

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Wednesday, March 07, 2012

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman McKenzie, Senators Darrington, Davis, Hill, Fulcher, 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.

Senator McKenzie called the meeting to order at 8:02 a.m. and invited **Senator Bilyeu** to introduce the first item on the agenda.

RS21428 A SENATE RESOLUTION RECOGNIZING the Achievement of Ariane Drake and Emily Kladar.

Senator Bilyeu explained that the intent of this concurrent resolution is to honor two recipients in Idaho who received the Prudential Spirit of Community Awards. The Prudential Spirit of Community Awards is an awards program recognizing student volunteer service. More than 5,000 student projects were reviewed from across the state. Two recipients were chosen: Ariane Drake of Pocatello and Emily Kladar of Hayden Lake.

Senator Bilyeu spoke of Ariane Drake who founded a non-profit organization "Hands for Uganda" that raised \$30,000 to buy land, construct a new building for a school, and pay for student's tuition fees.

The second recipient of the award was Emily Kladar of Hayden Lake, a sixth grader, who, with her sister, created a non-profit charity that raised more than \$60,000 to benefit families of children needing heart surgery in Mexico and the United States.

MOTION: **Senator Darrington** moved, seconded by **Senator Fulcher**, to print **RS21428**.

VOTE: The motion carried by voice vote.

RS21464 RELATING TO THE MAINTENANCE AND REPAIR OF DITCHES, CANALS AND CONDUITS to codify existing law that the owner or operator of such aqueducts is not liable for wasting water or damage to others that is caused by the acts of third parties or acts of God.

Norm Semanko, General Counsel, Idaho Water Users Association, stated **RS21464** is a rewrite of **H398**. This bill clarifies what the law is in regards to the owner of a ditch or canal. The Idaho Water Users Association is not liable for wasting of water or damage that is caused by third parties or acts of God. This legislation reaffirms the responsibility of water managers to keep canals safe by setting forth the applicable duty of care. Without this legislation it will become more difficult for water managers to have their operations insured. This legislation will help make sure that canals and ditches can continue to deliver water to our farms, fields, subdivision, schools and parks.

Senator Stennett asked if the basic purpose of this legislation is to define reasonable care so that the owners can be insured? **Mr. Semanko** stated that

was correct. The more clarity you can have in the statute, the easier it is for the practitioners and judges to make a determination and will make them more insurable.

MOTION: **Senator Fulcher** moved, seconded by **Senator Darrington**, to print **RS21464**.

VOTE: The motion carried by voice vote.

HCR 36 HONORING AND COMMENDING STEVEN R. APPLETON for his professional and personal contributions to the State of Idaho.

Mike Reynoldson, Micron Government Affairs Manager, stated that this resolution honors the lifetime achievements of Steven R. Appleton and his professional and personal contributions to the State of Idaho. As the CEO of Micron Technology, Mr. Appleton led Micron's global expansion while maintaining the corporate headquarters in Idaho. Mr. Appleton also established the Micron Foundation, which has grown to become Idaho's largest corporate foundation, providing millions of dollars in contributions to K-12 and higher education programs.

MOTION: **Senator Fulcher** moved, seconded by **Senator Lodge**, to send **HCR 36** to the floor with a do pass recommendation.

VOTE: The motion carried by voice vote.

S 1330 RELATING TO AIR NAVIGATION FACILITIES to eliminate language made obsolete by HJR5.

Senator Toryanski said **S 1330** is a housekeeping bill which eliminates language found in *Chapter 401, Title 21, Idaho Code*, a statute that is outdated and inconsistent due to **HJR 5** which added a new section to the Idaho Constitution allowing public airports to issue revenue and special facility bonds provided that these bonds were paid solely from airport generated fees and not tax dollars.

MOTION: **Senator Lodge** moved, seconded by **Senator Darrington**, to send **S 1330** to the floor with a do pass recommendation.

VOTE: The motion carried by voice vote.

S 1366 RELATING TO ADMINISTRATIVE RULES to strengthen the legislatures statement of support for negotiated rulemaking by clarifying its purposes and providing minimum procedures to enhance public notice and participation.

Roger Batt stated that in 2008 he was involved in a project for the well construction industry which was involved in negotiated rulemaking with one of the state agencies. **Mr. Batt** shared his experience with the rulemaking process between a state agency and the well construction industry. The process was found to be frustrating and confusing in that they were not advised of changes of language and content within the rules. **Mr. Batt** shared this experience with members of other industries who had also conducted negotiated rulemaking over a period of years. He found that they shared similar experiences. In 2008, legislation was drafted to help rectify those issues. The legislation passed the House, but failed in the Senate.

In 2012, industry came back with a new piece of legislation and with a different approach to the rulemaking process. The legislation has been reviewed by eight state agencies in face to face meetings, phone calls, and e-mail correspondence. The agency personnel that provided input on this legislation were either a director or a deputy director, legislative coordinator, or the rules administrator for that particular agency. **Mr. Batt** consulted with **David Hensley** of the Governors Office, who selected the eight agencies that **Mr. Batt** personally met with. Those agencies were: Idaho Bureau of Occupational Licensing, Department of Environmental Quality, Department of Agriculture, Alcohol Beverage Control, Idaho Transportation Department, Idaho Department of Water Resources, Department of Administration, Department of Health and Welfare, and the Office of Administrative Rules. Many of these agencies provided input and suggested changes which were included in the legislation.

S 1366 strengthens the negotiated rulemaking process. It allows for better transparency of public notice, participation, and sharing of information between the agency and those engaged in negotiated rulemaking. This legislation will result in a much clearer understanding of the information being considered, gathered, summarized, and debated by those engaged in the rulemaking process. The legislation establishes minimum procedures for agencies to follow if that agency determines it will engage in negotiated rulemaking. Some of the most important elements within this legislation are on page 2, lines 9-16 of the bill.

Industry and agencies agree it is important to provide better transparency of the process by establishing, maintaining, and timely updating of the negotiated rulemaking schedule. By providing a list of written comments and other documents to stakeholders that are pertinent to the information being discussed then preparing a written summary of unresolved issues, key information, and conclusions reached as a result of the negotiated rulemaking addresses the transparency issue. Clear language ensures that participants have access to the same information, clear understandings on what is being discussed, clarity of why issues may or may not have been considered or agreed upon, and consistency of sharing information with participants who have attended meetings to negotiate on subject matter important or critical to their industry.

Under this legislation, agencies have the discretion about the distribution of information that would make it accessible to negotiated rulemaking participants. This was the resolution we reached with the Department of Health and Welfare a couple of weeks ago to gain their support of this legislation.

Senator Darrington advised that when this legislation was considered some years ago and it included a timeline as to how the process would proceed. The timeline led to the demise of the original effort to strengthen negotiated rulemaking. **Mr. Batt** stated that initially they did establish a timeline and they took it out because it would not work for this legislation.

Norm Semanko, Idaho Water Users Association, spoke in support of this legislation. This legislation will provide guidance for the agency heads in drafting rulemaking.

Jayson Ronk, Idaho Association of Commerce & Industry, spoke in support of this legislation. They worked with **Mr. Batt** and Mr. Jensen for several years in crafting this legislation. They feel that **S 1366** will streamline the rulemaking process and ensure the rules are moved forward through a process that promotes consensus.

Roy Eiguren, Attorney/Lobbyist, spoke in support of the legislation. The changes that are being brought forward in this legislation will enhance the process of negotiated rulemaking.

MOTION: **Senator Lodge** moved, seconded by **Senator Stennett**, to send **S 1366** to the floor with a do pass recommendation.

VOTE: The motion carried by voice vote.

H 516 RELATING TO THE STATE LIQUOR DIVISION to make housekeeping revisions to eliminate unnecessary language, modernize obsolete terms, and clarify language relating to day-to-day operations.

Jeff Anderson, Director, Idaho State Liquor Division, advised that **H 516** is a housekeeping measure to amend *Title 23*, to eliminate and modernize obsolete terms and language relating to the day to day operations of their Division. The code has not been updated for some time and there is no fiscal impact. Some of the changes for consideration: 1) Eliminating references to a liquor commission; and 2) Specific definitions of how they do business at present.

MOTION: **Senator Fulcher** moved, seconded by **Senator Stennett**, to send **H 516** to the floor with a do pass recommendation.

VOTE: The motion carried by voice vote.

MINUTES APPROVAL: Minutes for February 17, 2012 and February 22, 2012

MOTION: **Senator Stennett** moved, seconded by **Senator Malepeai**, to approve the minutes of February 17, 2012.

VOTE: The motion carried by voice vote.

MOTION: **Senator Lodge** moved, seconded by **Senator Darrington**, to approve the minutes of February 22, 2012.

VOTE: The motion carried by voice vote.

ADJOURNMENT: There being no further business **Chairman McKenzie** adjourned the meeting at 8:55 a.m.

Senator McKenzie
Chairman

Twyla Melton
Secretary