

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Friday, March 09, 2012

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman McKenzie, Senators Darrington, Hill, Fulcher, Winder, Lodge, and Stennett

ABSENT/ EXCUSED: Senators Davis and Malepeai

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. with a quorum present and started the meeting with **H 490** presented by **Senator Smyser**.

H 490 RELATING TO THE STATE SUNSHINE LAW to expand disclosure requirements and to provide for campaign contribution limits for candidates.

Senator Smyser commented that this bill expands the Idaho Sunshine Laws by providing that campaign reporting law application applies to countywide measures including countywide recall elections. It also provides for the application of the campaign reporting law to candidates involved in citywide, statewide, or legislative district recalls. The term "measure" defines and limits campaign contributions for candidates.

Senator Smyser related to the proliferation of recall elections that were taking place in the Spring of 2011 in Idaho. Candidates sought to raise money to combat the recall and they were told that the money raised could not be reported because of the lack of any law addressing this issue. It was a loophole in reporting and kept these funds off the books. This legislation closes that gap and allows the public to have the ability to do campaign financing for recall elections under the current Sunshine Laws. **Betsy Kimbrough**, Elections Supervisor is in attendance to answer questions.

Senator Stennett asked if this would place the same kind of caps and criteria that is in effect in a regular election. **Senator Smyser** responded it would be the same. **Senator Stennett** asked if there are no limits on the recall funds and those funds are transferred to an accounting fund, is there a means to report those funds because the funding was over what was normal to a campaign. **Senator Smyser** said that would be in the application process and would be filed in the same way other campaign funding was filed.

MOTION: **Senator Hill** moved, seconded by **Senator Winder**, to send **H 490** to the Senate floor with a do pass recommendation.

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

S 1373 RELATING TO LABOR to add a new section to provide legislative intent and to provide for the "Open Access to Work Act".

Senator Pearce explained that **S 1373** is known as the "Open Access to Work Act" and is similar to **S 1006** passed last session. Earlier in the 2012 session **S 1342** based on the same issue, was introduced but held by the sponsors in order to add language at the suggestion of the Attorney General. **Senator Pearce** outlined the history of **S 1006** which passed the Senate and was signed into law only to be overturned by Judge Winmill. **Judge Winmill** construed that the meaning of the

legislation was addressed so as to intersect with the National Labor Relations Board protection of labor union activities. Although the sponsors of **S 1006** did not agree with that decision, it provided insight into how to proceed with the current legislation. **Senator Pearce's** full comments on the current legislation and the changes from the earlier legislation, as well as the addition of the Attorney General's language, are attached as part of these minutes.

The bill addresses the concerns of the court, meets the goals of merit shop companies and workers, and does not violate any activities that are protected under the Nation Labor Relations Act. It is good for all parties and most particularly, the taxpayers of the State of Idaho.

Senator Pearce extended an invitation to testify to **Kate McCaslin**, President and CEO of the Inland Pacific Associated Builders and Contractors, a contractors trade association covering Idaho and Eastern Washington. **Ms. McCaslin** asked for the Committee's support on behalf of the open shop/merit shop contractors and their employees. This bill ensures that over ninety percent of nonunion construction workers and their employers will have an opportunity to bid on construction funded by tax dollars. It makes sure, through the bidding process, that state and local governments get the best construction for the best price. It does not interfere with the rights of private parties to negotiate union only labor agreements, it only says that government entities will not be able to enter into those agreements.

Senator Stennett stated that it is her understanding that state and local governments have a choice whether or not to enter into agreements with a union. **Ms. McCaslin** answered that they can choose a union contractor and for a particular project. This bill says the government would not get in the business of mandating or not mandating one. **Senator Stennett** requested percentages for work by a union shop versus an open shop. **Ms. McCaslin** replied that the Bureau of Labor Statistics indicate that over ninety percent of the workers in the State are open shop so it follows that the majority of contracts are open shop. Union contractors do get their share of projects, both public and private, in the State.

Public Testimony in Opposition of S 1373: James Piotrowski, Herzfeld & Piotrowski testified in opposition to this bill and his written testimony is included with the minutes.

Senator Stennett asked how many project labor agreements (PLAs) have been signed by local government in the State. Are they actively pursuing these labor agreements in public works? What are reasons local government would want to enter into a PLA?

Mr. Piotrowski responded that no agreements have been signed and he is not aware that anyone is actively pursuing a public sector PLA at this time. Highly skilled labor necessary to complete modern construction is difficult because of the rural nature of Idaho, especially when we are encountering fast changes within the construction industry. The skills needed and the size of the project would mean the project owner would want some security to guarantee that an adequate number of highly skilled, well trained, workers were available. On a case-by-case basis, a unit of local government may conclude that the best way to accomplish that is to ensure access to the hiring systems that are used by building and trade unions that maintain lists of highly skilled workers. Reasons for using a PLA are to meet timely completion dates, keep costs down, and to ensure a particular quality level.

Chairman McKenzie announced that **Brian Kane**, Assistant Chief Deputy, Attorney General's Office, was available to answer questions.

Senator Winder asked **Mr. Kane** to provide some background from his perspective i.e., specify what the judge ruled on and how **S 1373** specifically deals

with that issue. **Mr. Kane** said he will speak to these issues with the caveat that his remarks are subject to pending litigation because there is a pending appeal in front of the Ninth Circuit. The issue is directly addressed in the Attorney General's response of February 23, 2012, in the third paragraph (letter included in minutes). This legislation directly responds to what the federal judge identifies as a distinguishing characteristic between Idaho's legislation which was struck down and an executive order that was upheld in another case.

The other recommendation was to ensure that the specific remedy provided for in 2012 and 2013 sole remedies under the Right to Work Act are addressed. Those distinguishing characteristics have legal significance that is important.

Senator Darrington asked **Ms. McCaslin** to respond to the previous testimony with regard to the scope of the Idaho problem. **Ms. McCaslin** stated that in Idaho, there are a couple of very large PLAs driven by a federal government mandate. Nationally, not in Idaho, the union's use of strong arm tactics are pressuring local governments to impose union only PLAs. Being proactive will help Idaho avoid this situation. It does not say that private parties cannot engage in PLAs, it is saying that government cannot mandate use of PLAs. That protects local officials from intimidation tactics.

Nationwide, open shop workers and contractors complete over 88% of all construction put in place today. They are some of the largest companies and the most skilled workers in the country. If they were not, they would not own that share of the marketplace. This puts in print what was put in the record last year and was set aside by the judge.

MOTION: **Senator Winder** moved, seconded by **Senator Fulcher**, to send **S 1373** to the Senate floor with a do pass recommendation.

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

Chairman McKenzie turned the gavel over to senior member, **Senator Darrington**.

S 1362 RELATING TO AN APPLICATION OF THE STATE OF IDAHO, under Article V of the United States Constitution, for a convention for proposing amendments to the United States Constitution.

Senator Darrington called on **Chairman McKenzie** to present **S 1362**.

Chairman McKenzie stated that these two items are very important for Idaho and he will address them both at this time. However, he will ask the committee to hold **SCR 126** in committee. **SCR 126** is the actual application calling for a convention. More education is needed before taking that step.

Chairman McKenzie said that **S 1362** related to Article V of the Constitution and stated the need for this to be discussed this year. **Senator Mike Crapo** spoke on the Senate floor not too long ago and he said "the threat we face for our debt crisis may be the greatest threat America has ever faced. I say that with the full knowledge of the wars we have been in and the other kinds of threats that we face. But this threat comes from within and it is significant in terms of its threat to the America we all know as anything that I have ever seen." **Chairman McKenzie** described that as a very strong statement and agreed with **Senator Crapo's** conclusion that the national debt has increased to the extent it is about \$61,000 per household and continues to grow at an unchecked rate. Attempts to control spending and reduce that debt has been rejected. The reason for the debt relates to the expansion of federal power under the commerce clause as interpreted by the U. S. Supreme Court in from the 1930s, in areas that were traditionally controlled by the states.

