

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Friday, March 27, 2015

TIME: 8:00 A.M.

PLACE: Lincoln Auditorium - WW02

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Lodge, Senators Davis, Hill, Winder, Siddoway, Lakey, Stennett and Buckner-Webb

ABSENT/ EXCUSED: None

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 8:04 a.m.

RS 23923 **A Senate Concurrent Resolution Approving and Extending Temporary Rules.**
Dennis Stevenson, Administrative Rules Coordinator, stated **RS 23923** approves and extends state agency temporary rules beyond the current Legislative Session. .

RS 23924 **A Senate Concurrent Resolution Approving Rules that Impose a Fee or Charge, with One Exception.**
Dennis Stevenson, Administrative Rules Coordinator, explained that **RS 23924** approve pending agency rules that have fees and charges, with one exception, that were submitted for review during the 2015 Legislative Session and which shall be in full force and effect upon the adoption of this concurrent resolution or upon the date specified in the administrative rule.

MOTION: **Senator Siddoway** moved to print **RS 23923** and **RS 23924**. **Senator Buckner-Webb** seconded the motion. The motion carried by **voice vote**.

RS 23920 **A Senate Concurrent Resolution from the Commerce and Human Resources Committee Rejecting Certain Rules of the Department of Administration.**

MOTION: **Senator Winder** moved to print **RS 23920**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

H 219 **Relating to Elections to Provide that all Relevant Information Relating to Bond Elections is Placed on the Ballot.**
Representative Mendive stated this bill simply ensures that all relevant information related to an election question will be presented to the voter.
Chairman McKenzie asked if the counties use a font size large enough for voters to read. **Representative Mendive** said that all they would need to do was place the verbiage for the levy on one side of the ballot and the bond issue on the backside.

MOTION: **Senator Siddoway** moved to send **H 219** to the floor with a **do pass** recommendation. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

H 212 **Relating to Elections to Address Procedural Issues in the Election Laws of the State.**

Tim Hurst, Chief Deputy, Secretary of the State, stated this bill deals with election procedures. The main section defines the electronic poll book and authorizes the use of the electronic poll book at the polls. **Mr. Hurst** explained how the system works from the time the poll worker enters the voter's name until the election consolidation. **Mr. Hurst** went through the bill explaining the changes in each section.

Senator Davis asked if the language in this bill would affect the judicial qualification bill. **Mr. Hurst** explained that when he spoke to the Idaho Supreme Court they did not see a problem. There would be a trailer bill to fold it all into one bill.

Senator Davis said that he had received some concerns from the court. **Mr. Hurst** indicated he had spoken with Judge Wood, and they went over the two bills and found no conflicts. **Chairman McKenzie** advised that if there is a conflict, there may be a similar issue with respect to the ethics and open government laws. The conflict would exist if changes are being made to the same code section. A trailer bill may have to be passed to fix the subsection numbering. **Senator Davis** explained that when he spoke to Judge Wood there was still some concern that these two acts might create a statutory problem.

Senator Stennett inquired if there was a threshold where an automatic recount would occur when a small margin between the votes occurred. **Mr. Hurst** answered that an automatic recount is always requested.

Senator Siddoway asked if the electronic poll book could have security issues. **Mr. Hurst** replied he did not believe there would be security issues because the electronic poll book has to be certified by the Secretary of State. The precincts have been using this process at early voting and found no issues.

Phil McCrane, Chief Deputy Clerk, Ada County, advised that the electronic poll book issue in this legislation is important to most of the larger jurisdictions. When they consolidated elections a few years back it was a good policy decision which made it easier for the voters, but it became more complicated for the clerks administering the election. **Mr. McCrane** explained that in a consolidated election, precinct boundaries do not match city boundaries. The election workers have difficulty judging which voter gets which ballot, and that introduces the opportunity for error. A cost-benefit analysis was done comparing the accuracy of administering an election using paper versus a laptop polling book. Accuracy was a benefit of the laptop polling book. There are times when the right side of the street is in one precinct and the left side will be in another precinct. In Ada County laptops have been tested at the polls over the last few election cycles and have been successful in giving voters the correct ballot and getting them to the right polling locations.

