

MINUTES  
**HOUSE STATE AFFAIRS COMMITTEE**

**DATE:** Monday, March 26, 2012

**TIME:** 8:30 A.M.

**PLACE:** Room EW40

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

**ABSENT/  
EXCUSED:** Representative Sims

**GUESTS:** The sign-in sheet will be retained in the committee secretary's office until the end of the session. Following the end of the session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.

**Chairman Loertscher** called the meeting to order at 8:31 a.m.

**Rep. Smith(30)** made a motion to approve the minutes of March 19, 2012 as written. **Motion carried by voice vote.**

**Rep. Batt** made a motion to approve the minutes of March 20 and 21, 2012 as written. **Motion carried by voice vote.**

**S 1348:** **Sen. Nuxoll** presented **S 1348**, legislation to protect patients from involuntary denial of food and fluids and from involuntary denial of life-preserving medical treatment. Sen. Nuxoll explained that **S 1348** is a patient protection bill that does not stop health care providers from declining to give medical treatment that is genuinely medically inappropriate or futile. The doctor will be protected if he or she uses objective medical standards. A reasonable medical judgment that could preserve the patient's life cannot be termed medically inappropriate or futile based on subjective opinion. Sen. Nuxoll clarified that **S 1348** addresses two (2) loopholes in current law. The first loophole is found under Section 39-4513(2), in which any health care provider unwilling to comply with the desires of a patient who wants to live is given complete immunity from malpractice for withdrawing care against the will of the patient, once the provider has made a "good faith" effort to assist in obtaining the services of another provider willing to provide the desired care, whether or not the patient's care has been transferred to another. The second loophole is found in Section 39-4514(5) where the current law allows health care providers to override the wishes of patients for treatment even without attempting to transfer care to another provider, specifically "nothing in this chapter shall be construed to require medical treatment that is medically inappropriate or futile". Sen. Nuxoll explained that in order to be protected from denial of medical treatment under **S 1348**, two (2) conditions must apply: (1) the patient or his surrogate must want the food and fluids (IVs), and or medical treatment, and (2) it has to be medical treatment or food and fluids that will preserve the life of the patient. Sen. Nuxoll pointed out that futile care does not include comfort care. Sen. Nuxoll stressed that patients and their families, not others, should decide whether their lives are worth preserving with life-saving treatment, food, and fluids. No one should be able to impose death against a patient's will simply because the physician thinks the patient's "quality of life" is too poor due to age or a disability.

**Sen. Nuxoll** responded to questions by stating that even if a patient has an advanced directive, but changes their mind, the doctor should still do what the patient wants.

**Ken McClure**, Idaho Medical Association (IMA), responded to questions regarding **S 1348**. While the IMA negotiated to amend **S 1348**, they are concerned about the patient and the family being in the driver's seat. Mr. McClure explained that an advanced directive only takes over if a patient is unable to communicate and state their preference for care.

**Julie Lynde**, Cornerstone Family Council, and **Pamela Dowd**, representing self, testified in support of **S 1348**. It is important to have an advocate for a patient, and for doctors and health care providers to respond to the wishes of the patient and their family regarding quality of care. **S 1348** is proactive, preventive and patient-centered.

**MOTION:**

**Rep. Simpson** made a motion to send **S 1348** to the floor with a **DO PASS** recommendation.

**Jason Herring**, President, Right to Life of Idaho, testified in support of **S 1348**. Mr. Herring noted that **S 1348** protects the rights and wishes of the patient, their directive, and the surrogate acting on their behalf. The legislation is ground breaking for Idaho in its definition of futile care, and closes a potential loophole in our current law by making the standard a medical judgment. Mr. Herring noted that there is a time when care becomes futile. Science and medicine reach their limits, and they cannot prevent the demise of a patient. **S 1348** recognizes that and helps to define that line. It will not require physicians to cross that line, but it does protect the patient by preventing a doctor from preempting that line based on a subjective standard. Mr. Herring stated that **S 1348** is a good bill for Idaho's citizens that helps balance the end of life equation.

**Dr. Lavonne Mills**, Family Physician, testified in support of **S 1348**. Dr. Mills noted that the Idaho Natural Death Act currently states that doctors are not compelled to provide medical care that they believe is inappropriate or futile. It also does not provide any guidance or limits on how the doctor determines that the health care desired by the patient is inappropriate or futile, except to say that euthanasia is not legal. **S 1348** will provide additional and reasonable guidance for doctors in making a determination about health care that is futile for a terminally ill patient. Dr. Mills explained that there are two (2) reasons why it is necessary to provide extra protection for patients and extra guidance for doctors. The first reason is health care professionals expressing personal opinions about someone else's "quality of life". With **S 1348** the determination of futile care would need to be based on a scientific medical assessment that death is imminent within hours or at most a few days whether or not the medical treatment is provided and that the treatment will not improve the patient's condition. Secondly, many of the sickest patients are assigned to a doctor that the patient does not know. With no long standing doctor/patient relationship, Dr. Mills stated she believes that disagreements over treatment options are harder to resolve. **S 1348** will spell out clearly for doctors, health care providers, and ordinary people, that if health care can actually prolong someone's life, then it is the patient who decides whether or not to use the treatment, not the doctor deciding by him or herself. Finally, the amendments to the Idaho Natural Death Act found in **S 1348**, decisions about dignity and control at the end of life, will be made by patients and their surrogates. What is considered inappropriate or futile will be determined by a medical assessment and scientific fact.

**Kerry Uhlenkott**, Legislative Coordinator, Right to Life of Idaho, testified in support of **S 1348**. Ms. Uhlenkott stated **S 1348** is a common sense preventative measure which will help to ensure protection for a patient's autonomy in end of life situations. Based on her personal experience caring for her mother who suffered a stroke, she learned that if the primary doctor disagreed with the family's wishes, the doctor would have been allowed to stop treatment and ignore the

advanced directive due to loopholes in the current language of Idaho's Natural Death Act. Specifically "medically inappropriate or futile" is not defined well enough to ensure that the patient receives the treatment he or she wants when there is a disagreement between the patient and the health care provider. Ms. Uhlenkott stressed that when it comes to lifesaving treatment issues, the wishes of the patient and their family need to be respected and protected. We should never be in favor of forcing a person to die when he does not want to just because a doctor may think the patient's life is not worth living.

**VOTE ON MOTION:**

**Chairman Loertscher** called for a vote on the motion to send **S 1348** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Simpson** will sponsor the bill on the floor.

**S 1407:**

**Tom Perry**, Office of the Governor, presented **S 1407**, legislation to permit the Director of the Department of Commerce to use the title of "Secretary" of the Department for purposes of international trade. Mr. Perry explained the proposed amendment would give the same latitude to the Director of the Department of Commerce as the Director of the Idaho Department of Agriculture when conducting business.

**Mr. Perry** responded to questions by stating that the title of "Secretary" is acceptable when conducting trade missions in Asian countries. The title of "Director" is not on par because their cabinet positions hold the title of "Secretary".

**MOTION:**

**Rep. Buckner-Webb** made a motion to send **S 1407** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Buckner-Webb** will sponsor the bill on the floor.

**H 693:**

**Teresa Luna**, Director, Department of Administration (DOA), presented **H 693**, legislation to clarify the authority of the Director to promulgate rules governing public conduct on the Capitol Mall. Ms. Luna noted that while the need to formalize rules regarding Capitol Mall properties became clear due to the Occupy Boise movement, this legislation is not directed at them.

**Ms. Luna** responded to questions by stating that the DOA currently does not have the ability to make rules about the public's behavior while on Capitol Mall property. **H 693** will allow the DOA to utilize the rule-making process. Ms. Luna stated the DOA will ensure the rules promulgated maintain a neutral content and will be similar to those utilized by the City of Boise.

**Barbara Kemp, Katie Fite, Cay Marquart, Anne Hausrath, Cyndi Tiferet, Gene Bray, Jeff Harry, Mary Reali, Shavone Hasse**, representing self; and **Rachael Raue, Angel Glen Garity, Mike Despot**, representing public citizen; testified in **opposition to H 693**. Points of opposition included: the Legislature's time is precious and should be spent on other issues. We need to enact as few laws as possible, but they should be extremely well-crafted laws that benefit all Idahoans. **H 693** appears to be content-specific, a single purpose bill directed at shutting down one group who may have different beliefs. The rules that will be promulgated under **H 693** will harm a person's rights under both the Idaho and United States Constitution. There should not be a rush to judgment due to the recent judicial decision about the current use of the Capitol Annex property. **H 693** requires more review to ensure it will not overlap with existing statutes.

**Dean Gunderson**, representing self; testified in **support of H 693**, stating he would like to have **H 693** in effect when the evidentiary hearing is held in April regarding the current case on the use of the Capitol Annex. It will provide evidence of contempt of court.

**Roger Brown**, Deputy Chief of Staff, Office of the Governor, testified **in support of H 693**. Mr. Brown stated that **H 693** will allow the DOA to manage state property and promulgate rule-making that will include the monuments as well as the infrastructure of the Capitol Mall properties.

In response to questions, **Mr. Brown** stated that the existing rule-making process does not provide the DOA with the ability to make rules about the use of a building or the Capitol Mall property.

**Teresa Luna** closed out testimony by noting that **H 693** will provide authority for the Department of Administration to promulgate rules for and manage state-owned properties.

**Ms. Luna** verified that the Executive Branch has control over the Second floor of the Capitol while the Legislature controls the rest of the Capitol. **H 693** simply restates this.

**Brian Kane**, Assistant Chief Deputy, Office of the Attorney General, responded to additional questions by stating that **H 693** contains a provision for the Director of DOA to have the authority to sue to enjoin any threatened or continuing violation of rules promulgated as a result. Mr. Kane explained that **H 693** contains this provision simply to allow the State to take action when certain acts are threatened to take place on the Capitol Mall. The State would have authority to enjoin an injunction after having shown eminence for injury and danger to the State.

**MOTION:** **Vice-Chairman Crane** made a motion to send **H 693** to the floor with a **DO PASS** recommendation.

**SUBSTITUTE MOTION:** **Rep. King** made a substitute motion to send **H 693** to General Orders. **Rep. Smith(30)** seconded the motion.

**VOTE ON SUBSTITUTE MOTION:** **Chairman Loertscher** called for a vote on the substitute motion to send **H 693** to General Orders. **Motion failed by voice vote.**

**VOTE ON ORIGINAL MOTION:** **Chairman Loertscher** called for a vote on the motion to send **H 693** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Reps. King, Smith(30), and Buckner-Webb** requested to be recorded as voting **NAY**. **Rep. Bedke** will sponsor the bill on the floor.

**Chairman Loertscher** stated that Page, **Morgan Fox**, will be recognized for her service to the committee during the final meeting.

**ADJOURN:** There being no further business to come before the committee; the meeting was adjourned at 9:57 a.m.

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Representative Loertscher  
Chair

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Lissa Cochrane  
Secretary