

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Wednesday, March 21, 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.

**Chairman McKenzie** called the meeting to order at 8:00 a.m. with a quorum present and announced that there was a full agenda and that some committee members have other obligations and must leave at nine. The first order of business was **HJM 13** which will be presented by **Representative Eskridge**.

**HJM 13**

TO THE PRESIDENT, EXECUTIVE BRANCH AGENCIES AND CONGRESS OF THE UNITED STATES to work to ensure that the Border Action Plan on Perimeter Security and Economic Competativeness and the Action Plan on Regulatory Cooperation are effectively implemented in support of the border agreement between the President and the Prime Minister of Canada.

**Representative Eskridge** explained that **HJM 13** urges the implementation of the agreement between the US and Canada under the two above mentioned action plans which are aimed to streamline cross border trade and at the same time, provide improved intelligence sharing to enhance both countries security. This down economy has forced the US to look for new and innovative ways to create jobs and increase economic growth. When discussing strategies for increasing trade, the most obvious trading relations are already in place between the US and Canadian market. Currently, more than \$1.6 billion in goods and services, as well as 300,000 people, cross the Canadian-US border every day. More than eight million US jobs depend on trade with Canada and over 360,000 jobs in the five Northwest states alone, are dependent on the Canadian relationship. Canada is the largest foreign export destination for the US and they buy more goods and services from the US than Germany and China combined.

**Representative Eskridge** went on to say that 39,900 jobs in Idaho depend on Canada-US trade. Thirty four Canadian owned companies located in Idaho employ 2,742 people, and Idaho sells more goods to Canada than to any other country. These numbers point to an excellent opportunity to look to our closest neighbor to increase jobs and enhance our economic recovery.

In this new border agreement, the leaders of the two companies recognize the interdependence of the economies and the need to work together to improve trade and enhance security for both countries. The effective implementation of these two action plans are instrumental in carrying out the agreement between Canada and the US. The two plans lay out the structure with responsibilities and time lines for success.

**Senator Hill** asked for assurance that there is nothing in these plan documents that is controversial enough to have concerns about. The "Where as" sections seem okay. Are you comfortable with everything in those documents?

**Representative Eskridge** replied that he had read both documents thoroughly and there is some extreme positions but overall, he is comfortable with both documents. The security measures means a working relationship with both countries whether it is joint involvement in inspection of goods or joint activities regarding terrorism. This is the involvement of both countries without infringing on either country's citizens' rights.

**Senator Fulcher** referred to some of the social network/e-mail traffic and asked about the North American Union (NAU). The claims are that the language comes from a White House release dated December 7, 2011, regarding US and Canada beyond regulatory cooperation in support of the NAU. Would you speak to that? **Representative Eskridge** couldn't elaborate on the NAU. These are legitimate agreements between both countries trying to address some of the measures that have been put into place since 9/11 that have impacted economic relations between Canada and the US. **Representative Eskridge** provided a detailed description of the impact those measures have had.

**Senator Hill** accessed the Homeland Security website and quoted one of the comments regarding the Beyond the Border Action Plan. It specifically says that "it was crafted through discussions between our governments and was guided by mutual respect for sovereignty and the respective constitutional and legal framework to protect privacy . . . ." From the federal government's standpoint, they are trying to protect those things.

**Representative Eskridge** commented that Colonel Bill Shawyer, Director, Idaho Bureau of Homeland Security, appeared before the House Committee and he expressed their support for the agreement and reiterated that it protected the national sovereignty for both countries.

**MOTION:**

**Senator Davis** moved, seconded by **Senator Darrington**, to send **HJM 13** to the Senate floor with a do pass.

**VOTE:**

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

**S1383  
CONT. FROM  
3/19/12**

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 damage to others that is caused by the acts of third parties or acts of God.

**Norm Semanko**, Idaho Water Users Association, reopened the discussion on **S 1383**. The previous discussion identified some concerns with the bill and after that meeting, along with Dan Steenson, Attorney, they addressed those concerns resulting in an amendment to this bill. The amendment makes it more clear that canal company and irrigation district managers are responsible for their own acts or omissions but acts of others are not their responsibility.

**Senator Stennett** stated her questions about the third party qualifications. Since canal ownerships tend to be proprietary and those ownerships may change along the progression of the canal. How is responsibility determined when one ownership manages the waterways better than another one. **Mr. Semanko** responded that if an owner is not taking care of their portion of the waterway, they will be responsible for their acts or omissions whether this passes or not. This will codify and make it more clear that a third party who does not own or operate the facility is responsible for any damage they may cause, although they may not be held to as high a standard as that of a canal or irrigation company. **Senator Stennett** gave an example of an instance where a large canal, like the New York Canal, runs through a congested area and something happens to cause flooding and damage even though the canal may have been adequately maintained so neither the canal company nor the property owners are responsible for the damage. Who is held responsible? **Mr. Semanko** replied that nothing in this bill is going to make that situation any worse. The duty of the waterway owners is to properly maintain all the facilities to prevent the wasting of water. It is not a strict liability so a court will look at the situation and make a determination. This bill will not make the canals stronger or better, it will just make it clearer whose responsibility it is and if it is the canal company's, then that is what insurance is for. It is getting more difficult to get insurance without this type of code in place. Large canals are a major requirement not only to farmers, but to subdivisions, cities, parks, schools, cemeteries, and other facilities.

**Chairman McKenzie** asked about the reference to "storm" as some conditions that would be outside the liability for a canal company. What makes a "storm" under that definition? **Mr. Semanko** answered that it must be a natural phenomenon. There is case law to back up what is and what is not a natural phenomenon or act of God.

#### Public Testimony

**Daniel Luker** on behalf of Idaho Trial Lawyers Association, supports the amendments to S 1383 although they are not in favor of codification within the bill but they withdrew their opposition.

**Robert Hoppie** supports the S 1383 with the amendments.

**Benjamine Kelly**, Food Producers of Idaho, supports S 1383 and the amendments.

**Senator Winder** asked about the City of Meridian's concerns with placing structures and canals. Is this the same subject or is it a maintenance issue? **Mr. Semanko** said that topic was addressed in **S 1278**. That involves FEMA and whether or not the local governments have the ability to regulate the silting in canals and drains. That bill is being held in the Senate Resources Committee.

#### **MOTION:**

**Senator Hill** moved, seconded by **Senator Winder**, to send **S 1383** to the 14th Order for possible amendment.

#### **VOTE:**

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

#### **H 443**

RELATING TO FLAGS to correct issues with the flying of the POW/MIA flag and to give the Division of Veterans Services the responsibility to create rules for proper protocol.

**Representative Hagedorn** explained that **H 443** is a simple statute change. Last year, basic rules were promulgated applying to the POW/MIA flags. It allowed the flying of those flags over specific buildings at the state, county and city level. However, certain other buildings, cemeteries, or memorials that might have a reason to fly POW/MIA flags were not included. This bill deletes the specificity of the language and adds that the flag will be displayed in accordance with the rules promulgated by the Division of Veterans Services (Division).

**Senator Stennett** noted that the POW/MIA flags are the only organizational flags that are codified to fly between the US and the state flags. There is not a definitive manner identified as to how and when these flags should fly.

**Senator Stennett** brought this bill forward because the only POW in Idaho is **Bowe Bergdahl** from Ketchum in District 25. The Governor already has a proclamation about how the flag is to be flown; does this bill keep that order?

**Representative Hagedorn** thanked **Senator Stennett** for the original efforts to codify the handling of these flags. *Section 67-2303A, Idaho Code*, is the new section that has been created to direct the promulgation of the rules by the Division. The Division will use all resources available to determine the proper way to fly these flags. Currently, some of these flags are being flown by executive order. Once this process is completed, the rules will apply and it will not be necessary to have an executive order.

**Senator Stennett** asked if the rules were consistent with the federal declaration currently in place that directs how flags should be flown. **Representative Hagedorn** said the purpose is to focus the activity under one organization to promulgate the appropriate rules.

**Senator Hill** asked for confirmation that the rules the Division promulgate will be the rules the legislature will review. **Representative Hagedorn** answered yes.

