

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Monday, March 21, 2016

TIME: 8:00 A.M.

PLACE: Room WW55

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 7:59 a.m. with a quorum present.

VOTE ON GUBERNATORIAL APPOINTMENTS: Vote on the Gubernatorial appointments of L. Daniel Cravens to the Idaho Commission on Human Rights and Grant A. Brackebusch to the Idaho Lottery Commission (both were telephone interviews).

MOTION: **Senator Davis** moved to send the Gubernatorial appointments of L. Daniel Cravens to the Idaho Commission on Human Rights and Grant A. Brackebusch to the Idaho Lottery Commission to the floor with the recommendation that they be confirmed by the Senate. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS 24721 **Dennis Stevenson**, Administrative Rules Coordinator, Division of Insurance and Support, Idaho Department of Administration, explained that the two RSs before the Committee are relatively simple. **RS 24721** is a concurrent resolution that approves all the pending fee rules that have been reviewed by the various standing committees of the Legislature. There were two fee rules rejected in their entirety: Docket Number 11-0501-1501, the Idaho State Police, Alcohol Beverage Control Bureau; and Docket Number 16-0319-1502, the Department of Health and Welfare, Rules Governing Certified Family Homes.

MOTION: **Vice Chairman Lodge** moved to send the **RS 24721** to print. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

RS 24722 **Mr. Stevenson** said that this concurrent resolution approves all the temporary rules and allows them to remain in effect beyond the end of the legislative session. All the fee rules submitted to the standing committees were approved.

MOTION: **Senator Stennett** moved to send **RS 24722** to print. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

H 542 RELATING TO PUBLICATION OR DISTRIBUTION OF POLITICAL STATEMENTS regarding the requirement for communications for certain races.

Representative Greg Chaney, District 10, explained that **H 542** extends the requirement for the "paid for" designation on advertising materials to include a precinct committeeman race. This does not implicate any other requirement under the Sunshine Act. The bill adds the requirement that if advertising materials are being funded, the person or entity responsible must be listed on them. Many years ago, the State took over the responsibility for the conduct of these elections

and precinct committeemen are essentially the judicial council of the Legislature; they select the short list of nominees for submission to the Governor whenever there is a vacancy in the Legislature. **Representative Chaney** stated he coordinated with the Secretary of State's office and the Governor's office in constructing this legislation to ensure it doesn't do more than was intended.

Chairman McKenzie asked if there have been contested precinct races where expenditures were an issue. **Representative Chaney** responded that several mailers were sent out in 2014 in Washington County and it was a large issue for them.

Vice Chairman Lodge asked if the required information would be similar to "paid for by" an entity or person at the bottom of a sign. **Representative Chaney** responded that yes, if there is a sign, a mailer or a door-to-door palm card, the person or entity responsible would be listed. **Vice Chairman Lodge** inquired if this would include party designation. **Representative Chaney** replied that there would not be a requirement to designate party affiliation.

Senator Stennett explained that during a campaign they receive contributions and those contributions are used in a variety of ways; it could be signs or literature. Would those combined individual contributions be divided up percentage-wise and allocated to a particular advertising item or could she just indicate that she purchased that item through her campaign fund? **Representative Chaney** answered that if it was a small expenditure and there was not a need for a formal Political Action Committee (PAC) for distribution, an individual's name would be sufficient.

Senator Stennett gave an example where she had purchased her own yard signs, does she have to change those signs to show that she had paid for them? **Representative Chaney** said that if the signs had been printed without the names, they would need to be modified to show some type of designation; a sticker or marker might be used.

Senator Davis referred to line 17 and the word "candidate." Wouldn't precinct committeeman be considered a candidate? **Representative Chaney** responded that, under this section of Idaho Code, the word "candidate" is pregnant with special meaning and it was Representative Chaney's intention not to invoke or implicate any other requirements under the Sunshine Act; great pains were taken to avoid the word "candidate." **Senator Davis** referred to the definition sections in Title 67, Chapter 66, where it says "candidate means an individual who is taken an affirmative action to seek nomination or election to public office." That is the public office term Representative Chaney referenced. **Senator Davis** said that if they do not do this bill and, under current existing law, is a precinct committeeman a candidate under Title 67, 66-02a? **Representative Chaney** responded "no" because, in that definition section, "public office" is also defined and that definition does not extend to precinct committeemen.

