MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	Monday, February 27, 2012
TIME:	8:00 A.M.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Fulcher, Senators Davis, Hill, 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 and asked **Senator Keough** to present **S 1323**.

S 1323 RELATING TO BOARD OF TRUSTEES OF LIBRARY DISTRICTS to provide concise procedures in the event of a recall for library district trustees.

Senator Keough stated that current law requires recall procedures follow the procedures for the recall of county commissioners. Of the current 54 library districts, only 9 are county wide. Staff in the Secretary of State's office advised that for a recall election for library district trustees who were contested in their elections and won, signatures for recall would have to be collected from registered electors of the county (not necessarily aligned with the library district) equal to 20% of the number of electors registered to vote at the last general election of the county.

As an example, a library district in North Idaho has 1,007 residents eligible to vote. To bring a valid recall petition, 20% of registered electors in the county would need to be collected, which equals 4,578, more than four times the number of people in the library district. This doesn't seem appropriate.

During the print hearing it was asked if this change would lower the threshold and cause a rush of recall elections. New language points to a section of code (34-1702(5)), which states that the recall petition must be signed by registered electors in the district equal to 50% of the number of electors who cast votes in the last election of the district.

Lines 24-27 show the requirements for recall of a trustee that is not elected; "the number of district electors required to sign ..... must be not less than fifty, or twenty percent of the number of votes cast in the last trustee election held in the library district, whichever is greater." The proposed change brings contested election recall standards in line with current requirements for recall in a non-contested election. This is an effort to clarify current statute. Without the change, recall would be very difficult for roughly 83% of library districts that are not county wide. This does not attempt to lower the threshold for a recall election, it simply lines up recall election laws for library districts with the populations they serve. Tim Hurst with the Secretary of State's office was available to answer technical questions, as well as the Idaho Library Association. Both support the change.

Senator Davis stated that he supported the concept, but was concerned about the direct reference to Idaho Code 34-1702(5). He asked what the section in lines 22-27 deals with.

Senator Keough indicated that the section deals with procedures for library trustee recalls when they were appointed or when candidates assumed the position in an uncontested election.

Senator Davis asked why there were differences between the standards for contested and non-contested election recall procedures and why there would be a lower standard for recalling a trustee that was not in a contested election. **Senator Keough** explained that recall for a library district trustee who won the seat in a contested election would redirect the process to 50% of the electors who cast votes in that election in the district, as opposed to the process in lines 22-27, where, if they were not elected, they would be required to get 20% votes cast in the last trustee election. The two different standards are already in existence whether the change takes place or not and the lower standard is already in place for non-contested elections. This legislation intends to make sure registered electors in the library district had the ability to recall a trustee. The bill does not deal with that particular issue. **Senator Davis** questioned why the bill was tied to 34-1702(5) instead of the language in code in lines 24-27, and why the standards were not made congruent. **Senator Keough** indicated she was not involved in the history of the statute, and could not adequately answer the question.

John Watts, Idaho Libraries Association (ILA), indicated their support of the original intent of the legislation. In response to **Senator Davis'** question, he understands that it is a double standard. Many times a library district trustee was not a contested election and as elections became contested more and more often, these standards evolved. The issue this legislation deals with makes sense and the Library Association agrees with the changes.

Senator Davis asked **Mr. Watts** why there should be two different standards. **Mr. Watts** indicated that there is an incongruence that should be addressed, but this legislation does not deal with that. It is an old statute and it makes sense to align them at some point. **Senator Davis** suggested using this legislation to make the standards congruent. **Mr. Watts** indicated that the ILA would be open to fixing this legislation to reflect those concerns, or would allow this legislation to pass now.

Senator Davis asked **Mr. Hurst** of the Secretary of State's office, why there would be two different standards for recall. **Mr. Hurst** indicated that several special districts had their own recall statutes and when trying to consolidate those in 1989, some things were missed. He went on to state that deleting lines 24-27, would allow it to fall in line with Idaho Code 34-1702(5), the code for all other taxing districts. **Mr. Hurst** indicated that the history of county commissioner's language stemmed from county commissioners being elected by zones. Unifying the laws created problems.

Senator Keough indicated that the intent is to make the election process relevant to the district and not set an inappropriate standard in which districts smaller than the county would have recall situations beyond a district boundary.