**Chairman McKenzie** quoted *Article 14, Section 5* of the Idaho Constitution that says "all military organizations under the laws of this state shall carry no other device, banner, or flag than that of the US or the State of Idaho." That doesn't refer to flying the flag, it refers to carrying no other flag. Have you looked at that issue? **Representative Hagedorn** confirmed that the constitution had been reviewed and that it is not applicable to flying the flag over state buildings and grounds. That section in the Constitution is for State Militia.

**MOTION:** **Senator Davis** moved, seconded by **Senator Stennett**, to send **H 443** to the Senate floor with a do pass recommendation.

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

**H 577** RELATING TO IDAHO LAW ENFORCEMENT, to give recognition to fire fighting and EMS Medal of Valor recipients.

**Fire Chief Karl Malott**, Legislative Advisor, Idaho Fire Chiefs Association, brought **H 577** to the Committee. Currently, the medal of honor is awarded during the National Law Enforcement Recognition Week with a ceremony during May of each year for meritorious service for law enforcement, firefighters, and EMS. **H 577** is a request to move the recognition for the firefighters and EMS to the week of the National Fallen Firefighter Memorial Ceremony which is during the week of 9/11. The current focus of the ceremony is on law enforcement and this would be different in that it would be firefighters and EMS families and crew members in attendance – it would be a better fit for recognition. The law enforcement agency agrees with this move. Since this is in Idaho Code, it requires legislation to make the change. **Chief Malott** provided a history behind the medal of honor.

**MOTION:** **Senator Lodge** moved, seconded by **Senator Stennett**, to send **H 577** to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote. **Chairman McKenzie and Senator Lodge** will be floor cosponsors.

**HCR 46** HONORING AND COMMENDING General Darrell V. Manning for his service to the State of Idaho upon his retirement.

**Representative Black** remarked that it is with a great deal of honor that he is presenting **HCR 46** to the Committee honoring **General Darrell V. Manning**. **Representative Black** provided a history of his service in both the military and as a Representative in the House of Representatives. **General Manning** has given his time and energies over a period of years beginning in 1955 when he enlisted in the Air Force. In 1973 he left the Air Force and joined the Idaho National Guard where he attained the designation of Adjutant and Commanding General of the Guard.

**General Manning** served four terms, 1961-68, as a Representative from District 34 and one term, 1971-72, in the Idaho Senate. He has served on various committees in the House and Senate and a variety of boards and commissions. He was serving as Director of the Department of Transportation when he retired in 2011. This is a resolution to honor a man who has truly served the State of Idaho.

**MOTION:** **Senator Winder** moved, seconded by **Senator Fulcher**, to send **HCR 46** to the Senate floor with a do pass recommendation.

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

**H 479** RELATING TO VETERANS to allow for the managing of funds payable to a resident of a veteran's home of this state.

**Tamara Mackenthun**, Administrative Support Manager, Division of Veterans Services, explained that her duties include acting as the Administrator's Deputy for legislative issues. The Division of Veterans Services, the Idaho Commission on Aging, the state ombudsmen and other stakeholders have worked together to develop this legislation. It will allow an appointed member of the Division to serve as a representative payee for a veteran's income from a variety of sources in cases of financial abuse. It will also allow a Home Administrator to serve, at the request of the veteran or family member, as an authorized financial representative. This legislation clarifies that it is within the scope of the administrator to carry out these duties and will remove the risk of personal liability from a Home Administrator who acts in a similar capacity in certain cases.

There are a number of protections in place for the residents:

- Independent review and determination for a payee.
- Independent medical determination of incapacity to manage own funds.
- Availability of trained/licensed social workers for veteran residents.
- Established due process procedures in case the appointment is contested.
- Use of the trust fund for deposit/withdrawal of funds with rigorous state/VA inspections.
- Strict accounting of current processes in place to manage trust accounts.

**Chairman McKenzie** referred to Section 3, lines 36-38, requiring the administrator to maintain an accounting of the funds. What form does that take? **Ms. Mackenthun** responded that it is like any kind of invoice that would be received from a hospital or nursing home so it would be coded and put in the resident's file to be available for review.

