

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Thursday, March 28, 2013

TIME: 2:15 P.M.

PLACE: Room WW54

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 2:15 p.m. with a quorum present and welcomed Representative Denney to the Committee.

**HCR 21 AND
HCR 22** **HCR 21** - To establish an interim committee to study the aspects for the acquisition of certain public lands.

HCR 22 - To ask the Federal Government to cede title of certain public lands to the state of Idaho.

Representative Denney opened discussion on both **HCR 22**, which will be the one discussed the most and **HCR 21**, which authorizes the legislative council to set up an interim committee to study the issues related to **HCR 22**.

HCR 22 makes the historic and legal case for the transfer of title of public lands within the boundary of the state of Idaho from the federal government to the state of Idaho. **Representative Denney** explained the process and expectations from the time Idaho gained statehood and the actions of the federal government in relation to public lands. In most cases, the federal government has extinguished title to all but four or five percent of the lands within the states. Idaho's state founders relied on this precedent when they made the statehood agreement.

The bigger policy issue before us is the ownership and management of the lands within our boundaries. The ownership of the land is key to the management. We don't want to acquire title to these lands to sell them to the highest bidder; the state constitution only allows for 320 acres to be sold to a single buyer. In fact, the precedent on how state lands have been managed is apparent in the endowment plans that are now in place. Over the years, a small portion of the endowment lands have been sold but the vast majority has been held in state ownership and managed for the benefit of the endowments.

Last summer, nearly two million acres of public lands and forest burned in the state. Years of harvesting only a fraction of the annual growth has led to the buildup of fuel in the forest that waits only for a dry year and an ignition source. It is not the fault of the federal agencies but rather, a bureaucratic, dysfunctional system of conflicting laws and court decisions. For example the typical federal process goes:

Identify that there is a problem.

Proposed timber sale to isolate the problem.

Environmental assessment that takes two to five years.

Followed by a decision.

Followed by an appeals to the decision.

Followed by litigation.

Contrast the state process:

Identify the same problem.

Proposed timber sale to isolate the problem.

The sale is made.

The contractor, following the Idaho Enforced Practices Act, removes the timber.

The problem is taken care of.

This is not a proposal to clear cut the entire forest but to manage it for multiple uses and sustained yields.

According to some economic data provided by the Department of Lands, if Idaho was to manage the resource, an expected annual sustained yield would be 800 million to one billion board feet; that does not exceed the annual growth. Between 14,000 and 18,000 jobs would be created annually with an annual payroll of over \$600 million and an economic impact of about \$2.5 billion. In addition, active management is an economic imperative benefitting the environment with fewer and less intense fires therefore, emitting less green house gasses and mercury; improving habitat for wildlife; protecting the ecosystems; and enhancing recreational opportunities. **Representative Denney** said he believed that active management and state ownership would be good for everyone.

Chairman McKenzie asked if the interim committee was authorized to study this issue, would it necessitate adopting **HCR 22**? **Representative Denney** responded that the Committee could approve both HCRs or either one of them individually.

Senator Stennett asked if there was a plan to sell those lands. **Representative Denney** answered that it is not the intent is to sell those lands.

Senator Werk said that all the questions that were to be studied had already been addressed in a 1980 study and there have been rulings in federal courts that have dismissed similar arguments. **Representative Denney** responded that there is a recent 2009 court decision where the federal government gave title to public lands to Hawaii.

TESTIMONY:

Jonathan Oppenheimer testified in opposition to both **HCR 21** and **HCR 22** on behalf of the Idaho Conservation League. The main concerns with **HCR 21** are: 1) It undermines current efforts that are creating jobs, restoring lands and providing timber to the mills. 2) It represents an unnecessary study that's been done before when nothing has changed in the interim, even with the recent Hawaii case. 3) It is contrary to the Idaho and U.S. Constitutions.

In addition to the concerns with **HCR 21** that also apply to **HCR 22**, there are other concerns that apply specifically to **HCR 22**: 1) The Idaho Constitution and Admissions Act specifically disclaim further claim to title of Idaho's public lands. 2) Courts have consistently upheld Congress' authority under constitutional principles, have dismissed attempts to demand title pursuant to the Equal Footing Doctrine, and have dismissed efforts to seek title pursuant to other constitutional or case law. 3) Public lands are priceless and must not be auctioned off to the highest bidder. 4) The fundamental basis for **HCR 22** is deeply flawed.

Senator Siddoway said that nearly 100 percent of public lands are privately owned in the eastern portion of the nation and the mill levy rate is three to four mills in those states. In Idaho, the mill levy rate is 12 to 15 mills in order to provide county funding and even then, the rate doesn't provide enough resources to adequately sustain those counties.

Mr. Oppenheimer recognized that there are discrepancies between state and federal actions, as well as state to state, but progress is being made by working with local communities to realize better land management that will provide revenue, create jobs, and increase investments. Those collaborations are working.

Wally Butler, Idaho Farm Bureau, spoke in support of the bills. His testimony mirrored Representative Denney's points and compared them to Mr. Oppenheimer's concerns.

Betty Richardson, a past United States Attorney for the District of Idaho testified on behalf of herself in opposition to both bills. She was concerned that the proponent of the legislation focused only on the possible benefits to the state. It is important that the study committee authorized in **HCR 21** take a deep and thorough look at the potential costs. The costs are not only the hard costs, it affects the costs of other agencies. Can the state pick up the \$26 million plus in payments and taxes that it currently receives each year?

Ms. Richardson is concerned with the language in **HCR 22** and urges the Committee to talk to the Attorney General's office because some of the well-intended language is misplaced. A comprehensive study by the CATO Institute regarding land management concluded that state policies are as economically inefficient and shortsighted as their federal counterparts. She recommends that the legislature do the study allowed for in **HCR 21** with an added cost analysis and urges that **HCR 22** be tabled.

Senator Davis asked Ms. Richardson what she thought would likely happen if **HCR 22** passes. **Ms. Richardson** anticipated that it would be forwarded to Congress through the congressional delegation. It is Congress, not the state legislature that would make the transfer. If **HCR 22** does move forward, it behoves the legislature to do the study first.

Representative Denney, in closing, submitted two graphs (Att. B and C). One showed the history of the timber harvest on private lands and state lands which have been uniform over the last 60 years. The harvest on federal lands, starting about 1990, drops way down. The second chart showed the history of forest fires over the same time period. In 1990 the forest fires in the 11 western states went up. Both concurrent resolutions need to go forward because they start the discussion on active land management even if the land is not transferred.

Senator Siddoway declared a conflict of interest under Senate Rule 39 (h) since he runs livestock on public lands.

MOTION: **Senator Siddoway** moved to send **HCR 21** to the Senate floor with a **do pass** recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Siddoway** moved to send **HCR 22** to the Senate floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion.

Senator Davis stated that it is not the recitals but the conclusions that are being voted on. There is some concern about the accuracy of some of the recitals, but he will be voting in favor of the motion. He may, as a result of reading some of the material that was received during the hearing, not support **HCR 22** on the floor.

SUBSTITUTE MOTION: **Senator Werk** made a substitute motion to hold **HCR 22** in committee. **Senator Stennett** seconded the motion.

Senator Werk could live with the study in **HCR 21**. **HCR 22** is not needed to do the study. That is the reason for this motion.

The substitute motion to hold **HCR 22** in Committee failed by **voice vote**

The original motion to send **HCR 22** to the floor with a **do pass** recommendation carried by **voice vote**. **Senators Stennett** and **Werk** requested to be recorded as voting nay on both **HCR 21** and **HCR 22**. **Senator Siddoway** will carry **HCR 21** and **HCR 22** on the Senate floor.

ADJOURNED: The meeting adjourned at 2:52 p.m.

Senator McKenzie
Chairman

Twyla Melton
Secretary