

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Monday, March 11, 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 meeting to order at 8:09 a.m. with a quorum present.

MOTION: **Senator Hill** moved to approved the minutes of February 15, 2013. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

The February 18 minutes will be deferred until the next meeting.

MOTION: **Senator Davis** moved to send the gubernatorial reappointment of Sheila Olsen to the Commission on Human Rights to the floor with the recommendation that she be confirmed by the Senate. **Senator Hill** seconded the motion. The motion carried by **voice vote**. **Senator Tippets** will be the floor sponsor.

RS 22231 Relating to Social Security Benefits for policemen and firefighters. **Senator Winder** introduced **Dan Goicoechea**, Chief Deputy, State Controller's Office. **Mr. Goicoechea** stated that their office is attempting to fix a forty year old problem with **RS 22231**. Section 218 of the Social Security Act stipulates that the state administrator for Idaho is the state controller. The Controller's office has come before State Affairs in the past regarding retirement coverage for police officers and firefighters. The Federal Social Security Administration informed them that the enabling legislation is inadequate resulting in this legislation.

Senator Hill moved to print **RS 22231**. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

H 53 Relating to the Bond Bank Authority to clarify salaries. **Laura Steffler**, Chief Deputy, Treasurer's Office, said this bill addresses a conflict between Idaho Code § 59-501 that sets elected officials salaries and Idaho Code §§67-8703 that sets the compensation for Idaho Bond Bank Board Members. The bill clarifies that elected officials whose salaries are set in Idaho Code § 59-501 shall not be compensated for Idaho Bond Bank Authority Board meetings. **Senator Davis** asked why they are not proposing language that also excludes salaries of legislators that are appointed to the Bond Bank Authority. **Ms. Steffler** explained that it is acceptable for the legislators to receive compensation for their service on boards. In section 67-8703, elected officials whose salaries are set in code cannot earn additional compensation from the state.

Senator Hill moved to send **H 53** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion. The motion carried by **voice vote**. **Chairman McKenzie** will carry **H 53** on the Senate floor.

H 73 Relating to information technology and telecommunications. **Representative Loertscher** stated that the Idaho Technology Resource Management Council was established in order to effectively manage the state information technology (IT). They have consolidated IT efforts for efficiency and

reduced the number of e-mail servers the state uses. **H 73** renames the council to Idaho Technology Authority, reduces the number of required meetings from four to two per year and changes the makeup of the group. **Representative Loertscher** recommended the inclusion of a proposed amendment to **H 73** that would change the legislative representation to one member of each of the two largest parties from each body of the legislature as members of the council

MOTION: **Senator Siddoway** moved to send **H 73** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion.

Senator Hill stated that in the amendment the legislature would appoint one legislator from each of the two parties. Where is the change that the legislature is appointing two people. **Mr. Loertscher** answered that it is not that clear in the legislation. **Chairman McKenzie** asked **Mr. Loertscher** if it was his desire for the Committee to send this bill to the amending order for corrected language? **Mr. Loertscher** responded that would be correct.

Senator Siddoway modified the motion to, instead, send **H 73** to the 14th Order for possible amendment. **Senator Stennett** seconded the motion to send **H 73** to the 14th Order.

The motion carried by **voice vote**. **Senator Siddoway** will carry **H 73** on the Senate floor.

H 159

Relating to the retail sale of liquor by the drink.

Representative Gibbs stated that **H 159** amends section 23-903, Idaho Code, authorizing the issuance of a state retail liquor license for the sale of liquor-by-the-drink to be issued to a federally recognized Indian Tribe on tribal land under specific conditions; the license is nontransferable. If this bill passes, it would stimulate economic activity; would be an economic driver for the Lewiston-Clarkston Valley and the region; and fills the need for a liquor license for an existing facility that is in the process of adding a convention center with 35,000 square feet and 50 rooms.

TESTIMONY: The following people spoke in support of **H 159**.

Chairman Silas Whitman advised that the Nez Perce Tribe (Tribe) has embarked in a stronger direction by expanding their infrastructure and community development; developing natural and human resources; and, assisting federal and state governments with facilities and comanagement. This bill provides a level playing field with the other businesses in the surrounding area. Expanding services for scheduled events, conventions and conferences could generate as much as \$10 million in active tax dollars for the area.

Kristen Kemak, President and CEO of Lewis-Clark Valley Chamber of Commerce (Chamber). **Ms. Kemak** represents 14,798 jobs of which ten percent belong to the Tribe. They support **H 159** which would allow the Tribe to obtain their alcohol license. It is the vision of the Chamber to create a united community, vibrant business environment and quality way of life. They believe the Tribe's efforts will enhance their vision.

Doug Mattoon, Executive Director, Valley Vision, a nonprofit economic development company formed in the valley by the business community to support business efforts to increase the economy in the Lewiston-Clarkston region by helping businesses create additional jobs. They support the Tribe's request for legislation that would grant them a liquor license for their new tribal conference center located outside the city limits which eliminates the option of using an existing license. The Tribe is the third largest employer with 1,380 direct jobs. The Nez Perce Tribal Enterprises operates the hotel and conference center that has a direct employment of 341. Lewiston does not currently have any adequate facilities for larger conferences or concert types of events. Valley Vision did a study as part of a Tourism Strategic Plan

for the valley. The occupancy rate was at 58 percent. If that can be increased by five percent, there would be a direct room revenue of just over \$3 million and an indirect impact of \$28 million.

Jamie Olson, Executive Officer, Nez Perce Tribal Enterprises explained that Tribal Enterprises has grown exponentially over the last three years and we want to see this continue. With the expansion, new jobs will be created that will provide opportunities for people to have a sense of purpose, responsibility, training and career advancement. Thirty-six positions will be added for the gaming enterprise in addition to 137 constructions jobs.

Pam Eaton representing the Idaho Lodging and Restaurant Association, spoke in support of **H 159**. They protect the value of current liquor licenses and they are always cautious of something that might devalue them. They believe this addition will bring in extra business to the hotels and restaurants in the area. This is a specialty license since there is no other option to obtain a liquor license, We ask for the Committee's support of this legislation.

Senator Winder disclosed that, under Senate 39 (h), he could have a potential future conflict but intends to vote on **H 159**. He has received no compensation nor does he have a current contract, but there have been discussions over the last one and one-half years for a consulting opportunity.

MOTION: **Senator Siddoway** moved to send **H 159** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**. **Senator Keough** will carry **H 159** on the Senate floor.

RS 22207 A unanimous consent request to print from the Local Government and Taxation Committee relating to solid waste disposal.
Senator Werk explained that this legislation is a rewrite based on input from various stakeholders to improve some actions of the municipal landfills.

MOTION: **Senator Winder** moved to send **RS 22207** to print. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

S 1134 Relating to aeronautics of unmanned aircraft systems.
Senator Winder stated that this effort has been in progress since the beginning of the session working with various stakeholders including the American Civil Liberties Union (ACLU) and the Sheriff's Association and others. **S 1134** is a follow-up to an earlier resolution that this Committee passed and is intended to provide the constitutional privacy protections that go along with the potential for unreasonable search and seizure with the use of unmanned aircraft.

There are concerns that the Environmental Protection Agency and Department of Environmental Quality will use these aircraft to fly over agricultural land and dairies without permission to gather information without their knowledge or consent. The legislation does not restrict the use of unmanned aircraft systems by state and local law enforcement agencies engaged in marijuana eradication efforts on any property.

Monica Hopkins, Executive Director, ACLU, spoke in support of **S 1134**. This is a strong step forward in protecting individual privacy rights. **Ms. Hopkins** suggested making the bill stronger by adding language that would document those circumstances in which law enforcement could use unmanned aircraft, some data collection language on how long that data could be kept and language that indicates when unmanned aircraft are used, subject to consent for non-law enforcement purposes, and that the information cannot be used in court.

Senator Davis suggested that if unintended data is collected through the use of an unmanned aircraft that may capture information that a crime has been committed, that information should be made available in a civil or criminal proceeding. Are we

statutorily creating legislative consent that an unmanned aircraft system, if there is reasonable suspicion of criminal action, can now be used by law enforcement both in the investigation and the prosecution of a crime? Does this bill create that inference?

Senator Winder replied that this situation occurs with helicopters and fixed winged aircraft. There is no existing format for this type of bill. There is only conjecture about how those types of situations would be handled. **Senator Stennett** asked what other states have passed similar types of legislation; was some of that language considered? **Senator Winder** answered that other states are contemplating a variety of drafts. The state of Texas is contemplating highly restrictive language for the use of unmanned aircraft systems.

MOTION: **Senator Werk** moved to send **S 1134** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion.

Senator Davis said he was not prepared to vote in favor of this bill as it is written. There are problems in the following sections.

Section 21-213 (2) (a) (i) (ii) beginning at line 26 and (b) beginning at line 38, page 1:

- Language interpretation suggests that the unmanned aircraft can be used for unwarranted surveillance or observation if there is a reasonable suspicion of a crime; 1) the person being observed consents or 2) they don't have to give consent for all in (a) (i) and (ii) which includes marijuana eradication efforts. Why is it limited to marijuana when there may be other criminal conduct of equal or greater importance. In that case, this could be a barrier.
- Why would criminal conduct be relevant to the publishing or public dissemination of a photograph? It should say that an unmanned aircraft can never be used for that purpose.
- Normally, under Idaho law, there is provision to protect a state employee or an employee of a political subdivision. This legislation creates an individual liability against the person, not just the entity of state agency.

Senator Winder addressed Senator Davis' concerns. 1) The language on page 2 dealing with the law enforcement agency in marijuana eradication efforts responds to a principle called "open field," meaning that any aircraft flying over open, private or public properties has the right to observe certain unrelated subject matter. This legislation allows that same principle to be applied to unmanned aircraft. 2) Publishing of a photograph was an effort to deal with paparazzi and protect individual rights. 3) Transferring liability from an employee to an agency was not contemplated in drafting the legislation.

Chairman McKenzie noted that there is a motion pending. If this is something that should be addressed, **S 1134** could be brought back by unanimous consent. He is concerned about the standard for searches. "Reasonable, articulable, suspicion" usually relates to a search of suspicious activity for weapons.

Senator Winder explained that the language came out of the negotiation process with law enforcement to deal with issues when they may be in pursuit and may have reasonable cause to use an observation technique in the immediacy of an issue.

Senator Werk stated that if the Committee wanted to delay action, he would recall his motion. **Senator Davis** responded that he could vote but restated his concerns with the language. **Senator Winder** answered that he would prefer to address this in Committee rather than on the floor.

Chairman McKenzie announced that, by unanimous consent, **S 1134** would be held in Committee for further review.

ADJOURNED: There being no further business, the meeting adjourned at 9:10 a.m.

Senator McKenzie
Chairman

Twyla Melton, Secretary
Assisted by Carol Deis