Senator Stennett asked if the laptops were on a dedicated, secure line. **Mr. McCrane** explained that the statewide voter registration system is on a closed network. The data is uploaded directly to the computers and then the laptops are taken to the precincts; they will not be using wireless.

MOTION: **Senator Davis** moved to send **H 212** to the floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

H 213 **Relating to Public Library Districts to Revise Provisions for Annual Meetings and for the Oath of Office.**

Mr. Hurst stated that this bill establishes that library districts must have an annual meeting in June each year.

MOTION: **Senator Buckner-Webb** moved to send **H 213** to the floor with a **do pass** recommendation. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

H 214 Relating to the State Sunshine Law to Clearly Define a "Non-business Entity" and its Requirements and to Prohibit Contingent Fee Lobbying of Executive Officials.

Mr. Hurst explained that this legislation amends the Sunshine Law to more clearly define a "non-business entity." Under the current definition you must look at the receipts in the prior two years; that could create a problem if someone wanted to created a non-business entity during the current year. This will catch any newly created non-business entities. Section 2 addresses the requirement to report expenditures. Any non-business entity who makes expenditures directed to voters in Idaho must report its expenditures.

Chairman McKenzie asked if the non-business entity must report its expenditures, would it be only those spent in Idaho. **Mr. Hurst** answered in the affirmative.

MOTION: **Senator Siddoway** moved to send **H 214** to the floor with a **do pass** recommendation. **Senator Buckner-Webb** seconded the motion. The motion carried by **voice vote**.

H 216AA Relating to Elections to Add a New Section to Idaho Code Clearly Identifying the Process, Time Frame and Responsibilities for a City Initiative and Referendum.

Mr. Hurst advised that this bill adds a section to Title 34, Chapter 18 of the Idaho Code clearly identifying the process, time frame and responsibilities for city initiative and referendum.

Senator Davis questioned line 43, page 2, regarding the phrase "of odd-numbered years". **Mr. Hurst** answered that the reason is that county elections are in even-numbered years and city elections in odd-numbered years. Having initiatives and referendums occurring in odd-numbered years would allow for an increase in citizen participation.

Justin Ruen, Association of Idaho Cities, spoke in support of **H 216aa** stating that current law on city initiatives and referendums is complicated. It requires the cities to follow the same initiative and referendum process as the State's initiative and referendum law in Title 343, Chapter 18. However, cities are also required to have their own ordinance that will further specify the procedures. Most smaller cities have not adopted an ordinance or have ordinances that are out of date. Cities normally become aware of this when a petition for an initiative or referendum begins circulating in the community and the city is forced to adopt or amend their ordinance. A better alternative is to have a clear, consistent state law that provides procedures that all cities would need to follow. It would nullify the need for each city to have its own ordinance.

MOTION: **Senator Winder** moved to send **H 216aa** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

H 242 Relating to Elections to Revise Provisions and Procedures when an Automatic Recount in an Election Occurs.

Mr. Hurst advised that **H 242** is a trailer bill to **H 212** which states that anyone who is seeking a recount under Section 34-2309 would file with the appropriate officer. For city, county, state and federal office they would file at the Attorney General's office. For any other office, they would file with the county clerk.

MOTION: **Senator Siddoway** moved to send **H 242** to the floor with a **do pass** recommendation. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

Relating to Concealed Weapons to Repeal Section 18-3302 Regarding the Issuance of Licenses to Carry Concealed Weapons and Add a New Section 18-3302 to Provide Clear Guidance on Rights and Restrictions.

Dakota Moore, Idaho Spokesman, National Rifle Association (NRA), stated that this bill will reform the Idaho concealed weapons licensing provisions in Idaho Code § 18-3302 that was enacted in 1990 regulating the carrying and licensing of concealed weapons. Soon after its passage, an Idaho sheriff requested that the Attorney General intercede to block this bill from being enacted on a constitutional basis. The sheriff's request led to a Deputy Attorney General's opinion that § 18-3302 is unconstitutional because it will force a person of common intelligence to guess whether or not they will be in violation of the law.

