

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Monday, February 20, 2012

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Fulcher, Senators Davis, Hill, McGee, Winder, Lodge, Malepeai, and Stennett

**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.

**Chairman McKenzie** called the meeting to order at 8:00 a.m. with a quorum present. He welcomed **Senator Heider** to present the first item on the agenda.

**RS21337** PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF IDAHO to preserve the rights of Idahoans to hunt, fish, and trap.

**Senator Davis** explained that **RS21337** deals with a modification to **SR104** which was heard by this Committee earlier this session. The Idaho Water Users had some concerns and an opinion was requested from a water law attorney regarding recent court cases about bodies of water. The language on line 25 which states "or establish any minimum amount of water in any water body" addresses those concerns and clarifies the issue.

**MOTION:** **Senator Davis** moved, seconded by **Senator McGee**, to send **RS21337** to print.

**VOTE:** The motion carried by voice vote.

**GUBERNATORIAL APPOINTMENTS:** Jim Rehder to the Idaho Lottery Commission  
James C. Hammond to the State Building Authority

**Chairman McKenzie** introduced **Jim Rehder** and asked him to tell the Committee about himself and the Commission.

**Mr. Rehder** was born and raised in Cottonwood, Idaho, and graduated from the University of Idaho. He was an educator for fifteen years, worked in the prison system for fourteen years (four years as a prison warden), and worked on a family farm for fifteen years. After retirement, he served as an Idaho County Commissioner for two terms. **Mr. Rehder** has served on numerous boards and committees.

**Mr. Rehder** deemed that the Lottery Commission would be attractive in the sense it provides for responsible gaming. The integrity of the agency is "rock solid" and it allows the Commission to provide money for schools and public buildings.

**Senator Davis** asked if **Mr. Rehder** had found areas at the Lottery Commission that could be improved. **Mr. Rehder** responded that this is a complex business and he has been in a learning curve but this is a "top notch" organization and they are continually briefed by the administrative staff and recommendations are made where appropriate. **Senator Davis** inquired if there were things the legislature could or should be doing to help the Commission. **Mr. Rehder** stated that there is some concern about legislation at the national level regarding the control of gaming nationally. The Governor and Director Anderson are watching that legislation closely.

**Jeff Anderson**, Director, Idaho Lottery Commission, supports **Mr. Rehder's** appointment. **Mr. Rehder** is engaged in advancing the mission of the lottery to provide responsible means for entertainment that can maximize funding for the beneficiaries.

**Chairman McKenzie** introduced **Senator Hammond**.

**Senator Hammond** stated that he was first appointed to this Commission by **Governor Batt**. Currently, the Commission is seeking to refinance some bonds at lower rates which will create a substantial savings for the State of Idaho. The work of the Authority is to find the best rates possible to build buildings for the State. The State ends up with quality buildings built at a reasonable price. It is always a learning curve but he enjoys serving in this capacity.

**Senator Davis** asked would there be a conflict serving on the Authority if you decide to also serve at North Idaho College (NIC)? **Senator Hammond** doesn't see a conflict. **Senator Davis** asked if the Authority has ever pursued bonding for a community college. **Senator Hammond** confirmed that they had. **Governor Kempthorn** convinced the legislature to authorize financing for all of the state facilities including all community colleges. Also, at this time, a nursing building was built. **Senator Davis** asked how, if you were President of NIC, would you handle your responsibilities on the Authority. **Senator Hammond** said he would handle it as any other facility would be handled. They don't identify who gets the funding, that decision is made by the legislature. The Authority is there to find the best rate of interest for funding and to manage the construction of the facility. There isn't a conflict.

**Chairman McKenzie** invited **Senator Hammond** to remain at the podium to present **SCR 116**.

## SCR 116

STATING FINDINGS OF THE LEGISLATURE to authorize the Legislative Council to appoint a Committee to undertake and complete a study of the feasibility for the State to obtain primacy over regulation or wastewater discharges to surface water.

**Senator Hammond** explained that **SCR 116** is a resolution to bring together some legislators and other players to study the issue of primacy regarding clean water and the management thereof which is currently managed by the Environmental Protection Agency (EPA). EPA issues any permits for discharge into streams such as permits for logging roads that may affect any kind of stream or the agriculture community must get permits for application of certain kinds of herbicides and pesticides. The challenge is that EPA will not issue any permits for the next year because they are in the midst of redefining their permitting organization.

Secondly, the state has lost control over it's own destiny. **Senator Hammond** gave an example where Washington has control over the criteria for some permits in Northern Idaho and the Idaho Department of Environmental Quality (IDEQ) is not included in those discussions.

This is not an effort to change any standard or waste water discharge, it is only an effort to allow the permitting of that to be done by the state. This would streamline the process for those cases where permits from both the EPA and the IDEQ are required. The delay in getting these permits affects many different industries and could eliminate any ability to grow. The proposed permitting is scientifically impossible, and diminishes the capacity of wastewater systems in Northern Idaho. This is not an issue limited to one area, it is an issue for business, industry, agriculture, and timber. The financing to build a bureaucracy to issue permits will be met by spreading the cost over all the users.

**Senator Stennett** asked about the cost of \$10,000 for the interim committee. What are those costs? **Senator Hammond** responded that \$10,000 is the price tag for the interim committee. The interim committee will develop the costs of the operation. **Senator Stennett** asked when the interim committee would convene and how would the members be selected. **Senator Hammond** answered that the selection would be the same as any other committee and it should convene during the summer with a recommendation by next session. .

**Alan Prouty**, Chairman, Environmental Committee of the Idaho Association of Commerce (IACI) and Industry, testified in support of **SCR 116**. **Mr. Prouty** identified four issues that need further study and that the interim committee is the proper place to discuss these and other issues. (Testimony is attached.)

**Jayson Ronk**, Vice President, IACI, testified in support of this resolution.

**Ken Harward**, Association of Idaho Cities (AIC), testified in support of the resolution. Idaho cities may be the most regulated and have a vested interest in the permitting, the outcome of those permits, the cost involved, and the suspended issue. They support the study and view it as very important.

**Elizabeth Criner** spoke on behalf of the Northwestern Processors Association who serves as an advocate for processors in Idaho, Oregon, and Washington. NWFPA supports **SCR 116**.

**John Eaton**, Governmental Affairs Director, Idaho Association of Realtors, testified in support of **SCR 116**. A new study would be appropriate at this time to determine what the cost of this process would be. There are some occurrences around the state and in the region that have impacted the construction industry. Idaho is one of four states that does not have primacy. The construction industry is aware of the requirements since every site over one acre is required to have permits that fall under EPA permitting for runoff from the properties. They would be willing to work with the sponsor and the interim committee to obtain the best information to make appropriate decisions for the future.

**Senator Hill** asked **Mr. Eaton** to elaborate on the reasons that the state has not been issuing these permits all along. As we consider doing this, we should know why we haven't done it in the past. **Mr. Eaton** stated that the number one reason was how to fund that project. Funding was never secured. Historically, the construction industry has not been as supportive of this type of position because by applying for a permit online, the permit was issued. No one from the federal government came around to see if the activity was done correctly but that has changed. The hard hand of the federal government is intruding into developments around the State. It would be better to deal with the people they know and have more input into the decisions that are made. In working with the State Transportation Department, there has been information exchanged and good examples from other states that they are working with regarding primacy that has been very successful.

**Jeremy Pisca**, attorney, Rische & Pisca Law Firm, and representing Potlatch. Potlatch agrees that the time to study this issue has come and from their perspective, a better relationship can be formed with people from within the state agencies that understand the economies of the state. **Mr. Pisca** also represents the Idaho Building Contractors Association which, for years has resisted primacy. A member of that Association would like to encourage the support of this resolution.

**Senator Hammond** stated that the Idaho Transportation Department brought up this issue because their projects are being held up because they can't get the permits from EPA because they are not issuing permits at this time.

**Senator Malepeai** asked what the significance was of doing a concurrent resolution rather than going through the legislative council. **Senator Davis** responded that each body runs the concurrent resolution requesting the interim committee it desires and then towards the end of the session, the majority/minority leadership will decide which ones can proceed to the body. This senate concurrent resolution will be held by the House pending that meeting and decision to go forward. Should the concurrent resolution pass the other body, then State Affairs will decide whether to formally fund it and then determine the makeup of the committee. This approach is consistent with the way to handle this process.

**MOTION:**

**Senator Hill** moved, seconded by **Senator McGee**, to send **SCR 116** to the Senate floor with a do pass recommendation.

**VOTE:**

The motion carried by voice vote.

**H 405**

**Senator Hammond** opened discussion on **H 405**.

**Senator Davis** referred to page 7, Section 11 of the bill and asked if there were any preemption standards that would preclude us from doing this. Generally, the use and sale of tobacco is a highly regulated industry at the federal level. **Senator Hammond** stated that they are not regulating tobacco, they are regulating the sale of nicotine. The federal level of oversight is not known but it is better to error on the side of caution to make sure this type of product can only be sold to those people over eighteen. **Senator Davis** asked if an Attorney General's opinion had been requested for the limited question of preemption. **Senator Hammond** said it had not. **Senator Davis** asked if this is modeled after other states. **Senator Hammond** answered that this is model legislation and the health districts helped put it together.

**Senator Hill** referred back to Section 11, and asked if it only applied to the Idaho seller shipping the product out and not the retailer receiving the shipment. Is this the seller selling to the ultimate consumer, the seller is located in Idaho, and the seller must provide this information? **Senator Hammond** agreed that was correct.

**Senator Hammond** stated that electronic cigarettes are relatively new to society. Those who want to smoke can without exposing others to the smoke from the cigarette. The challenge is that electronic cigarettes are being sold at kiosks in malls to anyone who wants to buy them because there is no regulatory prohibition to prevent kids under eighteen to purchase this product. This bill defines what an electronic cigarette is and it says that they can't be sold to kids under eighteen. He went on to explain the nicotine contents of cigarettes and the toxic effects. An estimated lethal dose for a child is ten milligrams, that is about one-half a pack of cigarettes. More or less nicotine can be put into the electronic cigarettes and they are not in childproof packaging. Children do need to be protected because they get a much higher dosage which creates health issues.