Senator Davis referred to the definition of "public office" which is any State office or position, State Senator, State Representative and Judge of the District Court that is filled by election. Because precinct committeeman is not in that definition, that means that they are not a candidate. Because they are not a candidate, there is no duty for any reporting. Then should precinct committeemen who are involved in an election disclose their own or other entities financial expenditures? **Representative Chaney** responded that was true to a limited degree. If the expenditures are being used to carry a particular message, the source of that message should be available for scrutiny by the voters prior to going to the ballot box.

MOTION: **Senator Winder** moved to send **H 542** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

H 497 RELATING TO LOBBYISTS to provide for reports by certain entities with exceptions.

Tim Hurst, Chief Deputy, Secretary of State's Office, explained that **H 497** is meant to fill a gap in the Sunshine Law between people who register as lobbyists and those who are public agencies or entities. The purpose of the Sunshine Law is to disclose money spent by those supporting or opposing legislation and administrative action. Lobbyists must file reports but public agencies or entities do not. This legislation requires monthly or annual reports from any agency or entity who provides gifts to Legislators. This legislation doesn't change anything they are currently doing except they have to report it. They would not have to register as a lobbyists. The reporting could be in lump sum totals unless it went over \$105 for any one item for one legislator. If it was more than \$105, it would have to be itemized. It is the intent of the bill to capture the expenditures that are being made to do lobbying activities that are not being reported.

Mr. Hurst explained that Senator Davis has requested an amendment to address a problem with lines 9 and 14 of the bill that says "department of state" and "department or state" respectively. There would not be a problem with sending the bill for amendment to change the word "department" to "agency" because the Idaho Constitution refers to three departments of government, not branches of government. The intent is not to have the Legislature report, it is for agencies or entities to report.

MOTION: **Senator Davis** stated his appreciation to Mr. Hurst for making this change. **Senator Davis** moved to send **H 497** to the floor with the recommendation that it be sent to the 14th Order of Business for possible amendment. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

HCR 57 STATING FINDINGS OF THE LEGISLATURE encouraging the flying of the United States and Idaho flags on certain dates.

Representative Linden Bateman, District 33, explained that no other nation on earth is so attached to their flag as the United States of America. Flags appear at malls, businesses and on flagpoles in the yards of the nation's citizenry. **Representative Bateman** told how two German girls staying in their home were amazed at the number of American flags that flew everywhere. America is the only country in the world where people put their hand over their heart when pledging allegiance to the flag. However, we do not often see State flags. They are seldom displayed on a home, mostly on office buildings. This legislation encourages people to fly the State flag. **Representative Bateman** declared that we are citizens of the United States of America and of the Sovereign State of Idaho.

This concurrent resolution urges Idaho citizens to fly the Idaho State flag on Idaho Day, March 4th, and on July 3rd and 4th, and on any other appropriate occasion. **Representative Bateman** presented a picture of Idaho Day on the House Floor where everyone in the picture was wearing blue to honor the Idaho flag (see attachment 1). **Representative Bateman** described the significance of July 3 and how Idaho became a state on that date.

MOTION: **Senator Stennett** moved to send **HCR 57** to the floor with a **do pass** recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

Senator Winder thanked Representative Bateman for his service to the State and his passion for the State's history and children.

RELATED TO BREWERIES to allow persons under 21 years of age to be on the premises of a licensed brewery.

Representative Sage Dixon, District 1, distributed a handout (see attachment 2) and explained that the intent of **H 597** is to create parity between two similar but distinct industries; the wine industry and a growing craft brewery industry. The exemption language to allow minors in the tasting rooms of wineries was created in the late 1990s. **Representative Dixon** provided the history and reasoning behind that change.

Currently there are about 50 craft breweries in the State and an expected 8-10 more in the next year. Those craft breweries are spread out across the State and very often are in small resort areas. They provide a strong local economy; they are generally family owned and hire local people. It is an economic issue to keep these breweries viable and growing. The intent is to add two words into existing language where it says "wine and winery"; "beer and brewery" would be added so that minors would be allowed in the tasting rooms on brewery premises.

Senator Lakey described the few winery tasting rooms he has seen and they seem pretty sedate and focused with a low level of foot traffic. **Senator Lakey** stated that his impression of a brewery is that it would be broader in scope. It was his understanding that the breweries combine their brewery with their pub operations and could have a restaurant. How would activities be focused on limited circumstance versus a brewery/pub combination? The focus language is not apparent. **Representative Dixon** said that there is a clear delineation on the premises and minors would not be allowed in the pub section. There would have to be some sort of barrier.

