

MINUTES  
**HOUSE STATE AFFAIRS COMMITTEE**

**DATE:** Thursday, March 01, 2012

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

**PLACE:** Room EW40

**MEMBERS:** Chairman Loertscher, Vice Chairman Crane, Representative(s) Stevenson, Black, Anderson (Keough), Andrus, Bilbao, Luker, Palmer, Simpson, Guthrie, Henderson, McGeachin, Sims, Batt, Smith(30), King, Higgins, Buckner-Webb

**ABSENT/  
EXCUSED:** Representative(s) Henderson, Higgins

**GUESTS:** Chris Rich, Ada County; Tim Hurst, Office of the Secretary of State; Teresa Baker, Ada County; Kristina Glascock, Twin Falls County; Betty Dressen, Payette County; Betty J. Thomas, Washington County; Ray Amaya, KBOI Radio; Phil McGrane, Ada County; Jason Kreizenbeck, Lobby Idaho; Kevin Altman, NTC National Tobacco; Jesse Taylor, Westerberg & Associates; Brett DeLange, Office of the Attorney General; Steve Rector, Pinnacle Business Group; Ashbey Taylor, Roll Your Own (RYO) machine manufacturers.

**Chairman Loertscher** called the meeting to order at 8:01 a.m.

**H 454:** **Rep. Sims** presented **H 454**, legislation to revise qualifications for electors, require a written warning on the absent elector's ballot form, and further define "permanent resident" status for qualified electors. Rep. Sims clarified that **H 454** will nullify the residency of any citizen who declares "permanent resident" status in another country regardless of their intention to return to Idaho. This excludes the military members covered under the Servicemembers Civil Relief Act. **H 454** will require a written warning on each absent elector's ballot form about falsifying information and the penalties for perjury. Ballot envelopes shall not be opened until the ballots are counted and **H 454** will void any ballot if there is more than one (1) ballot in an envelope. **H 454** complies with the Servicemembers Civil Relief Act, 50 U.S.C. App., Section 595, and will provide absentee ballots for federal, state, county and municipal elections to qualified electors and their spouses who are serving in the military outside of the State. Further, **H 454** requires a written audit procedure approved by the Secretary of State and signed by the person responsible for conducting the election. Rep. Sims stated that **H 454** is not a rewrite of current law, but simple corrections to protect the integrity of the election as well as the candidates.

In response to questions, **Rep. Sims** stated that if an elector is out of the country and wants to vote in a federal election; they receive a federal ballot not a state one. They are not qualified to vote on state issues if they are not a resident of Idaho. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) provides for absentee ballots to be sent out of the country for U.S. citizens residing overseas. Rep. Sims noted that declaring permanent residency status in another country does not preclude someone from returning to Idaho and declaring residency in Idaho again. The thirty (30) day residency requirement was already in Idaho Code.

**H 571:** **Tim Hurst**, Chief Deputy, Office of the Secretary of State, presented **H 571**, legislation to clarify procedures for handling absentee ballot envelopes, provide for in-person absentee voting, and allow "early voting". Mr. Hurst explained that **H 571** cleans up a mistake in legislation passed last year and deletes reference to perforated ballots. **H 571** allows for the opening of optical scan ballots and removal from their envelopes to flatten the ballots before running through the tabulators. Mr. Hurst noted that **H 571** differs from **H 454** in that it allows ballots to be opened as early as 8:00 a.m. on the Monday before the election. **H 571** requires security procedures for absentee ballots which include a detailed security plan submitted to the Secretary of State's Office thirty (30) days before the election, ballots locked and located in a secure location with the premises patrolled by security personnel, only one person with access to the keys, and two (2) people present whenever the ballots are handled. Mr. Hurst noted that **H 571** allows for "early voting" if the county has access to the statewide voter registration system. A detailed plan for security of the ballots must also be submitted to the Secretary of State's Office thirty (30) days before early voting begins. Mr. Hurst reiterated that ballots are not counted until election day, and there will be no early results.

In response to questions, **Tim Hurst** stated that **H 571** allows ballots to be transferred from the ballot box to a transfer case with a numbered seal as an option for counties that count ballots at a central location. If the seal is broken, there is no other option than to go to court to challenge the election results. Mr. Hurst acknowledged that every county has absentee ballots, but it amounts to in-person absentee voting. Early voting will only be allowed two weeks prior to the election and smaller counties may not be able to offer it. Mr. Hurst stated there could be additional costs for early voting, but opening the ballots early to lay them flat and not having to pay overtime on election day could provide a cost savings. There are four different methods for voting, but the basic procedures are the same. **H 571** requires a detailed plan for security of the ballots based on minimal standards that every county can comply with. Mr. Hurst noted that counties requested the option to open ballots and lay them flat due to optical scanning. Early voting has been requested from poll counters, representatives, and voters because they do not have to apply for an absentee ballot.

