

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Monday, March 18, 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) meeting to order at 8:00 a.m. with a quorum present.

**RS 22269C1** Relating to the Idaho Liberty Preservation Act presented by Senator Pearce. **Senator Pearce** introduced **RS 22269C1** as the Idaho Liberty Preservation Act that would invalidate portions of the National Defense Authorization Act (NDAA) which gives the federal government the right to apprehend an Idaho citizen, require an appearance before a judge, transport that person anywhere and allows for imprisonment for an indeterminate period of time. **Senator Pearce** went through the bill item by item explaining that the main emphasis is on page 3, line 31 which states that an "employee or agent of this state commits a misdemeanor offense if such person knowingly and willfully enforces or attempts to enforce indefinite detention provisions of the NDAA."

**MOTION:** **Senator Fulcher** moved to send **RS 22269C1** to print. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

**RS 22281** Related to gaming to revise certain sections pertaining to tribal gaming presented by Mike Duff who is representing United Families of Idaho. **Mr. Duff** explained that the purpose of **RS 22281** is to reaffirm and enforce the gambling regulatory framework of the Idaho Constitution and subsequently, amend Idaho Code. It is necessary for the legislature to make clear the types of games that are prohibited and provide clear guidance for the Lottery Commission. This legislation responds to technological advancements by defining, modernizing and clarifying factors related to electronic imitations or simulations of prohibited gaming devices. It also amends Idaho Code to require legislative approval of future tribal gaming compacts. **Mr. Duff** deferred to former Idaho Supreme Court Justice, Robert Bakes, to discuss the constitutional issues regarding the intent of this legislation.

**Judge Bakes** provided a history and an analysis going back as far as the Civil War and subsequent events that have occurred to bring Idaho to its current involvement with gambling. (Attachment A). In 1992, an amendment to the Idaho constitution allowed three exceptions to the prohibition on gambling; 1) a state lottery, 2) pari-mutuel betting (horse and dog racing), and 3) charitable bingo and raffle games.

In 2002, via Proposition One, which was an outcome of a federal law allowing casino gambling on Indian reservations, the governor was authorized to enter into compacts with Indian tribes to conduct casino gambling. This legislation does not repeal those sections, it only requires legislative approval of any proposed new Indian compact or amendments to existing compacts. **RS 22281** also creates a new

section 67-429D to authorize the pursuit of the constitutionality of sections 67-429B and 67-429C. **Judge Bakes** urged the Committee to approve **RS 22281** since the legislature is the only body in the state of Idaho that can defend article III, section 20, of the Idaho constitution.

**MOTION:**

**Senator Davis** moved to send **RS 22281** to print. **Senator Hill** seconded the motion.

**Senator Werk** questioned Judge Bakes' reliance on the legislature to determine constitutionality rather than the courts. **Judge Bakes** responded that there is not a clear answer. There were two cases, one prior to Proposition One and another following the passage of Proposition One, where the Supreme Court determined that they had no jurisdiction. The alternative is for the legislature to enact statutes to defend the constitution and prevent activities that violate the constitution.

**Senator Werk** quoted section 67-429D, "any member of the constitutional defense council...will have the authority...to pursue a declaratory judgment," but the actual statute indicates that decisions of the council are made by a majority vote of the members. This seems to be conflicting. **Mr. Duff** said that in section 8, 67-429D, authority is granted to any member of the defense council to pursue a declaratory judgment action.

**Senator Stennett** asked who are members of the council. **Mr. Duff** answered that it is the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Attorney General. **Senator Stennett** asked how the earnings, now generated by the gambling industry, would be replaced if this passes. **Mr. Duff** stated that it is unclear that any revenues would be lost. The lottery projections through 2016 show that earnings are stagnate and they need to bring in gaming devices to increase revenues.

**Senator Winder** asked what was the intent of the sponsors of the bill for this session. **Mr. Duff** stated that they would like to see the legislature renew the framework contained in section 20. This is an important item to ensure that the constitution functions and to prevent negative impacts to the state. They would like to see the bill move as quickly as possible.

**Chairman McKenzie** clarified that if the Committee moves to print, the bill may come back but it would not be heard this session; that information has been indicated to the sponsors.

The motion carried by **voice vote**.

**H 193AA**

Related to Prepaid Wireless Communications presented by Skip Smyser who spoke on behalf of his client, AT&T.

**Mr. Smyser** explained that **H 198aa** has been a collaborative effort of the Idaho telecommunications industry including AT&T, Verizon, TracFone and TMobile, all of whom are represented in the audience. These companies have worked with the Idaho Emergency Communications Commission (IECC), the Idaho Sheriff's Association, the Association of Idaho Counties and many other groups to develop a system for the collection of a fee for the 911 service from the prepaid wireless services segment of phone users that, today, do not pay for the 911 service; and, to do this with a minimum of burden on the retailers.

**John Cmelak**, Vice President of State Tax Policy-Western Area for Verizon, said he has worked with the State Tax Commission to develop a mechanism for the collection of the fee. The retailer can collect the fee and send it to the Tax Commission with their sales tax payments. The funds will be sent by the Tax Commission to the IECC and they will make quarterly payments to the 911 service

providers. The retailer will retain three percent for administering the collection of the fees, the Tax Commission two percent and the IECC one percent. The effective date is January 2014.

**Senator Werk** referred to page 3, sub section (d), "the prepaid wireless E911 fee is the liability of the consumer and not of the seller." How does the fee relate to prepaid wireless cards?**Mr. Cmelak** confirmed what the language says, but added that it goes on to say "except that seller shall be liable to remit all prepaid wireless...the seller collects or is required to collect." This law does require the retailer to collect the money and if they do not, the Tax Commission can hold the retailer liable for failure to collect. **Senator Werk** asked why is this a liability for the consumer, unless collection couldn't be made from the seller. **Mr. Cmelak** concurred. It is a joint and several liability. If it is a purchase for prepaid merchandise, the retailer has the option of making the sale or not if the consumer refuses to pay. In the postpaid world, the customer just deducts the amount off his payment and it is hard to collect. **Senator Werk** asked if the customer would be provided some standard type of notification for the 911 fee if the seller no longer exists and the Tax Commission notifies them that they now owe some additional amount. **Mr. Cmelak** conceded to that possibility.

The intention of the 911 system is to have all users contribute to the funding whether the user knows of it or not.

**Senator Fulcher** asked if Verizon currently pays the 911 fee. **Mr. Cmelak** said that they do not pay on prepaid but do pay on postpaid. **Senator Fulcher** asked if his Verizon service as well as all other major carriers was considered postpaid. **Mr. Cmelak** agreed. Postpaid wireless has a 911 charge. As to prepaid, his understanding is that they do not pay the 911 fee yet. **Senator Fulcher** asked if part of the purpose of this legislation is to have prepaid services included in the 911 fee collection. **Mr. Cmelak** responded that the purpose of the bill is to have all consumers, whether prepaid or postpaid, contribute to the 911 fund. Right now, only postpaid customers are contributing.

**Senator Werk** questioned the calculations shown on page 3, lines 22-33. **Mr. Cmelak** explained that the postpaid 911 fee is increased or decreased. The prepaid charge would proportionately increase or decrease so that parity would be maintained. In order for the retailers to mesh the 911 fee into something similar to the six percent sales tax calculations for administrative purposes, the flat fee had to be converted to a percentage. Also, prepaid service can be purchased in smaller amounts and the percentage makes it more fair.

**Senator Fulcher** stated that if Verizon is wholesaling minutes to "go phone" providers, why not build the fee into those charges. **Mr. Cmelak** explained that the prepaid product is a national product that is sold to companies like TracFone but they also sell to Walmart directly and therefore, lose control of the product. When that product is dispersed to different states, those states have different 911 levies. They can't do state specific pricing.