**Senator Davis** referred to MD.com information that said the FDA has decided to oversee electronic cigarettes the same way it does tobacco products. He is not questioning the legislation, he plans on supporting it in Committee and on the floor. It does not say the state is precluded for regulating the product – is there concurrent jurisdiction? **Senator Hammond** will follow up on this question.

**Senator Stennett** noted that there was no fiscal impact but somebody has to regulate this if it passes. Under what auspices do you envision this working? **Senator Hammond** said it would be regulated in the same way as any tobacco products. The concern is not as much enforcement as it is making it clear that those sales cannot be made. Most retailers would agree with that restriction and follow it.

**Chairman McKenzie** asked how is this like other nicotine products such as nicotine gum or nicotine patches. Is this a way of ingesting nicotine? **Senator Hammond** said they are not regulating the product itself, it is regulating the age at which it can be sold. Other products have a limited amount of nicotine in them, this product can be adjusted to hold more nicotine than others. This is not regulating the product, just the sale of the product.

**Senator Davis** asked if this is perceived to be a gateway device or is it the device itself that would lead to smoking. **Senator Hammond** responded that any way that nicotine is ingested could create an addiction.

**Senator Davis** noted that it is the addictive nature of nicotine in cigarettes that keeps people coming back and it is the carcinogens that are the more troubling aspect of consumption. The e-cigarette has only the nicotine aspect. **Senator Hammond** concurred.

**Senator Hill** stated that electronic cigarettes could be more dangerous than regular cigarettes because of the level of nicotine that can be placed in them where additional nicotine cannot be added to a regular tobacco product. **Senator Hammond** agreed.

**MOTION:** **Senator Hill** moved, seconded by **Senator Lodge**, to send **H 405** to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote. Senator Hammond will be sponsor of **H 405**.

**RS21242** RELATING TO WORKER'S COMPENSATION that shall be paid for disability or death resulting from certain firefighter occupational diseases.

**Mike Walker**, Executive Vice President, Professional Firefighters of Idaho, brought this bill to the Committee. This issue has been worked on for over ten years with numerous print hearings and one Committee hearing. **RS21242** has come from a subcommittee. The main committee opted not to take a stand but urged the subcommittee to bring it to the legislature. There is a large body of research compiled of dozens of studies over a course of years that shows that firefighters are susceptible to certain cancers. With these occupational diseases, it is nearly impossible to show what exposures led to the disease because they are usually the result of chronic exposure over the course of time. The work comp system is stacked against the claimant in occupational disease cases. In response to this, forty states have passed similar legislation to presume that certain diseases are occupationally related for firefighters unless proven otherwise. This legislation will not provide an unfair advantage to the claimant in a disputed claim.

**Senator Davis** asked if the state of Washington has similar language of presumption that is in this legislation. **Mr. Walker** said they don't. They are much more liberal on the time lines, the number of diseases that are included in their statute, and the definition of what would be rebuttable. **Senator Davis** stated that sub part (c) is the most important part of the legislation. Is there something similar to that in Washington's code or even more protective of the employer. **Mr. Walker** replied that Washington was in the spectrum of states that were looked at. This legislation is modeled after New Mexico which is a more conservative state.

**MOTION:** **Senator Winder** moved, seconded by **Vice Chairman Fulcher**, to send **RS21242** to print.

**VOTE:** The motion carried by voice vote.

**VOTE** **ON GUBERNATORIAL APPOINTMENTS:**  
**Sam Haws** as Administrator for the Office on Aging  
**E. Robert Mooney** to Idaho Energy Resources Authority

**MOTION:** **Senator Lodge** moved, seconded by **Senator McGee**, to send the gubernatorial appointment of **Sam Haws** to the Office on Aging to the floor with the recommendation that it be confirmed by the Senate.

**VOTE:** The motion carried by voice vote. **Senator Lodge** will be the floor sponsor.

**MOTION:** **Senator Winder** moved, seconded by **Vice Chairman Fulcher**, to send the gubernatorial appointment of **E. Robert Mooney** to the Idaho Energy Resources to the floor with the recommendation that it be confirmed by the Senate.

**VOTE:** The motion carried by voice vote. **Senator Winder** will be the floor sponsor.

**PAGE INTRODUCTION:** **Chairman McKenzie** introduced **Nathan Chelson** as the new page for the second half of the session. Chelson is a familiar name in the Senate because the family produces lots of good pages. He asked **Nathan** to tell the Committee about himself, about his family, and why he is interested in being a page.

**Nathan** answered that he is the fourth child of seven, i.e., middle child, and he is the fourth Chelson to serve. He came here because of his interest in government and he is glad to have this opportunity.

**ADJOURNMENT:** Being no further business, **Chairman McKenzie** adjourned the meeting at 9:01 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary