

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Wednesday, March 06, 2013

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Senators Davis, Fulcher, Hill, Winder, Lodge, Siddoway, Stennett and Werk

**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.

**CONVENED:** **Chairman McKenzie** called the Senate State Affairs Committee (Committee) to order at 8:03 a.m. with a quorum present.

**S 1079** Relating to Internet Crimes Against Children (ICAC) presented by Paul Jagosh, Fraternal Order of Police (FOP).

**Mr. Jagosh** explained that **S 1079** is the result of three years of work by the FOP because crimes against children are a top priority. The ICAC Task Force has been operating through the Attorney General's (AG) office for the past five years using a \$250,000 grant from the federal government. The intent of **S 1079** is to make the task force an official part of the AG's office and create a budget should finances be appropriated.

The task force is needed to follow up on the 5,000 leads currently on file for people trading in child pornography. Over 34,000 kids per year are solicited for sex online and 5,000 of these predators have attempted to meet children in person. That number is only from one lead source; it does not include other sources such as social networking and Craig's List advertisements. Studies have shown that 80 percent of the people watching and trading in this type of pornography are also offending kids. One officer, during 24 investigations, rescued 51 children from some form of violent sexual abuse.

**Mr. Jagosh** gave other statistics and examples of what the task force has encountered in Idaho during the course of its existence. Most victims do not report abuse and that is why the investigations are so important. Not only do the victims endure extreme physical pain, there are emotional ramifications as well.

Currently, the ICAC task force has part-time investigators that equal two to three full-time investigators. One highly trained investigator can pursue 25-30 leads which equates to 100 cases per year out of the 5,000 active leads. The leads are not acquired by investigating personal computers and Google search history, they come from people who are openly trading this information in cyberspace. Any search and seizure is done with a warrant. The predators are aware of the number of arrests and who is getting away with these crimes. They know very little is being done in Idaho and that this state could become a safe haven for these predators.

There is a need for dedicated resources and highly trained investigators to fully investigate these cases. The costs to Idaho is not only in dollars but also in the emotional effects including mental disabilities and school drop outs. The task force needs help in sending a message to these evil doers that violating our children will not be tolerated in Idaho.

**Senator Fulcher** asked for an explanation of the mechanics of a search, how the searches are conducted and the tools used. **Mr. Jagosh** deferred the question to Detective Tim Brady.

**Tim Brady**, Detective, Boise Police Department, has been conducting ICAC investigations for about seven years. Each case is different but everything the investigator does requires some legal process. They deal with the large social networks, small companies and large companies such as CenturyLink or Cable One. There always must be probable cause or reasonable suspicion that a crime is occurring. The information that is collected must relate directly to the case. There is no authorization to collect extraneous or bank information.

**Senator Werk** asked Mr. Jagosh about page 3, section 2 (5); how would the task force operate? **Mr. Jagosh** answered that the funds from the federal government pays the salary for the part-time officers. When an investigator from another agency works for the task force, the salary is reimbursed back to that agency. They still work for their regular agency but when they work for the task force, they become agents through the AG's office. Most investigating is done in cyberspace so most of the work can be done from an office in a central location in the AG's office in Boise. They work with local law enforcement and prosecutors, and eventually will travel to the pertinent area.

**Senator Werk** asked if the employer would be the AG's office. **Mr. Jagosh** said they would be employees of the agency they work for but would be an ICAC agent. **Senator Werk** inquired about the type of oversight in terms of monitoring activities to ensure that inappropriate investigating tactics would not occur. **Mr. Jagosh** explained that a judge is overseeing the activities and determining what should be included in the search. The leads come from an open and public forum; there is no authorization for personal investigation. **Senator Werk** asked if it is the responsibility of the AG to see that there are no abuses to the authority given this task force. **Mr. Jagosh** deferred to Brian King, AG's office.

**Mr. King** responded that the AG will have oversight for that unit. Any allegations of abuse will be handled by the AG. The AG's office has experience in these types of investigations. The task force has been in effect and effective within the state for several years, and has identified an area where there are not enough resources to address the issues confronting the state.

**Senator Davis** is concerned about the accuracy of the fiscal note and referred to Joint Rule 18 which outlines the requirements of fiscal notes. **Senator Davis** then referred to section 3 of the bill and noted that it does not require the expenditure of funds but says that a fund is created in the State Treasurer's Office and the fund has two sources: 1) Funds that are appropriated by the legislature at their discretion and 2) Grants, donations or monies from other sources. Section 3 creates a bucket the legislature may, at some time, choose to fund. The fiscal note says that the bill will cost the state a certain amount. Should the fiscal note be changed to say "in the event the bill passes, the bucket is created, and if this legislature or subsequent legislatures choose to appropriate monies at their discretion, these costs could be part of the hard costs." If the bill passes, it does not require that the legislature fund it if they are without the resources to do so.

**Chairman McKenzie** explained that after the bill was printed, he, Cathy Holland-Smith, Senator Rice, Senator Winder and Representative Bedke generated a chart to show at what levels the ICAC would be funded, what it would cost and then searched for a funding mechanism outside the general fund. This is a bucket bill in the sense it doesn't appropriate anything but sets up a bucket if a subsequent funding bill is initiated. A correction to the fiscal note will be made to show that a bill must come from the Joint Committee appropriating funds this year and each subsequent year.

**Senator Winder** noted that this is an important issue and past discussions have always ended with a question about funding without going to the general fund. This is a creative approach since the AG's office receives awards from various sources that can be used for some initial funding this year and then a determination can be made for future funding.

**MOTION:** With the corrections to the fiscal note that were just stated, **Senator Lodge** moved to send **S 1079** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion. The motion carried by **voice vote**. Chairman McKenzie will sponsor **S 1079** on the Senate floor.

**Chairman McKenzie** welcomed the visiting Government class from Boise High School.

The following three RSs were a unanimous consent request to print from the Senate Commerce and Human Resources Committee:

**RS 22086** A Concurrent Resolution to reject Docket No. 24-2501-1201, Bureau of Occupational Licenses relating to the Idaho Driving Business Licensure Board presented by Senator Patrick.

**RS 22158** A Concurrent Resolution rejecting certain rules of the Bureau of Occupational Licenses relating to the Board of Architectural Examiners presented by Senator Patrick.

**MOTION:** **Senator Davis** moved to send **RS 22086** and **RS 22158** to print. The motion was seconded by **Senator Fulcher**. The motion carried by **voice vote**.

**RS 22162** Relating to Worker's Compensation to extend a temporary premium tax reduction and certain deduction provisions presented by Tom Limbaugh from the Industrial Commission.

**MOTION:** **Senator Davis** moved to send **RS 22162** to print. The motion was seconded by **Senator Lodge**. The motion carried by **voice vote**.

**S 1080** Relating to County Prosecutors to eliminate a conflict of interest presented by Senator Rice.

**Senator Rice** explained that this bill addresses a conflict of interest that county prosecutors currently have when prosecuting a county elected official. That prosecutor also investigates allegations of violations of state law by those same elected officials. They can declare a conflict of interest but that doesn't always happen. The bill authorizes that those complaints be sent to the Attorney General's (AG) office where there would be a preliminary investigation to determine a course of action. The AG's office has the ability to correct non-judicial as well as more serious issues.

There is a fiscal impact of \$212,600 for hiring an additional Deputy Attorney General and one investigator.

**Senator Werk** raised the question of a possible conflict of interest in the AG's office. **Senator Rice** said that there are alternatives in the event of a conflict of interest. If a conflict exists, the case could be sent to a mandatory conflict council selected by the courts at the county level.

**Senator Davis** asked if the bill required the allegation to be put in writing then submitted to the AG for consideration. How does the AG's office become aware of an allegation? **Senator Rice** answered that it could be a written submission or a phone call, which is the most frequent. When a complaint comes in, proof must be collected to show that there was a violation of state law.

**Senator Siddoway** was concerned about the cost to the county for outside resources to prosecute when a county prosecutor was able and willing to prosecute the offender. **Senator Rice** stated that prosecuting an official that is a client of the county by a county prosecutor is prohibited under the Bar Ethics Rules; the county would have to send it out. In this bill, if the AG's office has the resources, it will handle the prosecution and will not bill the county. If the AG's office has no resources, it will go to another county for prosecution.

**Senator Stennett** was concerned about the wording "any allegation" versus "any credible allegation." What is there to ensure that only allegations that have some credence are pursued? **Senator Rice** explained that was addressed when the language "violated state laws" was added. This would make sure the AG would only get those with a conflict of interest.

**MOTION:** **Senator Winder** moved to send **S 1080** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion.

**Senator Werk** agrees that this is a good idea but is concerned about credible allegations. Also, there is no confidentiality within the language. He will vote no.

**Senator Davis** agreed with Senator Werk's point about confidentiality.

**Chairman McKenzie** referred to the investigations that the AG's office does; are those subject to the Freedom of Information Act requests or is there some confidentiality that would attach in the AG's office or in the county prosecutor's office? **Senator Rice** answered that they are confidential. These are mostly citizen complaints so results are made public in advance on something that requires no action to protect reputations.

**Senator Davis** requested some statutory provision that speaks to the confidentiality issue so it would be available if this motion passes. **Senator Rice** agreed.

The motion carried by **voice vote**. **Senator Rice** will sponsor **S 1080** on the Senate floor.

**CONTINUATION OF S 1108** Relating to Initiative and Referendum Elections presented by Russ Hendricks, Idaho Farm Bureau Federation.

**Chairman McKenzie** said that this is a continuance of **S 1108** to allow further testimony and a closing from the sponsor before addressing the bill.

**TESTIMONY:** **Tyler Malard**, Government Affairs Liaison for Risch Pisca PLLC representing the Idaho Beer and Wine Distributors Association, testified in support of **S 1108**. The ballot initiative process should involve as many voters across the state of Idaho as possible. **S 1108** does not preclude the ability to do a ballot initiative, it ensures that all the signatures are not collected in Ada and Canyon counties. Initiatives are becoming more common and more expensive across the nation. Washington spent in excess of \$22.7 million on the passage of Initiative 1183 which was a 60 page, complex alcohol law written by big box retailers for big box retailers. Costco spent \$20.8 million to get that initiative passed. This law put liquor in big box retail stores, it deregulated the three tier system as it pertained to wine, it increased prices and it created more access to liquor for youth. Fortunately, Idaho's constitution requires that alcohol policy be decided by legislators. **S 1108** does not prevent ballot initiatives but makes them more representative of the state.

**Senator Werk** asked if Washington state has the ability to alter, repeal or change statute that is created through the initiative process. **Mr. Malard** did not know.

**Bert Marley**, Idaho Education Association (IEA), spoke in opposition to **S 1108**. Speaking as a former member of this body, he said that no one wants to routinely make public policy through the initiative process. However, it does have a valuable place in the republican form of government as is a reasonable safety valve for the populace to respond if provoked. The process has not been abused; this bill is the result of speculation.

**Mr. Marley** proceeded to give examples and statistics of various initiatives that have succeeded and those that have failed. Members of the IEA have a high level of frustration over this bill as it appears that it is a direct effort to make it easier to suppress the will of the people. Many feel it is a direct attack because of the success in rejecting the Students Come First laws. **Mr. Marley** shared some observations gained from his experience with the initiative process. He went on to compare Idaho's requirements versus those of other states that indicate the bar is much higher in this state. There is also a handicap concerning the time restraints to gather and register the signatures.

**Senator Davis** asked for specifics on the 2012 ballot initiatives. **Mr. Marley** responded that six counties were under six percent and two of those had adjusted numbers that showed they were over the six percent. The Secretary of State compiled a chart using the proposed changes from **S 1108** and applied them to Proposition I, II, and III. Under that scenario, three districts would not have reached the six percent level.

**Senator Winder** and **Senator Werk** both pursued questions about the confusion people had about their address and how it related to their legislative district and would the results for the last initiatives have been the same. **Mr. Marley** believed the results would not have been the same.

- Shuffling petitions between gatherers and county officials and others eliminates about one-third of the names for various reasons which happens in either case.
- This change puts urban voters at a disadvantage from rural voters.
- The number would be very different using legislative districts.

**Senator Werk** asked if a large, well-funded group would be more successful than a smaller, citizens group because they could overcome most obstacles. **Mr. Marley** answered that was a concern at any time.

**Mr. Hurst**, at the request of Senator Winder, referred to page 3, lines 13-14 and line 28, to clarify that each petition form will have a legislative district number on it and the person signing must be in that district as determined by their address.

**Senator Werk** questioned Mr. Hurst on the accuracy of the fiscal note considering the amount of work that will be added at the county level. **Mr. Hurst** replied that it will not be much of an increase because everything is automated.

**Mr. Hendricks** concluded his remarks by addressing a couple of issues. Adjustments should be made now before there are some abuses. Regarding voters signing the correct petition, maps are available but also, the Secretary of State's office has a website called idahovotes.gov that allows any voter across the state to find out which district they reside in and is available on a variety of electronic devices (it takes about 15 seconds).

**Mr. Hendricks** drew attention to a handout, Attachment A, that shows the results of four Ninth Circuit Court cases on geographic requirements based on legislative districts and that they all found it did not violate existing equal protection clauses. **S 1108** is a practical way to address the issue before the Committee in a manner that is fair and reasonable and asks for support to send to the floor with a do pass.

**Senator Werk** contended that the fiscal note is inadequate due to anticipated litigation costs. **Mr. Hendricks** responded that any law could be litigated but with these rulings, that probably won't happen.

**MOTION:**

**Senator Siddoway** moved to send **S 1108** to the Senate floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion.

**Senator Siddoway** stated that this has nothing to do with past issues, it has to do with the issues we are threatened with in the future like cannabis, animal rights and animal cruelty. It has to do with treating all people across the state equally; the concerns of rural Idaho has to be addressed as much as urban Idaho. He will be supporting the bill.

**Senator Stennett** agrees it is a question of fairness and that the one person, one vote will be recognized. The effort to give rural areas more advantage further restricts the process. Those signatures above the six percent do not qualify so it is unfair. She won't support this bill.

**Senator Hill** explained that the numbers over six percent do count because if you only had six percent of the 18 legislative districts, there would not be six percent of the total population which is also a requirement.

**Senator Fulcher** intends to support the motion. However, he understands the counterpoint view but his rationale is that this is a point of inclusion, not exclusion. The demographics of the state are such that to include the voices of the broad cross-section of this state, it is appropriate to take this step.

**Senator Lodge** agrees with Senators Fulcher and Siddoway. Even though she comes from a populous county, the area she represents is more rural. This is a way to get more people across the state involved in the voting process so she will be supporting this bill.

**Senator Davis** stated his concern with the original RS and requiring 22 legislative districts and he felt a simple majority was more than adequate. **Senator Davis** pointed out the following issues:

- The current process may crush public involvement statewide.
- This bill encourages public involvement statewide.
- Constituents outside the Mountain Home to Payette area (where 50 percent of Idaho's population resides.) should have been included.
- If this bill would have been in effect in 2012, participation would have been greater than the actual numbers showed.
- Fears California governance model; Idaho's model is better and this legislation protects that model.

**Senator Werk** stated his concerns:

- A higher bar makes it less likely people within Idaho will participate directly in the initiative process.
- Funded professional gatherers would be the only way to get the signatures needed to get an initiative on the ballot.
- There is confusion about which legislative district the signer belongs in even with technology available to help the gatherers.
- Judicial rulings can make this change constitutional, but it is not necessarily good policy.
- The fiscal note is inadequate since this law certainly will be challenged in court.

- The 60 day deadline is a problem.
- The initiative process is a stopgap, in the absence of legislative action, to allow the people to act in their own best interest.

**Senator Werk** stated that eroding the people's ability to affect law in the state is the wrong way to move and for that reason he will be not supporting the motion.

**Senator Davis** agreed with Senator Werk that there should be more public participation and that is what the sponsors of **S 1108** are trying to do. He also tested the website to see how hard it was to access and the time it took to look up his legislative district since he had not done that before; it took 19 seconds. It was not onerous at all.

**Senator Winder** said that we can learn from Oregon and Washington where the Cascade range is not only a physical and geological barrier, it is an ideological and political barrier and those that live east of the Cascades are disenfranchised since they have no say in the initiative process. This is not retribution and it will stand the test of any kind of litigation.

**ROLL CALL  
VOTE:**

At the request of **Senator Werk**, **Chairman McKenzie** called for a **roll call vote** on the motion to send **S 1108** to the floor with a **do pass** recommendation. The motion carried with seven ayes and two nays. **Chairman McKenzie** and **Senators Davis, Fulcher, Hill, Winder, Lodge** and **Siddoway** voted **aye**. **Senators Stennett** and **Werk** voted **nay**.

The following RSs were requests to print from the Chairman of the Education Committee and the President Pro Tempore:

**RS 22109**

Defines Financial Emergency for local school districts.

**RS 22129C2**

One year and two year contracts.

**RS 22130C1**

Reducing salaries; contract duration.

**RS 22131C1**

Majority representation; majority ratification.

**RS 22160**

Limits litigation impact; preserves due process rights.

**MOTION:**

**Senator Hill** moved to send **RS 22109, RS 22129C2, RS 22130C1, RS 22131C1** and **RS 22160** to print. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

**Chairman McKenzie** deferred **RS 22132** to the next meeting on Friday, March 8.

**ADJOURNED:**

**Chairman McKenzie** thanked the Committee and adjourned the meeting at 10:06 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary