

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Wednesday, March 14, 2012

TIME: 8:00 A.M.

PLACE: Auditorium - WW02

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.

Chairman McKenzie called the meeting to order at 8:00 a.m. with a quorum present and welcomed **Teresa Baker**, Ada County, to present **H 491aa**.

H 491AA RELATING TO VOTING MACHINE APPROVAL to transfer the authority of voting machine and tally systems certification from the federal Election Assistance Commission (EAC) to the Idaho Secretary of State to enable the Secretary of State to certify voting equipment without EAC approval.

Ms. Baker outlined the three points of the bill:

- To introduce competition lowering the price of election equipment to the counties.
- To allow counties to use the improved technology.
- To allow Idaho to take authority back from the federal government.

Ms. Baker went on to explain that the EAC is a four member board formed in 2002 as part of the Help America Vote Act (HAVA) and acts as a national clearing house and information resource regarding election administration. Since December 2011, there have not been any sitting members on the EAC and there has not been a quorum since the boards inception. They have never certified any new election equipment.

Idaho has the most restrictive standards for certifying equipment because the statute requires federal certification. Idaho is one of eleven states that requires EAC certification. **H 491aa** allows the Secretary of State to adopt standards. The Secretary of State can develop their own standards, work in cooperation with other states, or use federal standards to develop State standards that will still meet the EAC standards but without EAC approval. Any voting equipment must be tested by an independent testing laboratory and that cost will be born by the vendor. This system will bring competition into the market and allow counties to cut their cost.

Phil McGrane, Ada County, was available to answer questions.

MOTION: **Senator Darrington** moved, seconded by **Senator Lodge**, to send **H 491aa** to the Senate floor with a do pass recommendation.

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

RS21487 RELATING TO THE BOARD OF DIRECTORS OF THE STATE INSURANCE FUND to remove the requirement that Board Members must participate in PERSI.

Senator Goedde explained the **RS21487** changes one section of Idaho Code from (h) to (n) as it relates to State Insurance Fund board members. This change will remove the requirement that they participate in PERSI since such membership limits their participation in a personal IRA. This will provide the State some financial and labor savings.

MOTION: **Senator Fulcher** moved, seconded by **Senator Hill**, to send **RS21487** to print.

VOTE: The motion carried by voice vote.

RS21481 STATING FINDINGS OF THE LEGISLATURE to honor seven Idaho servicemen who fought and lost their lives in Iraq and Afghanistan within the last year.

Jamal Lyksett, Intern for **Senator Davis**, presented **RS21481**. **Mr. Lyksett** stated that this RS proposes to honor seven Idahoans who have died in military service for this country within the last year. Not only does this honor their service, but recognizes the impact that these lives have on Idaho families. All of these soldiers were less than thirty years of age. **Mr. Lyksett** related how this loss will affect the families and communities where those brave men lived. The following servicemen are being recognized:

- Army PFC Robert Near, Nampa, ID
- Army Sgt. Nathan Beyers, Coeur d'Alene, ID
- Army Spec. Nicholas Newby, Coeur d'Alene, ID
- Army Spec. Devin Daniels, Council, ID
- Army Spec. Robert Dyas, Nampa, ID
- Army Sgt. Ryan Sharp, Idaho Falls, ID
- Marine Lance Corp. Kenneth Cockran, Wilder, ID

This resolution is a small way to honor these servicemen and acknowledge the sacrifices they made. (NOTE: A copy of Mr. Lyksett's full testimony is attached for the record.)

MOTION: **Senator Winder** moved, seconded by **Senator Fulcher**, to send **RS21481** to print.

VOTE: The motion carried by voice vote.

S 1387 RELATING TO ABORTION to require the use of an ultrasound prior to an abortion and to provide an additional resource listing of places where pregnant mother's can obtain an ultrasound free of charge. When enacted, this legislation will codify the standard medical practice of using an ultrasound and referrals as described.

Chairman McKenzie outlined the procedures to be followed in the discussion and testimony for **S 1387** and asked Senator Winder for opening remarks.

Senator Winder noted his respect for activities that have occurred regarding this bill, e-mails and protests on the capital steps, by people exercising their first amendment right. The turn out today is appreciated and there should be some interesting testimony and he asked that everyone keep their minds open and be attentive to what is being said. This bill came forth from Idaho Right to Life by women who asked **Senator Winder** to be a sponsor of this legislation. It is his belief that the state has an interest in protecting the life of the unborn and that is the purpose, at least for himself, to speak for those who can't speak for themselves. Some people think this is an intrusion into the private lives and decisions of women. The Senator respects their point of view but, in his opinion, sees a higher need to protect the unborn and respect the life of a developing child. The original draft of the bill gave people the opportunity to challenge it on the basis of an intrusive medical procedure called a transvaginal ultrasound. The Senator found that to be

an issue, so that issue has been removed and it is left up to the women as to the best manner in which to have the ultrasound done. The presenters are going to talk specifically about the bill but he will stand for questions and close the discussions.

Kerry Uhlenkott, Legislative Coordinator, Right to Life of Idaho, explained that **S 1387** will require that an ultrasound be performed on a pregnant mother prior to the performance of an abortion by a method that the abortion provider and the woman decides upon. Under existing Idaho law, the mother is already offered an opportunity to view the ultrasound image as part of the Woman's Right to Know Informed Consent Statute of 2006. Ultrasound is a key element to provide information for an informed consent. There has been a study that shows 99% of abortion clinics use ultrasound prior to an abortion.

Ms. Uhlenkott went on to say that ultrasound is a common and useful diagnostic tool in verifying and dating the pregnancy as well as assessing the gestational age, size, and growth of an unborn child. The National Abortion Federation recommends ultrasound use prior to an abortion. An abortion clinic in Idaho has confirmed on its website, that they perform ultrasounds prior to the performance of an abortion.

S 1387 also provides that a pregnant woman be given a listing of places that offer free ultrasounds. The Department of Health and Welfare (H & W) provides a list of other resources to pregnant women. This is an additional item of information will be added to that list. In this proposal, H & W is required to inform a pregnant woman that she has the right to view an ultrasound, hear the heartbeat of her unborn child, and where to obtain an ultrasound free of charge.

The controlling case law in this issue is from *Planned Parenthood vs Casey* and *Gonzales vs Cartwright*. In 1992 in the *Casey* decision, the US Supreme Court held that states having prior information to an abortion "that is truthful and not misleading," be made available to a woman to help ensure that she completely understands "the full consequences of her decision." The court in the *Gonzales* case stated that having the information reduces "the risks that a woman may elect an abortion only to discover later, with devastating psychological consequences, that her decision was not fully informed." The images from an ultrasound are truthful and not misleading and can lead to a more informed consent. It also allows the mother to view the unborn child for herself so her decision is based on seeing, not opinion, but objective and accurate fact.

Ms. Uhlenkott reviewed the sections of the bill that are being amended. She described as the heart of the bill, subsection (5), page 3, lines 1-7 which is the performance of an ultrasound. Each of the remainder of the sections were explained: page 2, lines 13-18 regarding lists of providers free of charge; page 2, lines 19-25 informs the woman of her right to view the image and hear the heart tone; page 3, lines 19-46 requires a signed and dated statement from the physician who performs the abortion.

This legislation is also supported by Cornerstone Institute, Idaho Chooses Life, Choices Pregnancy Center in Sandpoint, Pregnancy Crisis Center in Twin Falls, Stanton Healthcare Center in Boise, and Wish Medical Clinic in Moscow.

Senator Stennett referred to the ten facilities that offered free ultrasounds. H & W reported thirteen facilities of which only two provide trained ultrasound technicians and those two are not abortion clinics but pro-life clinics. These facilities are not conducted by health professionals, are not certified by ARGMS, and are not compliant for these types of procedures. Are there any facilities in the State that are free, and offer abortions by doctors and health professionals that are certified? **Ms. Uhlenkott** responded that there are ten pro-life pregnancy centers throughout the state and there is a list of those. Seven are in Idaho; the other three are in Spokane.

**PUBLIC
TESTIMONY:**

Sue Philley, submitted a signed petition that she sponsored opposing S1387. Ms. Philley stated that the petition stated that health care decisions are best made by individuals and their medical providers and mandatory ultrasounds place undue burden on women and interfere with individual rights to privacy. This bill does not meet the Republican goal of less government. The signers want legislation that addresses issues that affect the quality of their lives, not their private lives.

Senator Davis counseled all speakers to be respectful. There may be disagreement on how this issue is viewed, but calling people and their approaches names or referring to them by metaphor, simile, or comparison to others that we all would repudiate is not helpful for either side. Please be respectful in your speech. We stop listening when that approach is taken and we do want to listen.

Yvette Sedlewicz, Registered Nurse, representing self and husband, testified in opposition to S 1387.

Jean Hudlet, licensed RN and Nurse Manager, Life Choices Pregnancy Center, Sandpoint, testified in support of S 1387.

Jill Jasper, Boise, testified in opposition to S 1387.

Susan Young, Director of Life Choices Pregnancy Center in Sandpoint, supports S 1387.

Senator Stennett intervened and agreed with **Senator Davis** that both sides of the aisle should keep the slander down.

Dwight Scarborough, a father, a citizen, and a Navy veteran spoke in opposition to S 1387. Senator Winder thanked Mr. **Scarborough** for his service to the country.

Nicole Betty Hagworth, citizen, opposed S 1387.

Ron Rhodes, Boise, opposes S 1387.

Curt Naeve, spoke in opposition of S 1387.

Brandy Swindell, Founder and Director, Stanton Healthcare, spoke in support of S 1387.

Adrienne Evans, Executive Director, United Action for Idaho, and submitted a sign up letter to oppose S 1387.

Senator Nuxoll testified in support of S 1347.

Pamela Reider, Nurse and Diagnostic Stenographer for 20 years, testified in opposition to S 1387.

Senator Stennett asked **Ms. Reider** when should an abdominal ultrasound be preformed and when is it appropriate for a transvaginal ultrasound? **Ms. Reider** said that between six and twelve weeks, a transvaginal is needed but after fourteen weeks, an abdominal would be sufficient.

Betsy McBride, representing League of Women Voters spoke and submitted a letter in opposition to S 1387.

Arvell Bajama, submitted oral and written testimony in support of S 1387.

Bonnie McKay Pfaff, Co-President, American Association of University Women of Idaho and on behalf of AAUW, opposes S 1387.

Stacey Harder, Client Advocate, Stanton Healthcare Center, Boise, spoke in support of S 1387.

Hannah Brass, Legislative Director, Planned Parenthood Votes Northwest gave oral and written testimony in opposition to S 1387.

Senator Stennett asked **Ms. Brass** how many clinics in Idaho will offer all the requirements for free. **Ms. Bass** responded that free ultrasounds wouldn't be acceptable by an abortion clinic. They must do their own. **Senator Stennett** asked about informed consent. The Senator's understanding is that existing statute includes a medical emergency exception. This bill does not make it clear that a medical emergency would be excused if there was not a performance of the ultrasound. Could you clarify that? **Ms. Brass** answered that section five talks about a medical emergency but sections six and seven do not. **Senator Stennett** said it is unclear in this bill that it would allow for a medical emergency exception and that could be a dilemma for the physician. **Ms. Bass** answered that it is clear there is no mandate for a medical emergency.

Julie Lynde, Executive Director, Cornerstone Family Council, provided oral and written testimony in support of **S 1387**.

Senator Malepeai asked **Ms. Lynde** if politicians should inject themselves between a physician and a patient? **Ms. Lynde** responded that the State of Idaho supports a stated purpose of live births over abortion and government is designed to protect its citizens. An unborn baby is, in her opinion, a citizen as well as the woman. When the government steps in and says a guideline should be established, that is appropriate.

Senator Stennett sought to identify any other medical procedure that was required by the State of Idaho. There are a few for lawbreakers. Would you please address why this procedure should be required when all others are criminal? **Ms. Lynde** stated she was not a physician or an attorney but abortion law and the practice of abortion is a very complicated area of medicine and law. There are many things surrounding it since 1973 and up through all the court decisions. The Supreme Court has said that the states have it within their rights to have certain guidelines that do not stop abortion but protect the innocent in that abortion.

Chairman McKenzie announced that time is limited so those with written testimony could hand it to the pages to be entered into the record.

Monica Hopkins, Executive Director, American Civil Liberties Union of Idaho (ACLU), submitted oral and written testimony in opposition to S 1387.

Senator Stennett stated her concern with the documentation segment of the bill. Is the statement that must be filled out and signed subject to public record? **Ms. Hopkins** said it would violate the privacy of the woman and the physician if these records were to be made public. **Senator Stennett** referred to page three, lines five and six that talks about the type of ultrasound being decided between the doctor and patient, it contradicts line six where it says the physician has to know the gestational age of the fetus and there is no option for an undetermined diagnosis. It is **Senator Stennett's** understanding that 80% of the abortions are less than ten weeks. If that is true, how can anything other than a transvaginal ultrasound be used? **Ms. Hopkins** answered that is correct. The providers indicated to the ACLU that the transvaginal ultrasound would be required in the early stages of pregnancy of which 80% are in the early stages. Additionally, ultrasounds are not the only way to establish gestational age.

Jason Herring, President, Right to Life, gave oral and submitted written testimony in support of **S 1387**.

Senator Lodge referred to page three, line 19, that says the physician performing the abortion shall sign and date the statement indicating the time of day when the ultrasound test was performed. Are there any of the abortion centers that provide a free ultrasound. **Mr. Herring** was not aware of any. This bill gives the woman a chance to get a free ultrasound and where she would have access to counseling as well, but it does not require her to have two ultrasounds. **Senator Lodge's** concern is that if a woman gets one free and then goes to the abortion provider and has to pay, that is adding to the cost. In this bill, the physician has to sign the statement. If there is an ultrasound available, why can't it just say the woman had the ultrasound. **Mr. Herring** agreed that was a valid concern. The abortion clinics want their own technicians to do the ultrasound. Also, the ultrasound that is free would not be an additional cost to the state, it is free.

Senator Lodge found two things that did not equate. The woman has the ultrasound and sees it. She still has to have one where a physician signs off on it in this legislation. **Senator Lodge** supports the rights of the unborn child but there are some points in this legislation that make it very difficult. It doesn't seem right to have to go through a dual procedure.

Heather Hammerstedt, M.D., testified in opposition to **S 1387**.

Chairman McKenzie closed the public comment segment and asked for closing comments.

Written Testimonies Submitted Due to Lack of Time to Testify

In opposition of S 1387

Nadine York, Boise, ID
Katie Fite, Boise, ID

Annie Kerrick, Idaho Coalition Against Sexual & Domestic Violence, Boise, ID
John C. McMahon, Boise, ID

In support of S 1387

Angela Dwyer, Volunteer, Stanton Healthcare, Boise, ID
Fran Lawrence, District 15

Letters

Susie Pouliot, Chief Executive Officer, Idaho Medical Association, Boise, ID, stated concerns but no decision one way or the other.

Kay Hummel, Boise, ID, in opposition.

Brenda Saltzer, CEO, Wish Medical, Moscow, in support.

Faye Weber, Boise, ID in opposition.

Liz Conrad, in opposition.

Senator Winder thanked all who testified on both sides of this legislation as part of the process that occurs at the legislature.

Senator Stennett asked **Senator Winder** if this legislation is in conflict with the Idaho Medical Consent Act because it puts forth that adult persons have the fundamental right to control decisions relating to the rendering of their medical care and the importance of privacy and respect for the patient. **Senator Winder** stated that was a question the Attorney General should answer.

Senator Malepeai asked about the severability clause. Could this legislation be flawed or could it be open to constitutional interpretations? **Senator Winder** answered that the severability clause was overlooked in the original bill. Any law that is passed is always subject to challenge and this is just a way of saying if a portion of it is struck down, all would not be lost.

Chairman McKenzie called for the will of the Committee for **S 1387**.

Senator Malepeai acknowledged that this is an emotional issue regardless of which side of the issue an individual stands. This legislation has raised awareness about the complexity of the policies and procedures in the medical profession. There are more questions than answers. A conference with a doctor is very personal. For the Committee to rule on this piece of legislation seems to be an intrusion of the privacy of the patient and physician when the decision should rest solely on those two. All cases are not alike. It is not for the government to interfere.

MOTION: **Senator Malepeai** moved, seconded by **Senator Stennett**, to hold **S 1387** in Committee

Senator Hill stated his appreciation for the testimony on both sides of the issue. The last person who testified made a comment that summarized some of the testimony heard today. She said, not an exact quote, don't let the concern for the unborn influence your decision. **Senator Hill** stated concern for the child was a major factor in his decision.

SUBSTITUTE MOTION: **Senator Hill** made a substitute motion, seconded by **Senator Fulcher**, to send **S 1387** to the Senate floor with a do pass recommendation.

Senator Stennett voiced a couple concerns. It is not certain that this bill will not affect existing statute in defining what the patient's rights are. In addition, it could dismantle what to do in case of an emergency when there is a choice of saving a patient's life and Idaho State law. Those are huge questions. From **Senator Stennett's** perspective, there is no precedent as far as doing a medical procedure except in cases of criminal behavior. Here, a medical requirement is placed on women before they have chosen to do an abortion and that is equal to criminal, invasive procedures; that is unconscionable. **Senator Stennett** requested a roll call vote.

Senator Lodge stated she does have concern for the unborn and that is the choice she will make. She has received information from her church that there are concerns with this legislation and that those concerns were given to the sponsors. They are not opposed to the bill, but they are neutral. So today, **Senator Lodge** will stand for the unborn but she is also concerned for young women who have to undergo these procedures. She is also concerned about the State mandating a procedure when they are fighting against other government mandated issues.

Chairman McKenzie asked for further comments. Being none, he instructed the Secretary to take a roll call vote.

VOTE: The substitute motion carried by roll call vote.
Ayes: Darrington, Davis, Hill, Fulcher, Winder, Lodge and McKenzie
Nays: Malepeai and Stennett.

ADJOURNMENT: Being no further business, **Chairman McKenzie** adjourned the meeting at 10:12 a.m.

Senator McKenzie
Chairman

Twyla Melton
Secretary