Senator Hill asked for **Senator Keough's** preference regarding what she would like to do with the bill. **Senator Keough** indicated that timeliness was important and wanted to ensure ILA got a chance to look at any change in language, but would commit to working on this in future sessions. **Senator Davis** indicated this could be hurried in and out of the amending order to address the issue rather than taking incremental steps as long as the sponsor and ILA can strike a deal. **Senator Winder** indicated the legislation had time for an amendment if that was the choice. **Senator Keough** and **Mr. Watts** agreed a fix was needed and the amending order would be appropriate if the committee chooses.

MOTION: **Senator Davis** moved, seconded by **Senator Lodge**, to send **S 1323** to the 14th order.

VOTE: The motion carried by voice vote. **Senator Keough** will sponsor the bill on the Senate floor.

S 1344 RELATING TO BEER to provide the same exception for Idaho breweries that is available to Idaho wineries that allows for a financial interest in or aid to retailers.

Senator Keough introduced two constituents to speak to **S 1344**: **Fred Colby**, Owner, Laughing Dog Brewery (testimony attached) and **Jeff Whitman**, Owner, Selkirk Abbey Brewing. This legislation intends to allow a brewer who produces fewer than 30,000 barrels of beer annually to be allowed financial interest in one additional brewery producing fewer than 30,000 barrels annually. This legislation could impact micro breweries across the state although it is more immediate in Northern Idaho. It would allow partnerships to occur, expertise to be utilized, and jobs to be expanded.

Mr. Colby said that he owns a brewery in Ponderay, employs sixteen people, and ships to thirty-six states and Canada. He would like to create another business with business partners similar to the existing one but cannot due to current code. Idaho code was modified allowing wineries to exercise a similar expansion and this bill would allow breweries to do the same.

Mr. Whitman stated that he is one of two remaining owners of Selkirk Abbey Brewing which is currently unopened and unlicensed. Their application for a brewers license was denied by the state because their business partner, **Fred Colby**, owned another brewery. **Mr. Colby** has since resigned so the remaining partners could continue with the licensing process. It is unfair to **Mr. Colby** and potentially devastating to the company's business plans. His departure means the loss of knowledge and extensive lines of distribution. Passing this bill will alleviate a large amount of the risk and the loss of thousands of dollars and, will give breweries the same latitude that is allowed to wineries.

Testimony in opposition of **S 1344**: Jan Sylvester was concerned with how it impacts distributors and licenses.

Jeremy Pisca, representing the Beer and Wine Distributors Association, worked with **Senator Keough** to craft a piece of legislation that was neutral to distributors. They are very protective of the three tier system currently in place but didn't see that there would be any collateral damage to allow this one exception. **Mr. Pisca** was not testifying in support of or opposition to the bill.

Senator Stennett asked how many micro brewers produce 30,000 barrels annually. **Senator Keough** indicated that twenty-four brewers in Idaho fall under micro brewery laws; four more are scheduled to open. **Senator Stennett** asked if this bill was passed, would breweries only be able to expand by purchasing another brewery beyond the one time? **Senator Keough** wanted to clarify that **Mr. Colby** is contemplating partnership, not ownership, with the new brewery, but he would not be allowed to go beyond that limit.

MOTION: **Vice Chairman Fulcher** moved, seconded by **Senator Malepeai**, to send **S 1344** to the floor with a do pass recommendation.

VOTE: The motion carried by voice vote. **Senator Keough** will sponsor the bill on the Senate floor.

RS21273C1 TO THE PRESIDENT OF THE UNITES STATES AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES to request that the US Department of Health & Human Services (HHS) reject and reverse regulation regarding new "prevention services."

Senator Nuxoll provided some background history leading up to this piece of legislation:

- Kathleen Sebelius, U.S. Department of Health and Human Services (HHS), reaffirmed a rule passed by the federal government last August that included a list of preventive and sterilization services that all health care brands must cover.
- This rule will become effective August 1, 2012.
- Nonprofit, religious employers that do not now provide the coverage and are not exempt under the narrow definition of a religious employer, will be given one year to comply.
- President Obama has issued a compromise where insurance companies would be forced to offer the preventive services without a copay. Employers will still underwrite the same policies only with services offered by different means resulting in higher premiums.