**MOTION:** **Senator Lodge** moved, seconded by **Senator Winder**, to send **H 479** to the Senate Floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote. **Chairman McKenzie and Senator Lodge** will be floor cosponsors.

**H 599** RELATING TO THE IDAHO STATE HISTORICAL SOCIETY (ISHS) to consolidate ISHS and the Department of Administration records functions of the State Records Center.

**Senator Darrington** stated that records management is a very complex subject and, as a member of the State Historical Records Advisory Board (SHRAB), he has come to appreciate that fact. There are two good records centers in the state: The Idaho State Archives under the Idaho State Historical Society and the State Records Center under the direction of the Department of Administration. Both are very well managed entities. This proposal has been studied for a long time and it is the right thing to do to merge the two records centers into one under the direction of the Idaho State Historical Society for efficiency, cost recovery, and accessibility to the records by the general public. Both agencies bless this merger. **Representative Black** is in the audience and is also a member of the SHRAB Board. **Senator Darrington** introduced **Janet Gallimore**, Executive Director, Idaho State Historical Society, to explain **H 599**.

**Ms. Gallimore** recalled the special hearing presentation where a detailed assessment of the records management functions of the State Records Center and Idaho State Archives proposed merger under the Idaho State Historical Society was presented to the Committee. The first phase of the initiative was to amend *Idaho Code, Section 67-4126* to establish provisions for Records Management Services under the Idaho State Historical Society. **Ms. Gallimore** walked the Committee through the new language in the bill that outlined the establishment of a fund to accommodate current and future cost recovery efforts to pay for services rendered; added a new section for the partnership between the State Historical Society and the Department of Administration; deleted the standard filing system; and added language regarding electronic protocols. It also deletes the authority of the Department of Administration for records management functions. A fact sheet that outlines the key background, purpose, and vision is included as part of these minutes.

#### Testimony

**Alan Virta**, experienced archivist representing himself and the Idaho State Historic Records Board, spoke in support of **H 599**.

**Zaine Baird**, Management Assistant, Idaho Department of Correction whose job is to coordinate the records management at the Department and on behalf of the Department, supports **H 599**.

**Scott Swanson**, Records Program Manager, Transportation Department, supports the merger of the two records centers.

**Seth Grigg**, representing the Idaho Association of Counties, supports the consolidation of the records centers. Local governments house a lot of records with the State Archives and so the greater the efficiency, the greater the opportunity to provide benefit to local administrations. They have been part of the group working on this program.

**Justin Ruen** had to leave but left word that Association of Idaho Cities supports this program.

**Marty Peterson**, citizen of Boise, worked on the task force that put this legislation together with a viewpoint from several directions: local government, state agency, historical society, and user of state archives as research tools. **Mr. Peterson** strongly supports this legislation.

**MOTION:** **Senator Winder** moved, seconded by **Senator Fulcher**, to send **H 599** to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote. **Senator Darrington** will be the floor sponsor. **Chairman McKenzie** thanked **Senator Darrington** for serving on the SHRAB Board and for helping with this legislation.

**MINUTES APPROVAL:** February 20, 2012: **Senator Stennett** moved, seconded by **Senator Fulcher** to approve the minutes of February 20, 2012. The motion carried by voice vote.

February 29, 2012: **Senator Winder** moved, seconded by **Senator Fulcher**, to approve the minutes of February 29, 2012. The motion carried by voice vote.

March 2, 2012: **Senator Davis** moved, seconded by **Senator Lodge**, to approve the minutes of March 2, 2012. The motion carried by voice vote.

February 27, 2012: **Senator Hill** moved, seconded by **Senator Winder**, to approve the minutes of February 27, 2012. The motion carried by voice vote.

March 5, 2012: **Senator Darrington** moved, seconded by **Senator Fulcher**, to approve the minutes of March 5, 2012. The motion carried by voice vote.

**ADJOURNMENT:** Being no further business, **Chairman McKenzie** adjourned the meeting at 9:20 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary