens Pursley LLC, representing Intralot U. S. A., Inc. who is a vender for the lottery and manufactures some of the customer operated machines. **Mr. Chou** noted that many of the reports referred to have to do with casino gambling not lottery. The average purchase for lottery tickets here is \$3.

Mr. Chou recognized that there is a preference to hold the line as far as the lottery goes. This legislation creates new restrictions for the lottery and it also restricts the machines. The lottery machines currently do not accept credit or debit cards and there is no intention to do so. They would propose that an amendment be considered to remove the restriction on the use of credit cards for retailers.

Suzanne Budge, SBS, representing the Idaho Petroleum Marketers & Convenience Store Association, testified in opposition to the bill. The confusion between debit and credit cards has been heightened by the federal settlement and lawsuits that are at issue nationally. Many of their members deny credit and debit cards for lottery, especially when it is a lottery only purchase and she echoed Ms. Eaton's comments and concerns.

Senator Werk inquired if there was anything that was not working with the current system? **Ms. Budge** stated it is up to the individual merchant to determine when circumstance open opportunities to provide a convenience for the consumer; that is what the retailer wants to do. As a matter of fact, the transaction can be made once you get cash back.

MOTION: **Senator Davis** moved to send **H 120aa** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion.

SUBSTITUTE MOTION: **Senator Werk** made a substitute motion to send **H 120aa** to the 14th Order for possible amendment. **Senator Stennett** seconded the motion. For lack of a clear voice vote, **Chairman McKenzie** called for a roll call vote. Senators Davis, Fulcher, Hill, Winder and Siddoway voted nay. Senators Lodge, Stennett and Werk voted aye. The substitute motion failed.

Chairman McKenzie called for the vote on the original motion to send **H 120aa** to the floor with a **do pass** recommendation. The motion carried by **voice vote**. **Senator Mortimer** will carry **H 120aa** on the Senate floor.

RS 22324

Relating to the Capitol Mall garage project presented by Senator Winder. **Senator Winder** stated that **RS 22324** concerns the construction of the parking garage which is time and money sensitive. Bonds have been issued and there is a significant delay that is occurring within the city process along with some associated appeals. The intent is not to exercise a nuclear option but to provide for a backup in an emergency. Meanwhile, the Department of Administration and the Legislative Service Office are encouraged to continue to work with Boise City toward a timely resolution. If the time arrives that the project will be jeopardized or the funding is at risk, this legislation will allow the Building Authority to preempt the city's planning and zoning oversight.

Senator Stennett asked for clarification on jurisdiction. **Senator Winder** said this applies to state owned property only, and would exercise the supremacy of the state over its own property. **Senator Stennett** asked if this bill prohibits our ability to manage services around or to the Capitol Mall. **Senator Winder** said it did not. It is related to timing issues that are delaying the construction of the parking facility. It wouldn't impact public or private utility services.

Senator Werk emphasized that this is an exemption from all local planning and zoning ordinances; that would include all access and egress onto public areas so it would include everything about a structure on the Capitol Mall. Would the Capitol Mall be outside the control of any local agency regardless of the issue i.e., safety or design issues. **Senator Winder** responded that it doesn't exempt the safety issues or access issues to the public rights-of-way that are under the jurisdiction of the Ada County Highway District (ACHD); that is not the intent of the proposal.

Senator Werk commented that the parking garage and the curb cuts providing access and egress would be on state property; ACHD would control the roads. **Senator Winder** responded that ACHD property would have to meet the requirements of the curb cut design, standard of distances and related safety issues.

MOTION:

Senator Fulcher moved to send **RS 22324** to print. **Senator Winder** seconded the motion. The motion carried by **voice vote**. **Senator Werk** was recorded as voting no.

RS 22336

Relating to Abortion presented by Senator Fulcher.

Senator Fulcher noted that this bill is coming from the Attorney General's office and is intended to make some technical corrections and coding updates to code that was enacted in 1973. It addresses some constitutional challenges that were raised in some recent litigation.

MOTION:

Senator Hill moved to send **RS 22336** to print. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**. **Senator Werk** was recorded as voting no.

ADJOURNED: **Chairman McKenzie** adjourned the meeting at 9:50 a.m.

Senator McKenzie
Chairman

Twyla Melton
Secretary