

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Wednesday, February 01, 2012
TIME: 8:00 A.M.
PLACE: WW02 - Auditorium
MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Fulcher, Senators Davis, Hill, McGee, Lodge, Malepeai, and Stennett
ABSENT/ EXCUSED: Senator Winder

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.

Chairman McKenzie called the meeting to order at 8:01 a.m. with a quorum present. He announced that the only item on the agenda was H 404. The Chairman provided a road map of how the introduction and testimony would proceed to allow as many people to testify as possible in the time frame available.

H 404 RELATING TO THE CAPITOL MALL AND OTHER STATE PROPERTY AND FACILITIES: providing legislative intent; amending **Chapter 16, Title 67, Idaho Code**, for the purpose of adding **Section 67-1613** to prohibit camping on capitol mall properties and other state facilities and defines "camping" in that context.

Senator Hammond initiated his explanation by comparing the difference between unregulated and regulated camping in Idaho's State Parks. Regulation ensures access by all citizens and further ensures preservation for all citizens, current and future, to enjoy the beauty of Idaho. He also pointed out what could happen if a small group of citizens decided to camp out in someone's front yard. Idaho's Capitol Mall is the property of all Idaho citizens and no one group of citizens has the right to seize that property and camp on it over an extended period of time.

Senator Hammond said that this bill ensures that State property is regulated and secured for the appropriate use of all Idaho citizens. This bill makes no provisions to limit or promote protests, vigils, or marches. But it does ensure that when accessing State property, all citizens will be accorded equal treatment through appropriate State regulation by closing a loop hole in our current law. This amendment states that "no person shall camp on or in any State-owned or leased property or facility including, but not limited to, the Capitol Mall, except those that are designated as a recreational camping ground, area, or facility". The bill also provides for an infraction penalty for violations and for the removal of personal property from State property.

The State of Idaho has, and will continue to, accommodate requests from groups holding meetings, rallies, protests, vigils, and marches. Those accommodations could include electricity, public address systems, podiums, and security. Seizure of public property for personal use or abuse by any group will not be allowed. **Senator Hammand** offered to answer any questions from the Committee.

Chairman McKenzie announced that Brian Kane and Mike Gilmore from the Attorney General's office was in attendance to answer questions.

Senator Stennett stated that, technically, the pregame assembly in the parking lot at BSU would not be allowed under this definition of State grounds. Is that correct? **Senator Hammond** stated that this would not apply because those activities are not considered camping. In addition, the State has some discretion on what they wish to allow. **Senator Stennett** asked for clarification on what would or wouldn't be allowed. **Senator Hammond** responded that the decision would be made by the Department of Administration and, in addition, the State facility would have some part in the decision.

Senator Stennett commented that Marine Major General Smedley Butler, a highly decorated and well respected leader, led the Bonus Army to Washington DC and camped across from the United States Capitol in order to get veterans' grievances addressed after WW I. If veterans were assembled in the park to complain about not receiving promised benefits and a lack of jobs for our returning armed forces, would this bill be before us today? Would you remove veterans from the park? **Senator Hammond** answered that he would.

Senator Davis stated that the BSU issue was dealt with in the language of the legislation which states that: "For the purposes of this section, the term "camp" or "camping" means to use as a temporary or permanent place of dwelling, lodging or living accommodation". The language clearly suggests that type of activity would not be affected.

Senator Malepeai asked for the meaning of "aesthetic standards" as defined in State statute. **Senator Hammond** defined "aesthetic standards" as those that are most pleasing to most people. In this instance, it would mean that rather than the assemblage of cardboard and other kinds of makeshift facilities, it would be the green grass, flowers, and the memorial that was intended to be there. **Senator Malepeai** said that "aesthetic standards" could be anything an individual wanted it to be. **Senator Hammond** submitted that it is a somewhat common standard about how one might want a front yard to look and the Capitol Mall is our front yard.

Senator Hill directed a question to **Michael Gilmore** in reference to the following language in the bill: "Such authorized persons seizing or disposing of such property shall be immune from legal liability for the seizing and disposing of such property." What does "be immune from legal liability" mean? Specifically, in the process of removing property, if unnecessary force against a human being is used, what kind of immunity is involved? **Mr. Gilmore** said this is legal liability for the seizing and disposing of property and does not include actions toward people. The intent of the language means, for example, if an officer is carrying out an order to remove property, that officer is not personally liable when due process of law has occurred. That is not immunity for the invasion of a person. The immunity here, deals strictly with the seizing and disposing of property. **Senator Hill** confirmed that the immunity was only for the value of the property. **Mr. Gilmore** agreed.

Chairman McKenzie opened the public testimony portion of the meeting.

The following people testified in opposition to **H 404**:

Brian Walker, attorney and resident of Boise, ID.

Katie Fite

Gene Bray, a retired Navy veteran and active participant in the Occupy Boise.**Dwight Scarborough**, District 21, US Navy veteran from the Viet Nam era.

Alan Anderson spoke as a concerned citizen.

Russell Buschert, businessman and resident of Eagle, ID.

Dana Joblonski, Marsing, ID.

Alex Neiwirth, resident of Boise, Idaho.

The following people testified in opposition of **H 404** and also submitted copies of their testimony (attached as part of these minutes):

John C. McMahon, Boise, ID, and veteran of the US Army Infantry.

Bob Blurton, Boise, ID.

Anne Hausrath, Boise, ID.

Mary Reali, Boise, ID, and District 21.

Peter Reali, Boise, ID, and District 21.