**H 454:** **Tim Hurst**, Chief Deputy, Office of the Secretary of State, testified **in opposition to H 454**. Points of opposition included: defining "permanent resident" provides an exemption for the military, but does not include residents working for the federal government in other locations, the penalty for perjury is \$50,000 not \$2,000, ballot envelopes containing more than one (1) ballot are not counted per current Idaho Code, and when **H 454** defines residency requirements, it does not include all possible elections.

**Teresa Baker**, Deputy Prosecutor, Ada County, testified **in opposition to H 454**. Ms. Baker stated that defining "permanent resident" is not an easily or commonly defined term and the qualification of voters is provided for in the Idaho Constitution, Article VI, Section 2. The Constitution allows for the Legislature to determine a time frame for residency, but the Constitution does not allow the Legislature to make other qualifications. Section 1 of **H 454** adds additional qualifications and is potentially unconstitutional. It is already illegal to falsely provide information for elections. The requirement to print this information on the ballot form would increase printing costs and add to an already crowded ballot. **H 454** allows the opening of absentee ballots only after the closing of the polls. This provision alone will result in election results being delayed by days, not hours. Ms. Baker stated that current statutes require that once a county begins processing election results, it is a continuous process until all the ballots are counted. Employees cannot work for 24 hours a day until all the ballots are counted. This will also result in unknown costs for overtime. **H 454** calls for a "federal ballot" which disenfranchises absentee

voters from voting in state and local elections. This adds an additional qualification not provided for in the Idaho Constitution. Ms. Baker noted that creating a new "federal ballot" means increased printing and personnel costs, programming machines, and the possibility for more errors.

**Christina Glascock**, Twin Falls County Clerk, testified in opposition to **H 454**. Points of opposition include: prohibiting opening the ballots early and creation of a new federal ballot. Ms. Glascock stated there have been issues in the past when ballots were opened, but not flattened to run through the tabulators. This delay causes a fiscal impact to the county. County personnel will count ballots during the day, but if we wait until the polls close, employees are paid time and a half. Ms. Glascock also noted there will be additional printing costs to prepare the "federal ballot". Ms. Glascock **supports H 571**.

In response to questions, **Ms. Glascock** stated that she tries to have some results for the 10:00 news as well as the candidates, but tabulating election results is stressful on the personnel. Ms. Glascock has promoted absentee ballots in the past without a lot of results. She does not mail out anything directly to the voters.

**Phil McGrane**, Ada County Deputy Clerk, testified in opposition to **H 454**. Mr. McGrane stated there is a constitutionality issue with defining "permanent resident" status. The opening of absentee ballots is a 24-hour day, and **H 454** would extend the work for possibly days. It questions the integrity of the election staff, and it is stressful for the media, the candidates, as well as the voting public.

**Rep. Sims** closed out testimony on **H 454**, proposed legislation for simple corrections. **H 454** is workable for the entire state. Rep. Sims stated that if we know that people are out of the country and not a resident of Idaho; they should not vote in Idaho.

**MOTION:** **Vice-Chairman Crane** made a motion to **HOLD** both **H 454** and **H 571** in committee subject to the call of the Chair. **Motion carried by voice vote.**

**Chairman Loertscher** turned the gavel over to **Vice-Chairman Crane**.

**H 572:** **Tim Hurst**, Chief Deputy, Secretary of State, presented **H 572**, legislation to clean up procedures found during the first year of election consolidation. **H 572** removes references to city clerks. For primary elections, it allows an "unaffiliated" elector to affiliate with the party of their choice by signing a party affiliation form up to and including election day. Mr. Hurst stated **H 572** will require all political party candidates to declare their party affiliation in their declaration of candidacy and be affiliated with a party at the time of filing. Mr. Hurst explained that in the past candidates wanted to be unaffiliated, but still file for a specific party.

In response to questions, **Mr. Hurst** verified that an elector would use a party affiliation form if they want to change parties on an election day.

**MOTION:** **Rep. Simpson** made a motion to send **H 572** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Buckner-Webb** will sponsor the bill on the floor.

**H 518:**

**Brett DeLange**, Office of the Attorney General, presented **H 518**, legislation to require operators of cigarette rolling machines to comply with applicable Idaho laws governing the manufacturing, marketing, sale and taxation of cigarettes; the use of the cigarette rolling machines will not circumvent the Tobacco Master Settlement Agreement (MSA). Mr. DeLange explained that **H 518** provides a level playing field, the same operating rules for everyone whether big tobacco or a small convenience store, and **H 518** will allow the Attorney General to defend payments that Idaho receives from the MSA, \$25 million. **H 518** applies to sophisticated commercial cigarette rolling machines costing \$35,000 to \$40,000 and used in a commercial context. The rolling machines have the capability to roll up to 150 cigarettes in less than thirty (30) minutes. **H 518** will require operators of the cigarette rolling machines certify annually with the Attorney General and provide information regarding the operator, the location of the machine, the make and brand of the machine, and from whom the operator purchased the tobacco from. Mr. DeLange stated that **H 518** requires the operator of the rolling machine to use tobacco maintained on the Attorney General's directory pursuant to the Tobacco Master Settlement Agreement Complementary Act, payment of applicable state tobacco taxes, a current permit, compliance in preventing minors from purchasing or having access to tobacco or entering the premises, use of fire safe cigarette tubes, and cigarettes sold in a quantity not less than twenty (20). Mr. DeLange explained that if Idaho wants to keep receiving funds from MSA, then we have to track cigarettes as well as the cigarette rolling machines. If we don't, we risk losing funds vital to our state.

In response to questions, **Brett DeLange** clarified the requirement to certify cigarette rolling machine operators is due in part to ensure all tobacco used in the machines is listed on the Attorney General's directory and to prevent operators from turning into manufacturers. Certification is a simple process to identify the operator and the brand and no fee or payment is required to be listed in the directory.

**Steve Rector**, Pinnacle Business Group, representing the Roll Your Own (RYO) machine operators, deferred his time to testify to Mr. Taylor.

**Ashbey Taylor**, Esquire, representing the Roll Your Own (RYO) machine manufacturers, testified **in opposition to H 518**. Mr. Taylor stated cigarette rolling machines are new to the market and they want a bill that addresses all machines. Mr. Taylor clarified they want regulations and reporting requirements for the machines as well as the retailers, they want to adhere to fire safety standards, and to prevent access for minors, and they want to address the concerns of the Attorney General. Mr. Taylor recommends an amendment to **H 518**. The key distinction is the Attorney General limiting the tobacco that he approves.

In response to questions, **Mr. Taylor** noted that less than 5% of the population rolls their own cigarettes. Mr. Taylor clarified that all other tobacco requires payments under MSA, but pipe tobacco does not. The amendment he proposes would still require an escrow payment for using pipe tobacco the same as other tobacco products. The key difference between **H 518** and Mr. Taylor's proposed amendment, is the flexibility for consumers. The machine's manufacturers want reporting requirements, just not the Attorney General's requirement to be listed on their tobacco directory. It may be a burden for RYO manufacturers to track every cigarette in Idaho, but they want to be transparent.

**Roy Eiguren**, Sullivan Reberger Eiguren, representing National Tobacco, deferred his time to testify to Mr. Altman.

**Kevin Altman**, representing NTC National Tobacco, testified in support of **H 518**. Mr. Altman advised that at the federal and state levels, "roll your own tobacco" is defined as "for use or purchase by consumers for making cigarettes". Use of pipe tobacco in the RYO machines skirts the MSA and evades taxation. Mr. Altman stated they should be using roll your own tobacco, but the taxes are higher and this harms their business model. Mr. Altman explained that we should look at the intent of use. If using a RYO machine then tobacco should be RYO. Mr. Altman noted that pipe tobacco is taxed at \$2.84 per pound, but RYO is substantially more.

In response to questions, **Mr. Altman** stated that RYO machines allow the consumer to purchase cigarettes for less than buying a regular carton. The roll your own bags of tobacco do not have warning labels on the hazards of smoking. Mr. Altman cannot support **H 518** if the operators of the machines are not using the proper legal tobacco in the machines. The tobacco should be listed on the Attorney General's directory.

**Brett DeLange** closed out testimony on **H 518**. Idaho consumers have over 260 tobacco brands to choose from and any manufacturer can request that the Attorney General certify their brand. Cigarettes in the RYO machines are cigarettes that need to be tracked. This is not a freedom issue. Mr. DeLange stated that the Attorney General has never rejected certifying a brand.

**MOTION:** **Rep. King** made a motion to send **H 518** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. King** will sponsor the bill on the floor.

**ADJOURN:** There being no further business to come before the committee; the meeting was adjourned at 10:46 a.m.

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Representative Loertscher  
Chair

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Lissa Cochrane  
Secretary