Since its adoption, § 18-3302 has been amended nearly 20 times. This resulted in a statute that was originally difficult to understand being even more convoluted. The purpose of **H 301** is to recodify existing law in a manner that provides Idaho residents and law enforcement with clear guidance on the Idaho concealed weapons licensing statute. The NRA believes that this rewrite accomplishes the State's goals in four major ways:

1. **H 301** provides clear definitions for commonly used words.
2. This bill places statutory provisions in a list format as opposed to the burdensome paragraph format that is currently used.
3. The proposed rewrite seeks to clarify provisions pertaining to carrying concealed weapons outside the limits and confines of any city.
4. The legislation seeks to lower concealed weapons licensing (CWL) fees and enhanced concealed weapons license (ECWL) fees by providing that sheriffs can only charge \$20 plus the actual cost of administering the license.

Definitions in the code are necessary to provide notice to citizens and law enforcement of the conduct that is being regulated.

Senator Stennett asked for clarification of the definition on page 2, Section 3, "outside the limits of or confines of any city." What about malls, truck stops and stadiums which might be outside the city limits but are still in dense populations.

Mr. Moore replied that this language is in the existing code along with § 18-3302, Subsection 9 and 12d. Carrying a concealed weapon without a license would be permitted in malls, truck stops and stadiums which are outside the city limits.

Senator Stennett asked why city officials and Legislators are not held to the same standards as the general public. **Mr. Moore** answered that a previous bill removed the exception, but a policy decision was made in the House to allow city officials and Legislators to carry a concealed weapon without a license.

Senator Stennett stated when investigating the CWL license fees she could not find a fee over \$100. Why would this amount be so onerous that this new legislation is dropping the fee to \$20? **Mr. Moore** answered that the statute allows the sheriff to collect \$20 in the current law and then allows the sheriff to collect fees for administering the license within the county. For example, Ada County charges \$64. Some of the rural counties have charged in excess of \$100. This is an issue of consistency. Why would one county need to charge \$40 more than another?

Senator Stennett referred to page 5, (m)(i) dealing with withheld judgement or a set aside. It appears that an individual is able to potentially carry after being charged with a felony. **Mr. Moore** advised that the language on page 5, (i) under Subsection 11 (m) is addressed on page 13, Section 6 which regulates the unlawful possession of a firearm. This language is very similar to how federal law reads. Federal law 18 USC § 9-21, 20 (a) provides a definition. **Mr. Moore** explained the court cases that vindicate the reasoning behind the drafting of this portion of the bill.

Senator Stennett questioned the set aside portion. What happens if an individual has been deemed a criminal but that conviction has been put on hold or set aside? **Mr. Moore** explained that in all the states that he is familiar with, a withheld judgement determination does not preclude an individual from getting a license because it is not subject to a federal or state law prohibition.

Testimony in opposition to H 301:

Michael Kane, representing the Idaho Sheriffs' Association, Idaho State Police, and Idaho State Prosecutors Association, stated a week ago the Sheriffs' Association adopted a neutral stance on **H 301** until it was pointed out that a new policy of withheld judgements was incorporated into the bill language on page 4, Section 11, line 41. If an individual has plead guilty or been found guilty of a felony that individual may open carry but is not entitled to carry a concealed weapon. This has been law in the state for 25 years. Page 5, lines 29 through 43, means that when a defendant goes to court on a felony charge they are expected to either plead guilty or not guilty. A withheld judgement still requires significant probation and jail time. When their judgement time is up, the defendant can go back to court and the judge can set aside the guilty plea.

