

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Wednesday, March 27, 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 8:00 with a quorum present. The agenda may be adjusted as the meeting progresses to accommodate moving **S 1192** to the floor. Minutes will be deferred until the end of the meeting.

HCR 20 A House Concurrent Resolution rejecting a final rule of the Athletic Commission presented by Representative Jason Monks.
Representative Monks said Docket No. 03-0101-1201, Rule 107 (07) pertaining to female combatants and the annual physical examination requirements for any age, which includes an examination of the pelvis as well as breast exams is being rejected. The sponsors' concern was with young girls undergoing those examinations. It was thought that those decisions should be left to the physician doing the examination. There are no specifications for male combatants so there should not be any for female combatants.

Senator Stennett asked if there was anything that specifies the process with parental consent for underage combatants. **Representative Monks** was not aware of any parental option under this rule.

Senator Davis asked what the Committee did on this rule. **Chairman McKenzie** stated that we approved them but this area had the most questions; the provision was not specifically rejected. **Senator Davis** asked why the House rejected the rule? **Representative Monks** answered that there were two issues: 1) A pending fee rule that was rejected by the House; and, 2) Removing existing Rule 107 (07). **Senator Davis** stated that they are not being asked to reconsider what the Committee did in 2013, but the bill is asking that an existing rule be struck, not because an annual exam is inappropriate, but because it is exclusively for a female combatant. There still would be a physical exam for female combatants, just not this specific. **Representative Monks** said that is correct. The physical exam is contained in a previous section which states that all combatants are to have annual physical examinations.

Senator Stennett recalled that the previous discussion was that this examination was to confirm whether a female was pregnant or not. Why isn't that important? **Representative Monks** responded that there are many things a physician must know when a combatant is going in to fight yet none of those are specified by statute; they are left to make the appropriate decision as to what to look for and, for female combatants, it should be the same. In addition, there is no age restriction. **Chairman McKenzie** referred to (03) (a) which states that females must submit to a pregnancy test.

Senator Werk confirmed that any pre-contest examination happens regardless of (07). Is this removing the requirement for a female to have an annual physical examination? **Representative Monks** answered no. **Senator Werk** asked for the exact language for those provisions and do they provide latitude for physicians to do what they think proper. **Representative Monks** stated he did not have that information with him. He deferred to Tom Katsilometes to answer that question.

Mr. Katsilometes, Commissioner, State Athletic Commission, answered that physicians around the state are happy with this change. They still have to do the examination for all combatants but the female combatants do not have to have the specific examinations required by Rule 107 (07) and they still must go through the pregnancy test.

MOTION: **Senator Davis** moved to send **HCR 20** to the Senate floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**. **Chairman McKenzie** will carry **HCR 20** on the Senate floor.

HCR 18 A House Concurrent Resolution for the Department of Administration to develop a contract management plan presented by Representative John Rusche. **Representative Rusche** outlined the requirements for the Department of Administration (Department) to develop a plan to improve the management of state contracts. The Office of Performance Evaluation (OPE) reviewed Idaho's contracting process and released a report strengthening contract management which presented several opportunities for improvement including best practice checklists, enhanced training, project review and improved risk management. The report led to this resolution to report and improve contract administration. The plan that is developed may or may not require statutory changes and will be presented to the legislature in January 2014.

Amy Lorenzo, Office of Performance Evaluation, reinforced the idea that this resolution will help address some of the preliminary concerns of the report and further encourage the Department's authority to implement the recommendations.

MOTION: **Senator Werk** moved to send **HCR 18** to the Senate floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**. **Chairman McKenzie** will carry **HCR 18** on the Senate floor.

S 1192 Relating to the Capitol Mall to provide certain exemptions related to the city planning and zoning process presented by Senator Chuck Winder. **Senator Winder** explained that **S 1192** is related to a parking structures where bonds have been sold and the state is going through the appeals process for design with the City of Boise. As a final effort to maintain the budget and available funding for the project, this bill authorizes the building authority to make a decision to continue the project should they not reach an acceptable agreement with the city. **S 1192** was presented to cover all the Capitol Mall property on an ongoing basis. However, **Senator Winder** would like to amend the bill to make it specific to the one parking garage structure with a sunset for June 30, 2014. That removes the fears that this is a blanket exemption for all Capitol Mall properties. With these changes, **Senator Winder** is requesting that the bill be sent to the 14th Order for possible amendment.

Chairman McKenzie stated that there are five people signed up to testify on this bill and asked them to be as concise as possible.

TESTIMONY: The following people testified in opposition to **S 1192**:
Dave Everhart, Advocacy Chairman, Preservation Idaho
Maryanne Jordan, President, Boise City Council
Holli Woodings, District 19 and North End Neighborhood Association

Scott Schoenherr, Rafanelli and Nahas Developers and President, Downtown Boise Association

Dana Hofstetter, Hofstetter Law Office LLC

Mr. Everhart ask the Committee to protect the sovereignty of the of the communities in Idaho and the historic resources they strive to recognize. The Capitol Mall and specifically the block under consideration abuts and includes three separate historic districts which includes two nationally recognized historic districts. **S 1192** has the potential to directly impact the distinctive historic architecture of these districts by sidestepping the procedural reviews. This measure will have long term impacts on historic resources within and around the block. The bill also sets an unhealthy precedent that could have repercussions around the state.

Senator Winder stated that they are still instructing all staff to work with the city through these issues and this is a "last ditch effort" if a final conclusion cannot be reached.

Ms. Jordan spoke about the process through her experience on the Boise City Council and as a former member of the Planning and Zoning Commission. When acting in the public sector, it is important to remember that things must slow down to meet certain requirements. She went through the details of the process for a proposed project. **Ms. Jordan** explained that there are multiple opportunities for solutions. This particular property is working its way through the process and she wants to see it continue.

Senator Fulcher referred to another project where a bus depot was proposed in an area across from the Capitol. Was the city involved with that planning and what was the process and status? **Ms. Jordan** stated that the city has been very involved in planning the Multi Modal Center (MMC) and securing federal funding. They have worked with various partners to analyze various locations. This will include facilities for transit, transit drivers and a police precinct. They are looking for partnerships and locations. **Senator Fulcher** asked if Ms. Jordan viewed that as an appropriate location. **Ms. Jordan** said that will ultimately come to the city council for a decision and there will be a public hearing involved in the location of that facility and she can't predict what the decision will be. It is an appropriate location to investigate.

Senator Fulcher asked if she would be comfortable for those administrating the Capitol grounds to have a voice in that decision. **Ms. Jordan** responded that would be imperative.

Representative Woodings asked to uphold Idaho's commitment to local control of local functions. Boise City's design and review process is fair, balanced and designed to protect property rights. It does not warrant state interference. The state has failed to pursue the project in a way any other business would; the project is adjacent to the most historic structures; the new structure is located next to historic neighborhoods; and, the state is asking for special exceptions. We request that this issue run its course through the existing process without intervention.

Mr. Schoenherr stated that Rafanelli and Nahas is one of the largest downtown developers investing over \$50 million in the downtown over the past few years and has built the only privately funded parking garage in downtown. They have been through the process the state is now dealing with and found it time consuming but reasonable, and it helped them to improve their design. Timing and budget issues apply to all projects and it is important to build this garage because it is needed. However, **Mr. Schoenherr** stated his concern with the precedent that is being set.

Ms. Hofstetter said both she and her husband have been involved in the process because they thought the project would impact the community and the neighborhood and felt it could be done better. No one involved in the process is against additional parking in the area, the issue is how it should be done not whether it should be done. **Ms. Hofstetter** recapped the process so far. The city has approved the conditional use permit and variance as is. Planning and Zoning (PZ) is separate and there the state has encountered opposition from the city. The architect who reviewed the design believes elements could be added that would be fitting for the area. The process is working. Compared to the existing state parking garage, this project could be better.

Senator Werk stated that the most disturbing element is obtaining financing before getting the construction permits. Why did that happen? **Jeff Youtz**, Director, Legislative Services Office and a member of the Capitol Commission, responded that this is a bill that probably will never be used. The last appeal occurs in late April after the legislature is gone so if there are decisions made by the city council that will require a change, additional money or going back to the drawing board, they will have to wait a year for the legislature to come back. **Mr. Youtz** agrees with the statements made by the people who have testified. The state's public works officials are working with Boise City and, as a result, have improved the project. They are intending to make some vertical and aesthetic changes at the City's recommendation and plan to follow the regular process through.

Mr. Youtz said that the bonds have been sold and they are to be retired by the users of the parking facility so if it is delayed the state must begin making the bond payments. When the project started last year, the bonds were at historically favorable interest rates. Hopefully, this will all work out with local government but it was felt there was a need for back up in case the project might be delayed.

Senator Werk restated his question. **Mr. Youtz** responded that it isn't inappropriate. Bonds were authorized for the restoration project prior to the actual design build details. **Senator Werk** asked about the authority to bond; does that mean bonds have to be purchased? **Mr. Youtz** said that the concurrent resolution required to authorize the bonding simply says the State Building Authority has the authority to work with the Department of Administration to bond for this particular project. Normally there is a budget ceiling; in this case with this project it was \$8 million. There is also a legislative section in the bonds explaining that the bonds will be retired through parking fees.

Senator Werk said his impression is that there is not enough money to substantially change the design and the skin of the building, which seems to be the issue, because the design was completed and the bonds let prior to the process required by the city. **Mr. Youtz** agreed. They are working with the city and have made some changes which will be good if they don't have to have a redesign that won't fit into the budget and accommodate the necessary parking spaces. Unfortunately, they won't have an answer until the appeal is heard in late April.

Senator Winder closed stating that no one intentionally designs something they don't think will meet the standards. The Planning and Zoning standards have been met. The architects' decision regarding the design is subjective. The staff recommends approval of the design that has been appealed.

Every effort will be made to work through this process so this legislation will not be needed. The proposed amendments have limited the bill to only the garage project so it won't have such far reaching results.

MOTION:

Senator Winder moved to send **S 1192** to the 14th Order for possible amendment. **Senator Hill** seconded the motion.

Senator Winder stated that because of the potential changes, there will be a new Statement of Purpose to go with the bill should the amendment be accepted.

Senator Werk stated his appreciation for the changes that are being made. This is an upsetting piece of legislation because the state's lack of planning has placed the legislature in a state of emergency. This is not a good precedent to set.

The motion carried by **voice vote**. **Senator Winder** will sponsor **S 1192**.

H 231AA

Relating to Public Works to provide an exception to the employment of Idaho residents presented by Stuart Davis, Executive Director, Idaho Association of Highway Districts.

Mr. Davis explained that **H 231aa** allows political subdivisions to have the same authority as the state to go out of state to secure goods or services if there is no current contractor available within the state. If there is a vender in the state that offers the service, that vender must be used. He is not aware of any opposition to the bill.

MOTION:

Senator Siddoway moved to send **H 231aa** to the Senate floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**. **Senator Siddoway** will carry **H 231aa** on the Senate floor.

H 245

Relating to the State Athletic Commission allowing the recovery of costs presented by Tom Katsilometes.