Senator Nuxoll testified that this is the greatest attack on our rights since Roe v. Wade in 1973. It is an attack on our right to religious freedom, freedom of conscience, and access to health care. This HHS ruling violates our rights of conscience, which is held so dear to the American people, as testified by our founding fathers. This is not a contraception issue, this is a conscience issue.

Most states and religious organizations are taking a stand recognizing it is an assault on the broader principle of religious freedom. As an example of the economic and social consequences, hundreds of hospitals may be forced to close. One in six patients receives care in 637 catholic hospitals throughout the states. The Catholic Church educates 2.6 million students every day at a cost of $10.0 billion and a savings to the American taxpayer of $18.0 billion. There are 230 Catholic colleges and universities that educate more than 900,000 students annually. The ultimate consequence could be the closing of schools, hospitals and ultimately churches.

The Attorney General has issued an opinion expressing strong opposition to the HHS mandate and will vigorously oppose it in court, joining Attorneys General in Maine, Florida, Louisiana, North Dakota, Ohio, Oklahoma, South Dakota and Colorado. This is an American issue not a Catholic issue. Freedom of conscience belongs not just to religious people, but to all Americans.

Senator Stennett noted that in the statement of purpose, the concern is that prevention services may violate the rights of conscience for a majority of US Citizens. Are prevention services currently part of a requirement for insurance that is offered? **Senator Nuxoll** indicated that people now pay for insurance that is being provided.

Senator Stennett said that the sponsor spoke of the right of conscience of the majority of U.S. citizens; what would be the guidelines that majority would require to craft something that would protect what the sponsor would consider an invasion on conscience, and how would it be defined? **Senator Nuxoll** stated that it is a violation of the First Amendment to the Constitution, which guarantees the right to religious freedom and the right of conscience.

MOTION: **Vice Chairman Fulcher** moved, seconded by **Senator Hill**, to send **RS21273C1** to print.

VOTE: The motion carried by voice vote.

RS21323C1 RELATING TO THE MEDICAL CONSENT AND NATURAL DEATH ACT to protect patients from the involuntary denial of food and fluids, and from life-preserving medical treatment when denial is based on disability, age, or terminal illness.

Senator Nuxoll based her discussion on patients' need to be protected from involuntary denial of food and fluids and life preserving medical treatment when that denial is based on disability, age or terminal illness. Patients and their families, not others, should be able to decide whether their lives are worth preserving with life saving medical treatment, foods and fluids, and that no one should be able to impose death against a patient's will because of age or disability.

Twenty-seven court cases have arisen from conflicts between parents and family members over this issue. This antidiscrimination bill does not stop health care providers from declining to give medical treatment that is medically inappropriate or futile. It simply assures that treatment, which in reasonable medical judgment could preserve the patient's life, cannot be termed medically inappropriate or futile just because of the patient's age, disability or terminal illness. Loopholes exist in current law.

Three conditions must be met to be protected from denial of medical treatment. The patient or surrogate must want treatment, the treatment has to be medical treatment that, in reasonable medical judgment, will preserve the life of the patient (this protects the doctor), and the reason treatment is being denied is based upon the doctors belief that extending the life of a patient that is elderly, disabled or terminally ill is of less value than extending the life of a patient who is younger, non-disabled or not terminally ill (this protects the patient). In order to receive food and fluids, only the first two conditions are required.

Senator Nuxoll noted that those in favor of the bill are: Right to Life of Idaho and Cornerstone Institute. End of Life is opposed to the bill.

MOTION: **Senator Winder** moved, seconded by **Vice Chairman Fulcher**, to send **RS21323C1** to print.

Senator Stennett asked if there were statistics about how often these treatments are denied against the patient's wishes and questioned if the purposeful lack of providing certain treatments would result in health care facilities murdering the patients. **Senator Nuxoll** indicated that there are court cases currently dealing with this, and that she has spoken to many nurses who have had patients die from over medication that was administered against their or their surrogate's wishes.