Chairman McKenzie stated that there is a solution to this problem. Article V is the states' ultimate power to reign in an out of control federal government. It was put in by the founding fathers as a fail-safe mechanism. It is not a self destruct button that some people worry about for an unlimited plenary convention but it is for use by the states to limit an out of control government. **S 1362** is something that has been worked on in Congress as well. When **Representative Minnick** represented Idaho in Congress, he joined a bipartisan group to push for the "Madison Amendment" to clarify that states could call a convention without a fear of a runaway and address issues that weren't brought before it. This Committee and the Senate passed an amendment last year on the "Madison Amendment" and it passed the House State Affairs but it was not voted on on the House floor because it was hanging on the calendar at the end. The issue was studied further and this bill is a better approach.

Chairman McKenzie explained that this statute would limit Idaho's delegates to a convention. From Madison's writings in the Federalist Papers 34 debate on this issue, it is clear that in a convention called by the states the delegates are agents of the legislatures. The states have the right to control their delegates to that convention. Because of that, we brought this proposal before the Committee.

S 1362 would set up a procedure for our delegates to a convention. The way the convention would occur is that if two-thirds (34) of the states had the same subject matter for an application to Congress to call for a convention similar to those in **SCR 126** that are the most common subject matters for a convention. The most common relates to the federal debt and putting limitations on Congress' spending authority. If two-thirds of the states made an application for the same subject(s), Congress is required to call a convention. Idaho would send delegates to that convention. Those delegates, picked by the legislature are an extension of the legislature, and the legislature has the right to control the delegates. The bill would direct Idaho's delegates to support only the amendments that are in the application from Idaho. But if the convention goes beyond the specified subject matter and considers other subjects, Idaho delegates would have to vote "no" on those. Otherwise, they would be rescinded and the alternative delegates would take their place. It also provides a mechanism that allows the legislature to have the delegates consider limited subject matters beyond that upon approval by the Idaho legislature during the Article V convention. The last step in the process is if the convention comes up with language for amendments, three-fourths of the states (38) would have to approve that language.

The Committee is being asked to consider this Runaway Convention Act limiting the delegates if a convention was called. This is a step moving forward but it is not taking full action at this time.

Senator Darrington asked for questions from the Committee.

Senator Hill noted that the first "WHEREAS" referred to the "concurrent resolution that the Idaho Legislature has passed." It appears that one paragraph may not be appropriate. Should it affect the passage of this particular piece of legislation?

Chairman McKenzie acknowledged that point. It may be more substantive than technical so an amendment may be required.

Senator Stennett asked if the delegates were limited to certain topics and other states were not, what happens when some are held at a different standard at the convention? **Chairman McKenzie** answered that the first thing the delegates are asked to do is have the convention pass votes as listed on page 2, line 26. The delegates would ask the convention to adopt the rules which state that the Article V convention shall consider only those proposed amendments within the scope of the applications. Following the final vote on all motions on the proposed amendments related to the amendment, the convention will close.

If **S 1362** is passed and the convention has more subject matters than were on Idaho's application, Idaho's delegates would be present for the vote on those matters but they would not vote to approve any amendments that come for those additional subject matters. There is a provision where the legislature could allow for consideration for those if authority is given to the delegates during the call of the convention itself.

Senator Fulcher stated his understanding of Article V is that it only authorizes a convention for addressing specific amendments. Is that correct? If so, then why do we need **S 1362**? **Chairman McKenzie** agreed that the convention is limited only to favoring the proposed amendments stated in the applications. The bill limits Idaho's delegates if the convention considers subject matter beyond what is in Idaho's application.

Senator Darrington asked if there were others to speak to **S 1362**?

Bliss Tew, Orem, Utah, identified the word "specific" as in the discussion about specific amendments. However, when looking at Article V, the word "specific" does not appear so, in his opinion, the amendment is not limited to specific amendments. **SCR 126** lists seven potential amendments to consider then each of the fifty states could have different subjects. That would be 350 amendments to be considered. That many amendments would be quite sweeping. **Chairman McKenzie** has asserted it is not a general or constitutional convention, this many amendments would be as sweeping as a general convention. There was also the assertion that the thirty-eight states would be able to ratify the amendments that are the products of the convention. Does states mean state legislatures? It says in Article V, Congress may propose a method of ratification which might be either the state legislatures or it could be state ratification conventions. If Congress decides that the ratification conventions will be the model for ratification, the state legislatures will never have the opportunity to have any kind of hearing about any of the amendments or make any decision about what amendments are ratified.

Also, there was the assertion that the delegates attending the convention would be held to certain topics. But, what happens if the other states are held to something else. We can't assume what this convention would look like since no Article V convention has convened. How would the delegations be designed and how would you derive the number of members to the delegation from each state? Article V does not give the state legislatures any authority to set the agenda for the convention.

The real problem is that there is a government assembled in Washington D.C. that doesn't stay within the limited scope of their delegated powers. The concern is a runaway government spending trillions of dollars and putting us into debt. The problem is the Congress, President and the electorate do not follow the Constitution. Instead of tinkering with the Constitution, the electorate needs to be educated on the premise of the Constitution to limit the powers of the federal government and hold the federal government accountable to the Constitution.

Senator Fulcher understands that the purpose of **S 1362** is to limit Idaho delegates to what the State Legislature authorizes them to address. In sharing reservations about a constitutional convention, if that were to transpire, wouldn't it be at least some degree of wisdom, to limit the scope of the influence Idaho has control over, which is our own delegates? **Mr. Tew** concedes that might happen and it would be a wise idea if they can avoid other topics. Holding Idaho delegates to designated subject matter is questionable when 350 topics can be brought up. Are they going to leave it up to other delegates to decide on those topics or are they going to participate?

John Runft, Constitutional Attorney in Boise, testified in support of **S 1362** and the resolution for the convention. Mr. Runft shares the belief that there is a problem in our country and the need for the states to exercise some of their powers in the

Constitution. The key element of the Constitution is the division of power. There is an increased usurpation of power by the federal government. There has been a loss of division of power and a added concentration of power in the federal government. The Idaho Legislature and the public has expressed dissatisfaction with the current situation. There does reside in the Constitution one residual right for state sovereignty and that is Article V. It provides that the states can propose amendments to the Constitution and then it goes back to three-quarters of the states to ratify. That was insisted on by the states at the Constitutional Convention in 1787. It is fundamental—there wouldn't have been a deal if that had not been put in the Constitution. Alexander Hamilton put forth in Federalist Paper 85, a provision that "clinched the deal" and that is Article V of the Constitution. It is the rights of the states to call a convention and propose an amendment. The possibility of a runaway convention does not exist under Article V. That myth was perpetrated when the seventeenth amendment to allow a popular vote to the Senate was being debated. Congress acted and the law was changed before a continental convention could be called. There has never been a constitutional convention called for proposing amendments. It is a limited convention because they can only propose amendments which does not empower the convention to change any procedure in Article V. The possibility of a runaway convention does not exist in Article V in conjunction with the Supreme Court's power to issue a review.

The myth of a runaway convention arose about a century ago in the early 1900s with respect to the seventeenth amendment. Since that time there has been a great deal of research. There are three policy reports that have been made available to the Committee and are included as part of these minutes. Much more information can be accessed electronically. This information is important because it has to do with what the founding fathers meant by a constitutional convention and many other terms. It is a great irony that the one tool available is not being used to address the country's problems.

The topics included in the concurrent resolution are also of interest to other states who have been contacted as the resolution has been constructed. A convention can only be called by the agreement of thirty-three states on the proposal of those subject matters. It has to be thirty-three states agreeing to the same specific subject matters. It is the province of the convention to decide on the specific language of the proposal or the convention would not have a purpose. Logically and legally, if any new subject matters were raised in the call of the convention, they do not qualify.

Senator Darrington called for questions. Being none, he asked if there was further testimony.

Dale Pearce, Nampa, Idaho, testified in opposition to **S 1362**. In 1787 thirteen states sent representatives to a convention to improve the Articles of Federation only. They ultimately "trash canned" the Articles of Federation. Instead, they brought forth the greatest constitutional system this world has ever known. If a constitutional or amendments convention were called today, who would chair it? It could be the current President or the Secretary of State. Are they defenders of the Constitution? Idaho would have a small delegation and if they didn't like what was going on, they could come home and no one would care.

Claudia Nelson, representing herself, observed that there has been a good discussion but how do we know what will happen, we have never had a constitutional convention. Can we afford to take that chance and possibly lose what we have? She was not speaking for or against the bill.

Being no more testimony, **Senator Darrington** called on **Chairman McKenzie** to summarize.

Chairman McKenzie noted that the people who spoke today had valid concerns about the process. In reviewing the research, as **Mr. Runft** said, it would be a limiting convention and there are restrictions. **Representative Lynn Luker** is a cosponsor for this legislation. **Chairman McKenzie** thanked him and **Mr. Runft** for help on over ten revisions of the language and hours of research.

Senator Darrington called for the will of the Committee.

MOTION: **Senator Hill** moved, seconded by **Chairman McKenzie**, to send **S 1362** to the 14th Order for possible amendment.

VOTE: The motion carried by voice vote. **Chairman McKenzie** will be the floor sponsor.

SCR 126 STATING FINDINGS OF THE LEGISLATURE and making application to the Congress of the United States for calling a convention for proposing amendments to the United States Constitution limited to specific subjects.

Chairman McKenzie withdrew **SCR 126**.

RS21494 STATING FINDINGS OF THE LEGISLATURE to encourage the Health and Welfare Department to conduct town hall meetings to gather feedback on recruiting/retaining volunteer EMS personnel.

Senator Lodge requested that Wayne Denney, Chief of the Emergency Medical Services Bureau (EMS) present **RS21494**. She also requested that **RS21494** be sent to the floor instead of being returned to the Health and Welfare Committee.

Chief Denney brought RS21494 to the Committee. Members of the House and Senate Health and Welfare Committees identified several rule dockets relating to emergency medical services. The specific issue of grave concern was the viability that the system of services that volunteers provide on which the State of Idaho relies. Mr. Denney provided some statistics on the types and numbers of services that are provided to the State and the number of providers to carry out those services. Approximately 80% of the services are provided by volunteers. The numbers of volunteers has been stable over the past years but maintaining that workforce is becoming increasingly challenging in Idaho's rural communities. This concurrent resolution will allow the Bureau to carry the message into the rural communities with legislative intent.

MOTION: **Senator Darrington** explained that by printing the resolution it would go directly to the floor. He moved, seconded by **Senator Winder**, to introduce **RS21494** for print.

VOTE: The motion carried by voice vote.

RS21486 RELATING TO THE MILITARY DIVISION to establish a mission and place command and control of the CAP Idaho Wing under the duly appointed officer of such wing.

Senator Winder explained that **RS21486** is a request from the Civil Air Patrol (CAP) regarding consolidation of the CAP and locating it at the Gowen Field facility subject to the control of the Adjunct General and the Director of the Department of Homeland Security.

MOTION: **Senator Lodge** moved, seconded by **Senator Fulcher**, to send **RS21486** to print.

VOTE: The motion carried by voice vote.

ADJOURNMENT: Being no further business, **Chairman McKenzie** adjourned the meeting at 9:28 a.m.

Senator McKenzie
Chairman

Twyla Melton
Secretary