Mike Despot, Boise, ID, and was Manager of the Capitol Mall Buildings during the 1990s. **Senator Malepeai** asked if July 1st was **Mr. Despot's** own opinion or was he speaking on behalf of Occupy Boise. **Mr. Despot** said that each of the testimonies is that person's own opinion. No one person speaks for Occupy Boise. This is his own opinion and he can't speak for anyone else.

Stan Hoobing, Boise, ID, and a retired Lutheran pastor

Rachael Raue, Nampa, ID, and District 12. Referenced the Occupy Boise website at www.occupyboise.org.

Glen Garity, member of the homeless community and currently residing in one of the tents at Occupy Boise.

Mary Bolognino, Boise, ID.

Barbara Kemp, resident of Idaho for 33 years.

Patrick Casey, Doctor of Physical Medicine, Physician, and small business owner.

Cyndi Tiferet, Boise, ID.

Dean Gunderson, Boise, ID, representing self.

Pam Piper-Ruth, Boise, ID.

Kristy Kuecken, resident of Boise, ID.

Steve Walker, resident in District 17.

Monica Hopkins, Executive Director, ACLU of Idaho.

Jan Sylvester, resident of Meridian ID.

Fairy Hitchcck, Hitchcock Family Advocator, Boise, ID, spoke in favor of **H 404**.

Greg and Charlotte Olson, Boise, ID, submitted written testimony but remained neutral.

Chairman McKenzie announced that the Committee had to adjourn by 10:30 a.m. so Committee Members could go to other meetings they could not change. If there is written testimony, please provide that to one of the Pages and it will be made part of the record. There will be closing remarks and then the Committee Members will have an opportunity to ask questions of **Mr. Gilmore** from the Attorney General's Office or from the Department of Administration.

The following people submitted only written testimony in opposition to **H 404**:

Harold Stiles, former Caldwell resident and now Boise, ID resident.

Geoff Burns, Boise, ID.

Edward Waters, Boise, ID.

Christine Rutledge, Boise, ID.

Barbara Pinkerton, Boise, ID.

Joseph A Voss, Jr

Marley Diaz, Boise, ID.

Gerald King, Idaho native and WWII Veteran, Boise, ID.

Senator Hammond closed by thanking the audience for their respectful and proper testimony. In reference to Senator Davis' concerns that camping is not a part of our free speech, this bill does not silence anyone's voice. The voices of our citizens were heard today and they are heard regularly on the capitol steps throughout the year. Our citizen's voices will continue to be heard, not only in this auditorium, but in hearing rooms throughout this building as well as on the floor of the chamber through their representatives.

The seizure of the people's property is not the right of any citizen or group of citizens. The cause of Occupy Boise is not the issue here. Good folks are expressing their legitimate concerns and grievances which is appropriate but the front yard of the Capitol Mall cannot be seized for their own purposes. No one should be able to seize public property for their own purpose. H 404 seeks to close the loophole that allows such a congregation.

Regarding the question about the personal property that is being used at that site, it is not the intent to seize personal property. The intention is to clean up what is left after the people who are using that site have removed their personal property.

MOTION:

Senator Davis moved, seconded by **Senator McGee**, to send **H 404** to the amending order.

Senator Davis commented that speech is protected by the Idaho Constitution and the 1st Amendment. The Senator was troubled when he first saw the Occupy Boise encampment. However, hard times suggest such activity. We may disagree with the solutions but that is part of the public dialogue. This type of speech is subject to regulation, but what are the standards to regulate that type of speech? The seizure component is an uncomfortable part of this bill, although the intent is to discard what is left. There is the possibility of a language change that would provide a way to have a respectful and satisfying way to meet the 14th Amendment standards that **Brian Walker** spoke about, particularly preserving property rights. For these reasons, we should look at some modifications as it relates to this issue.

Senator Malepeai agreed that we are here to ensure due process and to exercise the right to free speech. He is for this motion and looks forward to the dialogue to find a solution.

Senator Stennett stated that this is a philosophical disagreement when entertaining this bill. It is the Senator's personal opinion that we quiet what we don't want to hear in any form. She cannot support the motion.

Senator Hill supports the motion. His original intent was to support this bill. His homework had been done by studying the court cases and reconciling the 1st Amendment rights, but there is a concern about the 4th and 5th Amendment rights. Senator Hammond has made excellent comments, but there is the issue of personal property. There is language that can be added to make the intent more clear, including, potentially, with respect to the emergency clause.

Vice Chairman Fulcher directed his comments to the people who took the time to testify. He respects and thanks those people for a willingness to share, and it is their right to do so. There may be disagreement on how to voice opinions, but it is not feasible for everyone to make their point in this way. We stand in unison to give everyone a voice and to work together to figure things out. He supports the motion.

Senator Lodge thanked everyone who came forward to testify and those who wanted to testify and didn't have enough time. Your presence is appreciated. We are not happy with what is happening in this great nation of ours and are concerned with the future. Thanks for the information that is being distributed. We have heard your concerns and we would like to be aware of what other citizens are saying when they come and see the tent city.

Chairman McKenzie asked for further comments. Being none, he called for a vote on the motion to send **H 404** to the 14th order for possible amendment.

VOTE: The motion carried by Voice Vote.

ADJOURNMENT: **Chairman McKenzie** extended the Committee's appreciation to everyone who attended this meeting and acted in such a passionate and respectful manner in providing testimony and also, to those who wanted to testify but couldn't due to lack of time. Being no further business, the meeting adjourned ay 10:25 a.m.

Senator McKenzie
Chairman

Twyla Melton
Secretary