Chairman McKenzie stated that the breweries he had seen were a part of a restaurant where children were allowed in the restaurant.

TESTIMONY:

Roger Clements, Regulatory Consulting Services, stated that he had retired from the Idaho State Police as a Lieutenant after 31 years of law enforcement experience; the last 11 years as Bureau Chief of Alcohol Beverage Control (ABC). **Mr. Clements** stated he is representing a brewery in McCall, Idaho. **Mr. Clements** described how the business community, laws, regulations, business practices and models, and trends have changed over the past years. The craft brewery industry has changed as it has grown. It is not like a bar and it is not exactly the same as a winery. The majority of the premises are used for manufacturing and brewing beer. It is a huge economic boost to local and the State economies. **Mr. Clements** asked for support of this bill.

Senator Davis referred to Title 23, Chapter 9, Section 902 and 942, that related to definitions. **Senator Davis** could not find "brewery" in those two sections. Is there a definition of brewery in Idaho Code? **Mr. Clements** said that the definition of brewery is in Chapter 10. There are different definitions of breweries and brew pubs. Part of the problem is that some of the breweries have taken the initiative to be primarily a restaurant to get the exemption for minors. The craft breweries do not have that interest or capability.

Senator Davis quoted the definition in subsection 23-1001 that says "as used in this chapter," that is Chapter 10; what happens in Chapter 9? **Mr. Clements** stated that Chapter 9 describes what a place is and it points to liquor by the drink, beer for on premise consumption or wine by the drink. The later chapters are Chapter 10 for beer and Chapter 13 for wine. **Senator Davis** noted that these questions are not intended to be hostile to the bill, only to ensure that the bill does what it is intended to do. **Senator Davis** said he has a definition that applies to Chapter 10 that specifically says it only applies to that Chapter. Where is

the definition of "brewer or brewery" in Chapter 9? **Mr. Clements** stated that there wasn't a need to get the definition of a brewery in Chapter 9 because a brewery could fall under the definition of a "place" since they serve beer for consumption. **Senator Davis** read the definition of "place" from Chapter 9 and asked if it was unfair to the wine industry by not including the definition of winery.

Senator Davis restated Senator Lakey's question: how is "brewer" defined in Title 23, Chapter 9? **Mr. Clements** responded that it is not defined in Chapter 9 nor is winery defined in Chapter 9, but they are defined in Chapters 10 and 13 respectively. That just points to the archaic statutes that need to be rewritten. The main issue is the one paragraph that exempts minors from restrictions to enter or remain on the premises of a winery; that same exception shall be made for breweries. **Senator Davis** asked if an amendment could be made to take the definitions of a "brewery" and/or "winery" from another acceptable statutory location and incorporate them somewhere in subpart 4 in **H 597**. **Mr. Clements** said that would be agreeable if the Committee thought it necessary.

Senator Hill asked if there is anything in **H 597** that would prohibit a brewery from having a pub on the premises where minors would be allowed. **Mr. Clements** responded that there is no such provision at this time. A brew pub is almost always a restaurant. The small breweries do not have restaurant capabilities. **Senator Hill** asked if the change proposed in this legislation grants a brewery the ability to have a pub on the premises where minors would have access. **Mr. Clements** said the change would grant a brewery the ability to have minors on the premises, including access to a tasting room.

Bob Dodge testified in support of **H 597**, stating he was from McCall and is associated with Broken Horn Brewing, which is owned by his son. **Mr. Dodge** outlined the living conditions in McCall as it relates to employment and supporting a family there. McCall is a resort area that attracts a wide range of people of all ages, including families with children. In most cases, a brewery sells a limited amount of beer on the premises; it is only for tasting and then people buy what they want and take it with them. **Mr. Dodge** explained how a tasting room at a winery worked. He said Broken Horn Brewing in McCall functions in the same manner except children are not allowed on the premises as they are for a winery. **Mr. Dodge** stated that the intent of this legislation is to allow tasting rooms on the premises of a brewery and allow minors on those premises.

Representative Dixon said the point of the legislation is to put the draft breweries on par with wineries. Wine tasting is considered an art; brewers desire a similar designation with craft beers. Craft beers promote Idaho by the use of barley, wheat and hops and strengthen those businesses throughout the State.