The language of **H 301** allows the defendant who has been adjudicated guilty of certain felonies to have the ability to get a CWL if they have their guilty plea set aside. **Mr. Kane** referenced the Idaho Supreme Court handout which lists the felony withheld judgements that were issued. There were 914 in 2013 and 694 in 2014 (see attachment 1). This document shows all manner of crimes such as burglary, drug dealing, theft, robbery and domestic violence that have had withheld judgements. These defendants will be able to apply for a CWL. Law enforcement strongly urges the Committee to adopt the proposed amended language (see attachment 2).

Senator Hill stated that the wording in **H 301** is that the guilty plea or adjudication has to be nullified by setting aside. Are there set asides that cannot be nullified? **Mr. Kane** responded no. **Senator Hill** stated that the terms setting aside and withheld judgements have been used interchangeably. **Mr. Kane** clarified that when a defendant receives a withheld judgement under Idaho Code §19-2604, the judge will sentence the defendant to a certain time in jail and set the time and terms of probation. When the jail and probation time has ended and the defendant does everything correctly, the judge will set aside the guilty plea which is the terminology used in statute. **Senator Hill** asked if all of these judgements shown in the graph were set aside. **Mr. Kane** responded that the graph does show the withheld judgements, and they are in the court system to be set aside. If you extrapolate backwards with 600 per year there would be thousands of individuals that have received withheld judgements for all kinds of felonies who would be able to get a CWL.

Senator Davis asked **Mr. Kane** if he was able to find any case law that possession and concealed carry were the same. **Mr. Kane** answered that he had looked for any federal cases that ruled on both withheld judgements and concealed carry. He was unable to find any cases.

Senator Lakey asked how many of the defendants listed on the graph successfully completed their sentencing. **Mr. Kane** stated that for 2013 and 2014, the judgements were granted. **Senator Lakey** asked the process that the judge goes through to grant a withheld judgement and determine whether the defendant will have their civil rights restored. **Mr. Kane** answered that civil rights are restored automatically at the end of probation even if there is not a withheld judgement or if the defendant had gone to prison and then was on parole.

Senator Lakey requested clarification on the judge's process to determine whether to grant a withheld judgement and then to determine the setting aside of the conviction. **Mr. Kane** stated that a judge will then order a presentence investigation and take information from all sources including the prosecutor's recommendation. All that information will feed into the judge's decision for disposition. The judge can send the defendant to prison, place them on a suspended sentence with probation or grant a withheld judgement. The withheld judgement is the lightest sentence and encourages the defendant to do everything right and demonstrate that they are rehabilitated then the judge can set aside the original guilty plea.

Senator Lakey asked Mr. Kane to focus on what the judge considers for a withheld judgement and a plea to set aside. **Mr. Kane** stated that the judge has a list of things to look at which can include family history, drug abuse, alcohol assessment, the nature of the crime, and information that was received from the victims and prosecutors. Then the defendant can be tested for various things. It is a discretionary decision on the part of the judge. **Senator Lakey** asked what the process would be for an expungement. **Mr. Kane** answered that, in his career, he has not seen an expungement happen without granting a pardon with the expungement. **Senator Lakey** asked if an expungement would be another act of judicial discretion. **Mr. Kane** replied in the affirmative.

Senator Hill asked when the language was drafted in this legislation, was it their intent to expand the ability of individuals to qualify for a CWL. **Mr. Moore** stated that it was not the intent of the sponsors to expand the ability to qualify for a CWL.

Jeff Lavey, Chief of Police, Meridian, Idaho, representing the Idaho Chief of Police Association (ICOPA), advised that on page 8 of the legislation, dealing with threatening violence on school grounds, the wording is quite specific that the threat must occur on school grounds. There are many threats occurring in schools, and police departments are expending resources only to find that they cannot charge individuals because of this definition.

Aleshea Boals, Victim Witness Coordinator with the Canyon County Sheriff's office, stated she has assisted victims of violent crimes for the last 17 years. She explains to victims that laws are created by the Legislature. Many of the victims she advises are middle class women involved in domestic violence in their homes. These victims want to know that there are laws that protect them. **Ms. Boals** wants to be able to tell victims that law enforcement understands that they are in danger and they will continue to do all in their power to keep them safe.

Leslie Madsen-Brooks, representing herself, stated permitless carry is not only a Second Amendment issue, it is a public health issue. The original ban on federally funded gun violence research emerged when the NRA lobbied the U.S. Congress to stop funding any research whose conclusions might be used to support common sense gun control measures. **Ms. Madsen-Brooks** referenced statistics that it was 43 times more likely that a gun in the home would kill one of the members of that home. This bill will increase gun violence intentionally or through negligence.

Claude Beagarie, a member of Idaho Chapter of Moms Demand Action for Gun Sense in America (MDA), stated that MDA is for gun safety and is the nation's largest gun violence prevention organization. It is common sense to require people who carry hidden guns in public to have a clean criminal record and basic safety training. That is why Idaho, like nearly every other state in the country, requires a permit to carry a concealed handgun. This legislation would eliminate the permit requirement in virtually the entire State; it should be rejected.

Dolores Aragon, Chapter Lead, MDA, spoke of her concerns for the safety of families and communities whether in rural or urban areas. If passed, **H 301** would allow individuals to carry concealed weapons outside the city limits without any permit or firearms training. This undermines the common sense rule that individuals carrying concealed weapons in public should have a clean criminal record and basic safety training. According to the U.S. Census Bureau less than one percent of the total area of the State is contained within the city limits. Should individuals with no firearms training be allowed to carry concealed handguns in public throughout the vast majority of Idaho? She asked the Committee to please vote no on this bill.

Robert Spencer, hospital chaplain, stated he was a strong believer in peace and justice for all but has strong concerns about **H 301**. It is imperative to license, control and educate guns in both rural and city areas. Much of Idaho remains outside of cities. A large number of citizens are permitted to carry a concealed weapon. The permit system ensures that core public standards are observed. Gun ownership should require training and follow-up support to ensure safety. For the safety of all Idahoans please reject this bill.

Jill Kuraitis, representing herself, stated she has been around family that has been taught the appropriate use of weapons all of her life. **Ms. Kuraitis'** said her concerns with the bill are: 1) licensing should encompass regulation, training and qualifications of fire arms; and, 2) there are some individuals who should not own guns.

Mr. Moore made four points in conclusion:

1. There is nothing in this bill that will allow a person to have a firearm who is prohibited under state or federal law from such possession regardless of where they are located in the State.
2. There is no language in this bill that changes the current law with regard to domestic violence. Subsection 6 of the bill includes a provision that allows victims of domestic violence to show cause to a sheriff or obtain a temporary emergency license to defend themselves from domestic abusers.
3. No language in the bill changes the school threat in § 16-3302(i).
4. Subsection 9 in current law says that it is lawful to possess a loaded handgun in a vehicle outside city limits or while engaged in trapping, hunting, fishing or any lawful outdoor activity.

H 301 is not attempting to do anything other than create a clear code to amend what was first done in legislation in 1990 with the additional 20 amendments. This dated legislation is no longer sufficient to allow individuals in Idaho to be able to make determinations of lawful conduct. The legislation is attempting to simplify the law.

MOTION:

Senator Davis moved to send **H 301** to the floor with a **do pass** recommendation. **Senator Hill** seconded the motion.

Senator Davis elaborated on the testimony he had heard concerning bullying and victim's rights, and this bill does not deal with those issues. This bill appears to be a restatement of Idaho's policy. **Senator Davis** looked at current code and compared it to the language that is troubling to law enforcement, he didn't see the structural legal difference in the language. This bill is only to rewrite existing policy, not reconsider it. This is not a repeal of the concealed weapons statute, and for that reason, he will be supporting the motion and the legislation.

**SUBSTITUTE
MOTION:**

Senator Stennett moved that **H 301** be held in Committee. **Senator Buckner-Webb** seconded the motion.

Senator Stennett said that this bill alters Idaho's conceal carry permitting system. To let people carry concealed weapons outside of the city limits without a permit or any safety training is problematic considering that less than one percent of the State is found within the limits of an incorporated city. This opens the State up to densely populated situations such as malls, truck stops and stadiums. All state officials should be held to the same standard as the general public. For these reasons, she cannot support the motion and prefers that the legislation remain in the Committee.

Senator Buckner-Webb stated that her areas of concern with the bill were: 1) no firearms training; 2) the impact to victims of domestic violence and 3) violent criminals having access to guns.

Senator Hill stated that the Legislature and Mr. Moore have not clarified to the public what **H 301** does not do. The consequences of holding this legislation in Committee would mean that the State will be governed by the old law which will not accomplish what some Legislators would like to see. Setting aside was brought up by the maker of the substitute motion, and he was troubled by that language at first. He does not want to make gun access easier for violent people in the State. This same language is in other parts of the statute, including parts of the statute that the Committee is striking. Finally, he is not in favor of the language in the bill for the exclusion of government officials, but it is already a portion of the existing law. It would be inappropriate to reject good changes because the sponsor did not address additional changes that this Committee would like to see. He will not support the substitute motion.

Senator Lakey stated that he disagrees with the language in existing law that a public official can carry without a permit. He believes that public officials should not be treated any differently than the general public. He will support the original motion.

Vice Chairman Lodge thanked Senator Davis for his explanations on setting aside, because she is concerned about that language in the bill. She stated her confidence that Idaho's law enforcement and prosecutors would let the Legislature know how **H 301** is working within this next year, and if there are problems changes can be made. **Vice Chairman Lodge** will support the original motion.

The substitute motion failed.

**ORIGINAL
MOTION:**

The motion to send **H 301** to the floor with a do pass recommendation carried by **voice vote**.

**DOCKET NO.
11-0402-1401**

Rules Governing Simulcasting - page 3

Chairman McKenzie explained that these are the rules related to instant horse racing or historical horse racing. The House voted on the bill yesterday. The House approved rejecting that provision of the code related to instant horse racing. A motion may be consistent for this Committee to reject the rules because of that bill's passage.

- MOTION:** **Senator Hill** moved to reject **Docket No. 11-0402-1401**. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**. **Vice Chairman Lodge** requested that she be recorded as voting nay.
- MINUTES APPROVAL:** **Senator Winder** moved to approve the Minutes of February 9, 2015. **Senator Hill** seconded the motion. The motion carried by **voice vote**.
- MINUTES APPROVAL:** **Senator Hill** moved to approve the Minutes of February 20, 2015. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.
- MINUTES APPROVAL:** **Vice Chairman Lodge** moved to approve the Minutes of February 25, 2015 and March 11, 2015. **Senator Buckner-Webb** seconded the motion. The motion carried by **voice vote**.
- MINUTES APPROVAL:** **Senator Siddoway** moved to approve the Minutes of February 27, 2015. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.
- MINUTES APPROVAL:** **Senator Lakey** moved to approve the Minutes of March 2, 2015. **Senator Hill** seconded the motion. The motion carried by **voice vote**.
- PAGE GRADUATION:** **Graduation of Page Joshua Price.**
- Chairman McKenzie** asked Joshua Price to tell the Committee about his experience and how his impression of state government has changed during his page assignment.
- Mr. Price** said this has been a great experience. His brothers also served as pages last year. He was impressed with how much state government does, and it is a lot more than what the public hears about. **Chairman McKenzie** asked about his plans for next year. **Mr. Price** answered that he will be preparing to go on a mission, which will last for two years, and then he intends to go to college at Brigham Young University Idaho (BYUI). **Chairman McKenzie** thanked Mr. Price for his service and flexibility and awarded him with a Senate watch, a letter of recommendation from the Chairman, and a letter of commendation from the Committee for his service.
- ADJOURNED:** **Chairman McKenzie** adjourned the meeting at 10:30 a.m.

Senator McKenzie
Chair

Twyla Melton, Secretary

Carol Deis, Assistant Secretary