Senator Stennett asked if the discrimination based on disability, age or terminal illness, has happened to patients with the full ability for reasoning and mental capacity and the ability to determine their own care but they do not have directives or living wills to indicate their choices. Also, when health care systems or facilities are not adhering to a person's living will or directives, who would have authority to override a person's wishes if they have those documents in place. **Senator Nuxoll** stated that usually, they have a living will or other advance directive to guide them on this issue. The problem comes from the interpretation of some of the wordings, such as "good faith" and "inappropriate or futile" instead of objective medical judgement. There is

value of life concerns based on the person's disability or age, which may be misinterpreted by the provider.

Senator Stennett asked who and how this would be policed. **Senator Nuxoll** stated that this makes the law clearer. Also, outlining one's wishes in a living will and advanced directives would eliminate the doctor's judgement of the value or quality of life.

Senator Davis asked for an explanation on page three of the bill. What would be the legal effect of the language being added to sub part two? **Senator McKenzie** said that section refers to the provision of needs that are not extraordinary that if taken away, would result in the death of a person, such as assisted feeding, nutrition and hydration. Those things cannot be denied if, in reasonable medical judgment, the result hastens death. The point is to clarify that those decisions would be made by either the patient or the person(s) with the authority to make decisions on behalf of the patient.

VOTE: The motion carried by voice vote.

RS21297 STATING FINDINGS OF THE LEGISLATURE authorizing the Department of Parks and Recreation to enter into agreements with the Idaho State Building Authority to pay all bonds issued for the Vardis Fisher property and others in the Hagerman Valley in order to concentrate limited resources to enhance recreational opportunities in the Hagerman Valley. **Senator Winder** asked **Nancy Merrill**, Director of Parks and Recreation, to present the **RS21297**

Director Merrill, explained that a piece of property near Billingsley Creek in Hagerman Valley was purchased in 2001 with bonds through the Idaho State Building Fund. The property was bought for the purpose of aquaculture in partnership with the University of Idaho (U of I) to be used for a fish hatchery and habitat. The U of I has pulled out of that partnership and it remains as a fish hatchery in its present use. The Idaho Department of Parks and Recreation is looking at pieces of property to consolidate, transfer and trade; this is one of those properties. It will enable the Department to move recreational opportunities to another location and to find a better use for this property. It could be possible to reissue the bonds at a lower rate, move those bonds to a piece of property that the Department will hold title to, and the bonds will be paid off in a shorter period of time, saving the state about $600,000 a year.

Senator Davis asked if the limited recreational benefit of the Vardis Fisher property was the reason Parks and Recreation wanted to dispose of it and is the intention to sell or trade that property for other property. **Director Merrill** concurred. **Senator Davis** asked if it was best to have the property unencumbered by outstanding bonds when trying to sell or trade and, in the refinancing, would the Department encumber other property to service the outstanding debt. **Director Merrill** indicated that was the case. Existing property, i.e., the Department headquarters, that has building and land value similar to the Vardis Fisher piece would be the collateral for the bonds. The dollars coming from the sale would go to existing property or go into the maintenance and operation fund. It will not be used to purchase new properties.

Senator Davis asked if the Department is unable to trade the property for a more appropriate alternative property and it is sold, what happens to that money? **Director Merrill** deferred to the Department's attorney, **Steven Stratt,** Deputy Attorney General, stated that the money could not be used to pay off the bonds, because the property is presently only worth $2.7 million. The outstanding value on the bonds is over $4 million. The bonds could be paid down but they would have to be refinanced before that could happen. The Building Authority wants to refinance because it can lead to a lower rate without surety bonds, saving the state over $600,000 over the next ten years. In terms of the money, it is Legislative prerogative.

Senator Davis referred to line two of page two, regarding transfer of title to Parks and Recreation; who currently holds title to the property? **Mr. Stratt** indicated the Building Authority holds the title to the property. It is leased to Parks and Recreation through a facilities lease so the bond payment is the lease payment. **Senator Davis** followed up. The Building Authority holds the title. Once the bonds are satisfied, the title will be transferred to the Department. Sideboards are in the Concurrent Resolution as to what Parks and Recreation can do in the event the property sells. **Mr. Stratt** indicated that there were not any sideboards at this point. **Senator Davis** asked if the Building Authority currently owns the property that would effectively become the property that holds the lien after the bonds are refinanced. If so, would the lease holding interest be collateralized through the bonds. **Mr. Stratt** stated that Parks and Recreation, which owns the property, will lease the headquarters building to the Building Authority for $1 a year, and the Building Authority will lease back the headquarters to the Department for the bond payment. It is not necessary to hold the title to the property to secure the bonds; they just need a secure enough interest that if the lease payments are not made they can foreclose on it.

MOTION: **Senator Winder** moved, seconded by **Vice Chairman Fulcher**, to send **RS21297** to print and request that it be returned to committee.

VOTE: The motion carried by voice vote.

RS21319C2 RELATING TO ABORTION to require the use of an ultrasound prior to an abortion and to provide an additional resource where pregnant mothers can obtain an ultrasound free of charge. When enacted, this legislation will codify the standard use of an ultrasound and referrals as described.

Julie Lynde, Executive Director, Cornerstone Family Council, introduced **Kerry Uhlenkott**, Legislative Coordinator, Right to Life of Idaho, to present **RS21319C2**.

Ms. Uhlenkott has been working with House and Senate legislators, including **Senator Nuxoll** and **Representative McGeachin**. **RS21319C2** would require an ultrasound to be performed on a pregnant mother prior to the performance of an abortion. Under an existing 2007 law, the mother is already offered the opportunity to view an ultrasound of her unborn child as part of an informed consent statute. Ultrasound is a key element of informed consent, it should be required before an abortion is performed. This legislation also provides that the pregnant woman be given a listing of places that offer free ultrasounds. Page 3, 18-609 section 5, is the heart of the bill requiring an ultrasound be performed on a pregnant woman prior to the performance of an abortion by whichever method the abortion provider and pregnant woman decide upon. Ultrasound is a common and useful diagnostic tool, useful in verifying and dating pregnancy, as well as assessing gestational age, size and growth of the unborn child. Under current Idaho law, the Department of Health and Welfare (DHW) already provides a list of other resources to pregnant women. Page

3, lines 19-46, requires the physician performing the abortion or his agent, to sign and date a statement indicating the time the ultrasound was performed, initialed and signed by the patient. Information is power to women to make true informed decisions. The ultrasound bill will make scientifically accurate information available to the mother that will enable her to make an informed consent decision.

Senator Stennett asked if requiring an invasive procedure, which could possibly be against a person's wishes, as part of a medical process is a contradiction to a bill heard earlier in this meeting. **Senator Nuxoll** stated that ultrasound is part of informed consent. Women have suffered psychologically by not having had the information. She further indicated that this legislation doesn't require invasive procedures; it only requires an ultrasound, the method of which can be determined by the doctor and patient, whichever type is appropriate.

Senator Stennett stated that ultrasound procedures are currently available and asked if making it a requirement would make things safer. **Senator Nuxoll** stated that this legislation protects informed consent and insures the appropriate ultrasound is used to determine and date the pregnancy.

MOTION: **Senator Davis** moved, seconded by **Senator Hill**, to print **RS21319C2**.

VOTE: The motion carried by voice vote.

RS21102 **Senator Winder** presented a letter from **Senator Hammond** requesting unanimous consent to print the **RS21102** and refer it to the Senate Transportation Committee.

MOTION: **Senator Davis** moved to print **RS21102**, seconded by **Vice Chairman Fulcher**.

VOTE: The motion carried by voice vote.

RS20990C2 and RS21372 **Chairman McKenzie** noted the RS's had further changes that had not yet been made and asked that they be pulled back and held until the next Committee meeting. There were no objections.

VOTE ON GUBERNATORIAL APPOINTMENT: **Senator Lodge** moved to approve the appointment of **James C. Hammond** to the State Building Authority, seconded by **Senator Stennett**.

VOTE: The motion carried by voice vote.

MINUTES: **Senator Hill** moved, seconded by **Senator Stennett**, to approve the minutes of February 1, 2012. The motion carried by voice vote.

Senator Winder moved, seconded by **Senator Malepeai**, to approve the minutes of February 10, 2012. The motion carried by voice vote.

Senator Davis noted that there were corrections to the minutes from February 13, and asked they be deferred to the next Committee meeting.

ADJOURNMENT: **Chairman McKenzie** adjourned the meeting at 9:35 a.m..

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Senator McKenzie
Chairman

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Twyla Melton
Secretary