Senator Winder related that it had been brought to his attention that if the brewery is family owned, the family is very involved. Will this bill allow for an owner of a brewery to have a family member who is a minor on site assisting with the business? **Representative Dixon** answered yes. Presently, they are prohibited from being doing so. **Senator Winder** asked how many of the 50 breweries on the list presented earlier are family owned. **Mr. Clements** yielded to the question and answered that he believed it would be 40-50 percent. In smaller areas, the breweries are more likely to be family owned.

Mr. Clements referred to Senator Winder's first question, stating that even with this legislation, a minor, even if they are a family member, would be restricted from selling or serving beer if they are under the age of 19.

Vice President Lodge asked how many of these breweries brew non-alcoholic beer. **Mr. Clements** said he did not know the answer to that question but that they have the capability of brewing non-alcoholic beer.

MOTION: **Vice Chairman Lodge** moved to send **H 597** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion.

SUBSTITUTE MOTION: **Senator Davis** moved to send **H 597** to the floor with the recommendation that it be sent to the 14th Order of Business for possible amendment. **Senator Hill** seconded the motion.

Senator Davis stated that his intent is not hostile to the legislation. Lines 38 and 39 use the word "premises". "Premises" is included in the definition in Chapter 9, not just in Chapters 10 and 13. In Senator Davis' opinion, the prepositional phrase that follows is intended to "scope it down." The word brewery is an undefined term in any of those chapters although the word brewer is included and it can be logically assumed what a brewery is from that. However, "winery" is a very carefully defined term in 23-1303.

Each of those chapters that Mr. Clements has pointed to limits the definition to the appropriate chapter in both Chapters 10 and 13; neither term is defined in Chapter 9. This is an opportunity to help both the brewery and the winery industries by tying these to specific definitions. That is the purpose of the motion.

Chairman McKenzie asked for the vote on the substitute motion. The substitute motion carried by **voice vote**.

Senator Davis requested that Mr. Clements help construct the language for the amendment. **Mr. Clements** agreed to the request.

HJR 5 PROPOSING AN AMENDMENT TO ARTICLE III regarding legislative response to administrative rules.

Chairman Loertscher explained that this is a vitally important piece of legislation that amends the Constitution of the State of Idaho to provide the Legislature with the ability to approve or reject administrative rules that are not subject to a Gubernatorial veto under Section 10, Article IV, of the Constitution of the State of Idaho.

MOTION: **Senator Hill** moved to send **HJR 5** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion.

Senator Davis alerted the Committee that Joint Rule 20 says that a Joint Resolution proposing an amendment must be introduced on or before the 36th day of the legislative session. It wasn't. The rule also says it has to be transmitted from the house of origin to the other house prior to the 55th legislative day. It wasn't. Both rules have a remedy. The provision of this rule may be waived by the presiding officer of either house upon the presentment of a signed petition by the majority or minority leadership of the house. Unfortunately, neither side did that by the 36th or the 55th legislative day. **Senator Davis** explained that he has a draft letter requesting a waiver Nunc pro Tunc back to last Monday, which was the day the bill was received and introduced. The Committee needs to be aware neither body made the request. *Masons Manual of Legislative Procedure*, page 24, Section 15, subpart 1, says violations of rules of procedure adopted by a house of the Legislature for its own convenience and not required by the Constitution will not impair the validity of a statute. This is not a statute; this is a constitutional amendment. Subpart 3 says that a rule is virtually repealed for the occasion when it is disregarded by those who have power to control it.

Senator Davis stated that it was necessary to let this Committee know and understand the circumstances based on that language, although he doesn't know if it is necessary for either body to provide a letter Nunc pro Tunc. However, the Pro Tem and Senator Davis felt it necessary to make this disclosure to the Committee before it voted.

Chairman McKenzie noted that the disclosure would become part of the minutes.

The motion carried by **voice vote**.

HCR 51

STATING FINDINGS OF THE LEGISLATURE and rejecting certain pending rules of the Idaho Public Utilities Commission (IPUC).

Chairman McKenzie stated that this is a resolution rejecting rules submitted from the IPUC: IDAPA 31-11-01, Sections 202 and 203.

MOTION:

Senator Hill moved to send **HCR 51** to the floor with a **do pass** recommendation. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

**MINUTES
APPROVAL:**

Senator Winder moved to approve the Minutes of February 24, 2016. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

Senator Buckner-Webb moved to approve the Minutes of February 22, 2016. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

Senator Stennett moved to approve the Minutes of February 19, 2016 with one typing correction. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business, **Chairman McKenzie** adjourned the meeting at 9:05 a.m.

Senator McKenzie
Chair

Twyla Melton
Secretary