**MOTION:**

**Senator Hill** moved to send **H 193aa** to the floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion.

**Senator Werk** called attention to a provision on page 4, sub section (3) (b) concerning the three percent the seller can retain. **Mr. Smyser** answered that is a reimbursement for collecting the fee.

**Senator Hill** stated that this is a separate liability of the consumer that the retailer collects and if the retailer doesn't collect, he still must pay it. It is a liability just as sales tax is a liability. **Senator Werk** had further concerns about notification to the consumer but he will support the bill.

**Senator Stennett** referred to page 3, line 31, which says the Tax Commission shall provide advanced notification on its website. It is unclear how people would know to go to that website.

The motion carried by **voice vote**. **Senator Fulcher** will carry **H 193aa** on the Senate floor.

**H 183**

Relating to Municipal Corporations presented by Representative Terry Gestrin. **Representative Gestrin** said that **H 183** cleans up language that was missed in a 2008 bill that declared that the legislature would be the sole authority to regulate firearms with a few exceptions. This bill removes a statute that was enacted in 1967 that gave a city the authority to regulate or punish for concealed weapons. That bill also contained an item related to concealed weapons and that is the statement that is being removed. A city will still be able to regulate other aspects of enforcement for firearms. **Representative Gestrin** stated that he had support for this bill and stood for questions.

**Senator Werk** questioned whether removing the ability to punish for carrying concealed weapons was the intent. **Representative Gestrin** responded that this does not remove the police powers of the cities or counties, they have the ability to uphold and enforce whatever laws are on the books for the state of Idaho. **Senator Werk** asked if a person was arrested for illegally carrying a concealed weapon, would that case be considered by the city or by the state? **Chairman McKenzie** answered that it would be the same as other state statutes that are violated within the city limits i.e. the city enforces the Driving Under the Influence (DUI) statutes. That process is not being changed. If this bill passes, it will take away the city's ability to pass a city ordinance regulating concealed carry or regulating the penalty for it. The regulation for concealed carry and the penalty is already in state code.

**MOTION:**

**Senator Fulcher** moved to send **H 183** to the Senate floor with a **do pass** recommendation. **Senator Lodge** seconded the motion.

**Chairman McKenzie** noted that his bill preempted the area of firearms in the state and each of the exceptions were negotiated with the involved parties. This portion of code would have been struck at that time if the section had not been missed.

The motion carried by **voice vote**. **Senator Hagedorn** will carry **H 183** on the Senate floor.

**H 121**

Relating to the Idaho Credit Rating Enhancement Committee presented by Jace Perry from the Treasurer's Office.

**Mr. Perry** stated that **H 121** is a cleanup bill that does two things: 1) Allows the Enhancement Committee to meet at the call of the chair instead of meeting at a specific time every six months. 2) Removes the requirement for developing debt forecasts and debt capacity targets since they are not applicable to Idaho because Idaho does not have any long-term debt. Participants in the Enhancement Committee are dissimilar and each agency issues debt for its own purposes.

**Chairman McKenzie** asked if there was any opposition or votes against the bill as it went through the process or is it something to consider for the consent calendar.

**Mr. Perry** said there was no opposition. **Senator Davis** noted that there were two no votes in the body across the rotunda.

**MOTION:**

**Senator Siddoway** moved to send **H 121** to the Senate floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion.

**Senator Winder** disclosed that he is a member of the Enhancement Committee.

The motion carried by **voice vote**. **Chairman McKenzie** will carry **H 121** on the Senate floor.

**ADJOURNED:** **Chairman McKenzie** announced that Wednesday's meeting would be a joint meeting with the House State Affairs Committee in the Abraham Lincoln Auditorium for a presentation. Being no further business, the meeting adjourned at 9:07 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary