

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Wednesday, February 29, 2012

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Fulcher, Senators Darrington, 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 convened the meeting at 8:00 a.m.

RS21352 STATING THE FINDINGS OF THE LEGISLATURE and encouraging Governor C. L. "Butch" Otter in his efforts to move forward with the Governor's Sage Grouse Task Force.

Senator Brackett stated **RS21352** supports and encourages Governor Otter to move forward with the Governor's Task Force to create an Idaho Sage Grouse Plan (Plan). A recent court decision required the U.S. Fish and Wildlife Service to make a listing determination for sage grouse by September 30, 2015 under the Endangered Species Act. The Governor understands the potential devastating impact to the Idaho economy and lifestyle if that specie is listed. The sage grouse is the spotted owl of the sage brush step that includes all of southern and central Idaho. The Governor desires to develop a management plan that would exempt the state from compliance with the Bureau of Land Management's (BLM) instruction memorandum. The goal of the Plan is to keep that specie off the list but, if it is listed, to minimize the impact on committed lawful activities on the public lands such as grazing, hunting, recreation, energy and all other existing uses that are at risk. The BLM and Forest Service are writing an Environmental Impact Statement (EIS) that will be the basis for their determination. The Governor hopes this plan would be the preferred alternative by the BLM.

MOTION: **Senator Hill** moved, seconded by **Senator Winder**, to send **RS21352** to print.

VOTE: The motion carried by voice vote.

RS21369 RELATING TO ADMINISTRATIVE RULES to strengthen support of negotiated rulemaking by clarifying its purposes and providing procedures to enhance public notice and participation.

Roger Batt, representing the Idaho Heartland Coalition, explained that this bill strengthens the negotiated rulemaking process and allows for better transparency of public notice participation and the sharing of information throughout the negotiated rulemaking process. This will result in better consistencies throughout the process between the agencies and industry and will also result in better understandings of the information gathered and debated by those that are engaged in the process. **Mr. Batt** personally met with the different state agencies throughout these drafts to get to this RS. The drafters of this legislation was: The Bureau of Occupational Licensing, Department of Environmental Quality, Department of Agriculture, Alcohol and Beverage Control, Idaho Transportation Department, Department of Water Resources, Department of Administration and the Department of Health & Welfare. **RS21369** is the result of negotiations between all parties. The current legislation allows the agency the discretion of making written comments

available by any means that they feel necessary to those participating in the negotiated rulemaking.

Senator Hill asked if the emergency clause will put any hardship on any of the agencies. **Mr. Batt** replied that the clause was placed in the legislation because many of the agencies will start the process of negotiated rulemaking directly after the legislative session ends. This should not put a hardship on agencies conducting rulemaking as long as they know what steps to follow.

MOTION: **Senator Winder** moved, seconded by **Senator Malepeai**, to send **RS21369** to print.

VOTE: The motion carried by voice vote.

RS21243C1 RELATING TO THE PUBLIC UTILITIES COMMISSION in the case of ownership of RECs.

Rich Hahn, representing Idaho Power, offered introductory comments for **RS21243C1** noting that this RS is also supported by Avista Corporation and Rocky Mountain Power. The Public Utility Regulatory Policies Act (PURPA) of 1978 obligates all electric utilities to purchase the power generated by a qualified facility if they are asked to contract with that facility. Utilities such as Idaho Power have no choice when it comes to PURPA projects; they must purchase that energy. Utility customers pay 100% of the cost associated with these mandatory power purchases. This legislation provides that renewable environmental attributes (RECs) associated with the generation of electricity from PURPA qualifying facilities that sell their power to public utilities in the State of Idaho are owned by the Public Utility Purchaser of the power for the benefit of the public utilities customers. Currently there is ambiguity into which party, the public utility or the PURPA developer, owns the RECs generated by the PURPA project. This legislation would resolve that ambiguity by assuring that the customers that are paying for the PURPA energy also receive the full benefits of that energy including the environmental attributes. This RS applies only to qualified facility power purchase agreements entered into by public utilities following the enactment of this legislation. This RS is good for Idaho utility customers.

MOTION: **Senator Winder** moved, seconded by **Senator Hill**, to send **RS21243C1** to print.

VOTE: The motion carried by voice vote.

RS21064C4 RELATING TO UNCLAIMED PROPERTY to provide a method for a claimant to donate property, interest, and other types of proceeds to a public purpose.

Cozette Walters, Administrator, Unclaimed Property, explained that **RS21064C4** offers any claimant an opportunity to donate any unclaimed property that they have decided they are not interested in claiming to a cross-section of public interest purposes and can be an easy electronic fund transfer within the state treasury. There are four areas the department believes would be good candidates for the funds: 1) The Public School Permanent Endowment Fund; 2) The Veterans Cemetery Maintenance Fund; 3) Parks and Recreation Capital Improvement Account; and 4) The State General Fund.

Senator Stennett asked for a description of how the program operates? **Ms. Walters** outlined three steps:

- 1) They advertise citizens names in newspapers.
- 2) The abandoned property goes to processors who prove that this is the right owner.
- 3) They either make out a check to the claimant or the claimant may ask that the monies be donated.

Senator Davis questioned the cost to the State to issue a check. **Ms. Walters** stated they had done an analysis while at the Tax Commission and the amount to issue one check from beginning to end was \$46.00. **Senator Davis** produced a copy of a two cent check from a constituent and asked for an explanation. **Ms. Walters** explained that if the claimant files a claim and requests the proceeds, they are required to send it out no matter how large or small the amount. They currently do not have the authority to hold the check. **Senator Davis** suggested that consideration should be given to the processes that are in place to make sure that this is correct procedure. **Mr. Crane** stated that **Senator Davis** makes a very good point and their Department would be more than willing to work towards developing a process that eliminates waste.

MOTION: **Senator Winder** moved, seconded by **Vice Chairman Fulcher**, to send **RS21064C4** to print.

VOTE: The motion carried by voice vote.

RS21320 RELATING TO THE UNCLAIMED PROPERTY AND THE PUBLIC RECORDS ACT to restate existing protections related to personal information to alleviate the concerns of businesses and individuals participating in the program.

Ron Crane, Treasurer, State Treasurer's Office, explained that a couple of years ago this Committee moved the Unclaimed Property Division from the State Tax Commission to the State Treasurers Office. Under the existing codes the State Tax Commission enjoys exemption from the open records law. When that department moved to the Treasurer's Office, that exemption did not move with it. **RS21320** applies the same exemption allowed to the Tax Commission to be put in place for the Unclaimed Property Division which handles bank account numbers, private addresses, phone numbers, social security numbers, date of birth, etc. If this information could be accessed, there could be problems with identity theft or certain unscrupulous business practices.

Senator Davis asked if there was a reason why an emergency clause was not added to the legislation. **Julie Weaver**, Deputy Attorney General, replied that they did not think an emergency clause was necessary.

MOTION: **Senator Lodge** moved, seconded by **Senator Stennett**, to send **RS21320** to print.

VOTE: The motion carried by voice vote.

RS21373 A JOINT MEMORIAL TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES calling on Congress to reclaim its Constitutional role over the management of species and public lands and reexamine, reform, and reauthorize any federal law that disrespects the role of states and local governments in land management decisions.

Senator Lodge explained that this bill is brought to our Committee by a large group of legislators, as indicated on the co-sponsor list. They are urging Congress to reexamine, reform and reauthorize the Endangered Species Act, the National Environment Policy Act, the Equal Access to Justice Act, and any other federal law that disrespects the role of state and local governments in land management decisions and leads to costly and frivolous lawsuits that strip authority from Congress and place it in the hands of the judiciary.

This Memorial also asks the President of the United States to direct his federal land management agencies to utilize free market principles such as cost-benefit analysis, peer review of the science involved in their decision making process, and respect the concept of multiple use in the management of federal lands. It asks the Congressional Delegation to urge all federal land management agencies to use their discretionary authority to maximize the role and influence of local communities in federal land management decisions.

Senator Lodge stated that she lives by a man-made reservoir in Canyon County named Lake Lowell which is part of the Deer Flat Wildlife Refuge area. The Fish and Wildlife Services is threatening to close all recreational activity on the lake which will cause immeasurable recreational and financial harm to the economy of Canyon County. This action is causing an expenditure of countless county taxpayer dollars to defend the citizen's rights to recreate on Lake Lowell. If the State does not defend their rights, then the waters of that Lake will be closed to the citizens.

This Memorial also asks that regulations and constraints for caribou on the hundreds of thousands of acres in Boundary and Bonner Counties be scientifically studied. There is conflicting evidence as to whether those lands need to be closed and further study is needed before that closure.

Senator Lodge recognized the efforts of **Representative Derek Anderson** who has been working on this memorial and is currently in Washington D. C. testifying before Congress on this matter.

MOTION: **Senator Davis** moved, seconded by **Vice Chairman Fulcher**, to send **RS21373** to print.

VOTE: The motion carried by voice vote.

Chairman McKenzie relinquished the gavel to **Vice Chairman Fulcher**.

RS20990C4 RELATED TO AMENDMENTS TO THE UNITED STATES CONSTITUTION by the addition of a new *Chapter 93, Title 67, Idaho code* related to a constitutional convention.

Chairman McKenzie stated that this legislation could be the most important legislation the Committee considers during this session or even over the course of his career at the Legislature. This issue deals with Article V of the U.S. Constitution. Last session, the Committee addressed this issue but this bill is a better approach. This has been a joint effort between some national organizations and others in the legislature to fashion a solution to what is a critical national problem related to Federalism. Senator Crapo stated in his address to the Senate that the greatest crisis the Nation is facing currently or has ever faced is the growing national debt. America has faced threats to our country that are external and have come forward as a nation and shown a resolve to deal with those problems. This is an internal problem and the Nation has not shown a resolve to deal with the magnitude of this problem. This is a reflection of problems with our current "federalist system." The federal government has grown in ways that were never anticipated when the Constitution was passed, in particular, their expansion of powers under the "commerce clause." The growing impact of finances on the process of gaining and holding federal office has affected the process. The states have lost significant powers and the federal government has grown and has shown no interest in limiting its spending. This is a crisis.

These two RSs address the crisis and relate to Article V of the Constitution. Currently 2/3 of the states can call for a convention on a subject. Then Congress must call for a convention and that convention is limited in scope by the application from states, it is not a plenary convention. But, the states have never called for a convention because of the fear of a "runaway convention". Last year, this body passed a proposal that was the application to amend Article V to limit the convention to the applications of the states. Currently, the states have authority over their delegates to an Article V convention so the states can control their delegates. The proposal in **RS20990C4** limits the Idaho delegates to an Article V convention. If a constitutional convention was called, Idaho delegates would be limited in two ways: 1) they would take an oath to limit their consideration to issues within Idaho's application for the constitutional convention and, 2) the delegation will not vote to consider or approve any unauthorized amendment. Under the

current Article V, anything coming out of the convention would have to be ratified by three-fourths of the states.

Idaho delegates to an Article V convention which requires them to take an oath before they are certified that they would limit their consideration to issues within Idaho's application for the constitutional convention. They would not consider anything that went beyond that unless the legislature directly authorized them during the periods of convention. They would also advocate at the convention, rules to limit the scope of the convention to the application of the states. Whatever decision that would come out of a convention would have to be ratified by 3/4 of the states.

Idaho would be the first state to take this step. **Chairman McKenzie** would recommend this action to other states at the various legislative meetings in the interim.

Senator Davis stated that he is concerned that this is an actual exercise and trigger to several states and the belief that the participants can be narrowly defined. He also fears that enforceability of those provisions, which would be subject to a federal court interpretation, could strip away the very narrow "sideboards" that are being put in place. He agrees with the principles but is concerned.

Chairman McKenzie responded that **Senator Davis** had a valid concern. There are two parts of the process. 1) the Concurrent Resolution is the application; and, 2) the RS for the statutory changes would be the code section limiting the delegates. The research that has been done is clear that the state has authority to control its delegates. This is an uncharted action intended to address the constitutional crisis in the way U.S. Congress is operating and despite the best efforts of Senator's on both sides of the aisle such as the "gang of six," to try and craft reasonable and measured means to control federal. Congress is not doing it.

Senator Davis said if the Committee decides to print the concurrent resolution rather than to go into the 10th order of business, it is his understanding that the bill is to come back to the Committee. **Chairman McKenzie** stated that the concurrent resolution will come back to the Committee.

Senator Stennett voiced similar concerns as **Senator Davis** in that if the legislature passes this legislation and the delegates are sent off to the convention where other states don't have this provision, what would you envision their effectiveness to be in conjunction with those other states who do not hold their delegates to the same standards. **Chairman McKenzie** said that is the same fear every state has and that is why states have never called for a convention. There is a pent up desire to do something in this regard among several states; other states will follow Idaho's example and pass their own legislation. If the convention decides to try to rewrite the constitution or go beyond what is in the applications it would have to be ratified by 3/4 of the states which is significant.

Senator Davis explained that it might be safer to ask Congress to exercise its power within very narrow parameters and also write a statute that states they would have these narrow boundaries of what they can do. **Chairman McKenzie** replied that we need to get at the heart of the matter. If Idaho calls for a convention, it would be for the purpose of returning a balance of power. He reiterated the controls set forth within the RS. **Senator Davis** said it is politically troubling to trust that Congress will do what the state delegations pass into law or that the federal courts will interpret that we have the power with these boundaries. This year, he has been working with **Representative Lynn Luker**, House State Affairs, to craft the language. The bill has two issues; the delegates and making the application. The one to weigh heavily is the concurrent resolution which is the actual application to Congress to call for a convention with specific topics.

MOTION: **Senator Hill** moved, seconded by **Senator Lodge**, to send **RS20990C4** to print with a request to return it to the Senate State Affairs Committee.

VOTE: The motion carried by voice vote.

RS21372C1 STATING FINDINGS OF THE LEGISLATURE AND MAKING APPLICATION TO THE CONGRESS OF THE UNITED STATES to call for an Article V Convention to consider specific amendments to the United States Constitution.

Chairman McKenzie stated that this is a concurrent resolution to make application to Congress to call for a convention. If two thirds of the states make the call then Congress has a limited roll to call for the convention. Seven topics are listed in this RS reflecting items listed on past applications. The language would only become part of the constitution if three-fourths of the states ratified the language. This would call for the convention and would be limited to these seven topics.

MOTION: **Senator Winder** moved, seconded by **Senator Hill**, to send **RS21372C1** to print with a request to return it to the Senate State Affairs Committee.

VOTE: The motion carried by voice vote.

Vice Chairman Fulcher turned the gavel and meeting back over to **Chairman McKenzie**.

MINUTES:

MOTION: **Senator Davis** moved, seconded by **Vice Chairman Fulcher**, to approve the minutes of February 13, 2012.

VOTE: The motion carried by voice vote.

MOTION: **Senator Malepeai** moved, seconded by **Senator Winder**, to approve the minutes of February 15, 2012.

VOTE: The motion carried by voice vote.

ADJOURNMENT: There being no further business, the meeting adjourned at 8:58 a.m.

Senator McKenzie
Chairman

Twyla Melton
Secretary