Mr. Katsilometes stated that the Commission has worked with the fight promoters and the Bureau of Occupational Licenses to deal with the deficit. This bill will lead to fiscal solvency and debt reduction. **Mr. Katsilometes** addressed each of the changes within the bill beginning with page 1, lines 34-36 add procedures for the recovery of costs and fees incurred from an unsuccessful contest decision; page 2, lines 32-35 provide that certain costs incurred in the investigation and prosecution of a violation by a licensee or permit holder may be recovered; page 3, lines 46-48 increase the event promoter's initial event tax from \$400 to \$1,000; page 4, lines 6-9 change the event tax percentage from five to nine percent and lines 11-15 require tickets to be issued, sold and distributed by an independent ticket distributor; and, page 5, lines 16-21 require operation to be suspended when debt reaches \$200,000.

These challenges, along with some cost savings measures, should allow the Commission to address the deficit and become self supporting. All affected parties are in agreement with this approach.

Senator Hill asked what the Commission's debt is now. **Mr. Katsilometes** responded that it is \$179,000. **Senator Hill** commented that if operations are suspended, it sounds like it will be the end of the Commission. **Mr. Katsilometes** agreed; the Commission would be eliminated and they couldn't issue licenses. This bill would help make them self-sufficient and other actions would help them pay off some of the debt.

Senator Hill referred to page 1 and cost recovery. How often does a fighter challenge a decision? What are those costs when that happens? **Mr. Katsilometes** said that when disputes happen, 90 percent of the time they are resolved by the end of the fight. Those that go longer happen about every other month. In one instance, the cost amounted to \$25,000 which went back to the Bureau of Occupational Licenses. The object is to get away from frivolous challenges.

Chairman McKenzie said that one instance cost \$25,000 and right now you are within \$25,000 of the cap. He supports the elements of this bill but there is a concern about how close the Commission is to that cap right now. Is there any thought about increasing that cap? **Mr. Katsilometes** deferred to Tana Cory, Chief, Bureau of Occupational Licenses.

Ms. Cory responded that if this bill had been in place last year, they would have raised \$9,000 and, if that continues, it can prevent them from going into further debt. The Bureau has one fund and sustainable boards should not support those who are not. The cap provides an opportunity to work out the issues but it also doesn't allow the buildup of a big deficit that would mean returning to the legislature for funding.

Senator Fulcher asked for clarification regarding the move to an independent ticket distributor. **Mr. Katsilometes** answered that over the years, the Commission has not been able to control how many tickets and how much money is brought in by the promoters who work with the venue operators. This provides the ability to have more control. The Commission would select the vendor and they could make sure the number of tickets and people were accounted for to prevent disparity in the ticket sales which would bring in some dollars that have probably been lost in past years. **Senator Fulcher** asked how prices are set. **Mr. Katsilometes** said that the promoters set the prices and that is why they should share more of the burden since they have the ability to increase ticket prices.

Senator Lodge inquired if there was a time limit set for filing complaints. **Mr. Katsilometes** responded that there is no time limit but they usually file right after the fight. **Senator Lodge** asked why the decisions couldn't be made right then as the do at a rodeo. **Mr. Katsilometes** stated that is what they are trying to do. Mediation would be done immediately following a fight and the filing of a complaint.

MOTION: **Senator Lodge** moved to send **H 245** to the Senate floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion. The motion carried by voice vote. **Senator Lodge** will carry **H 245** on the Senate floor.

MOTION: **Senator Winder** moved to approve the minutes for March 4. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

PAGE GRADUATION: **Chairman McKenzie** called Page, Zach Baron forward to present a letter of commendation, a letter of recommendation and a watch in recognition of his service to the Committee. He ask Zach to tell the Committee about his future plans. **Zach** said he would spend one semester at BYU Idaho before going on a mission. Upon return, he will transfer to BYU Provo and then go on to law school.

Chairman McKenzie recognized intern Lexy Leahy, a Boise State student, who has been a huge asset and stated his appreciation for her service and thanked Twyla Melton, Committee Secretary, for her contribution to the Committee.

ADJOURNED: Being no further business, the meeting was adjourned at 9:27 a.m.

Senator McKenzie
Chairman

Twyla Melton
Secretary