

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Wednesday, February 05, 2014

TIME: 8:00 A.M.

PLACE: Room WW55

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

**ABSENT/
EXCUSED:** None

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 8:04 a.m. with a quorum present.

GUBERNATORIAL APPOINTMENTS: **Richelle Sugiyama**, Investment Officer, Public Employee Retirement System of Idaho (PERSI), was seeking reappointment to the Idaho Fund Investment Board (EFIB) for her third term of office. **Chairman McKenzie** welcomed Ms. Sugiyama and asked for questions from the Committee.

Senator Werk asked about the status of the investments, investment strategies and what her history has been over her past two terms. **Ms. Sugiyama** believes that the Idaho Endowment Fund's (Fund) performance highlights the stability of its investments. They have avoided the typical endowment model which includes real estate, private equity and hedge funds, and stayed with broad equity and fixed income indices that are much more transparent. They have a team of investment managers that assist the EFIB and adhered to their policies and strategies over the long term through the rough decisions and turbulent times. The EFIB works very well as a unit in assessing investment strategy and what investments are a proper fit within the portfolio. **Senator Werk** referred to a past incident where funds were taken from the fund and asked for a refresher on that incident. **Ms. Sugiyama** replied that this incident was in regard to the school bond guarantee and the fees that the Fund charges for that program. At that time the EFIB was requesting the authority to increase those fees. The request was turned down.

Senator Siddoway asked if the EFIB selects the investments or are the decisions left to the manager of the Fund. **Ms. Sugiyama** said that several years ago the organization was restructured with the help of Bob Maynard, the Chief Investment Officer (CIO) for PERSI. Since then, the investment managers are all outside contractors with oversight by the manager of investments. There is no direct flow of money or purchase of stocks or bonds at the offices.

Senator Davis asked if the talents and skills acquired with PERSI are portable to the Fund. **Ms. Sugiyama** said that it is her belief that they are portable. Beginning in July 2014, the EFIB will have oversight of the Judges' Retirement Fund which is very similar to PERSI. Working within PERSI provides the opportunity to interact and meet with CIOs from other endowments and foundations. The exchange of information helps to keep abreast of what others are doing across the nation and provides the opportunity to see how the Idaho Fund compares nationally.

Senator Siddoway asked if there are non performing assets, i.e. state lands, could those lands be liquidated and then the proceeds invested. This would give the Fund a much greater return for the beneficiaries. How would you manage such non performing assets? **Ms. Sugiyama** responded that to determine if there is a non-performing asset, a professional assessor would be needed. It would take an evaluation consultant to determine if the land was performing up to comparable assets, and opportunity costs would need to be assessed. It involves a policy decision in terms of whether or not that money should be reinvested in the State. **Ms. Sugiyama** said she could not opine on that since it was a policy call. Each situation is unique and must be reviewed by professionals with expertise in that particular area.

GUBERNATORIAL APPOINTMENTS: **Tom Kealey**, Gubernatorial Appointment to the EFIB, explained that he is a long time resident of Idaho, has been a member of the EFIB for 12 years and is a local businessman active in real estate investments along with a family owned restaurant chain. He has been involved in private equity with smaller businesses in the valley and sits on a number of boards including Blue Cross of Idaho.

Senator Davis asked how Mr. Kealey would address conflicts of interest during his service on the advisory committee. **Mr. Kealey** stated that he has no conflicts of interest in the sense that the EFIB doesn't have private equity so it is not an issue to serve in a private equity firm. There are no investments made in any of the boards or companies that he is associated with, and there doesn't seem to be a conflict with any of the volunteer activities he participates in. There are also board reviews by the other entities he serves on.

Senator Siddoway inquired if the EFIB had any influence with the Department of Lands (Department) in any capacity. **Mr. Kealey** said the EFIB serves at the request of the Department and they oversee the financial assets of the Endowment Trust along with some of the other beneficiary areas like the State Insurance Fund, the Judges' Retirement Fund and other small endowments. They recommend distributions to the Land Board, so they do have discussions and interface with them. Most recently, a new governance committee for the Department was organized to look at the overall real assets of the Department and the EFIB financial assets. He has just joined that committee as a member representing the EFIB along with Larry Johnson. This is a committee of six to look at the overall portfolio of lands.

Senator Siddoway restated his question regarding the land assets and the way they are being managed. Does the EFIB make recommendations to the Land Board about how to manage those non-performing assets? **Mr. Kealey** responded that, to date they haven't. With the new governance subcommittee, there will be experts and consultants that look at the real assets and also set a global strategy for all assets. There is a direct link to the EFIB to help with that process by providing oversight and giving recommendations to the Department. There are always changes associated with real assets such as new opportunities where none had existed in the past.

Susan Simmons, Deputy Director, Work Force Development, Department of Labor, noted that she has served on the EFIB since 2006. Prior to that, she spent ten years on the PERSI Board. The past few years on the EFIB were tough although they stayed focused, didn't "chase" the markets and didn't react.

Senator Davis pointed out that Ms. Simmons' resume shows that she was a licensed investment advisor but you have not maintained that status. **Ms. Simmons** said she had not. She made the decision not to pursue that type of business. **Senator Davis** asked if that training has been a benefit in serving on the EFIB. **Ms. Simmons** replied that it "most definitely" has been a help. Any training, as far as diversifying assets and reviewing risks, helps in serving on the EFIB.

Senator Hill asked if Ms. Simmons' had maintained her CPA license. **Ms. Simmons** responded affirmatively.

Chairman McKenzie complimented each of the members who serve on the EFIB and stated his appreciation for the consistent and strong leadership; they manage the funds well. The voting will be at the next meeting on Monday.

Senator Winder thanked all three individual for coming and for the expertise they bring to the EFIB. As a member of the EFIB he assured the Committee that all three were well qualified and they were very loyal to the service that they bring and it is an honor to serve with them.

Chairman McKenzie called on Senator Hagerdorn to present **RS 22615**. **Chairman McKenzie** called attention to a letter that was distributed to the Committee members regarding a balanced budget. Every state but one, has a balanced budget requirement. The federal government does not have a balanced budget requirement. The letter stated that at 9:22 a.m. Monday morning on February 4th, the federal debt was \$16,448,110,519,733.60. The letter is enclosed as part of these minutes (See attachment A).

RS 22615

Senator Hagerdorn presented **RS 22615** calling for a concurrent resolution regarding a national balanced budget amendment. Idaho first applied for a balanced budget amendment to the U. S. Constitution in the early sixties when the debt was \$350 million. Over the last 18 months there have been a number of meetings relating to this issue. A bipartisan meeting of legislators, senators, representatives, delegates and assemblymen was held in Mt. Vernon with 37 states represented, to talk about a balanced budget amendment, whether a convention of states should be called and, if so, how that would be managed and controlled. From that meeting, a steering committee was organized. Letters have been sent to leadership in all 50 states requesting delegates be sent from every legislature in the nation to Indiana to start to formulate rules for a convention of states. If and when Congress ever has to call a convention of states, the states will have been organized and developed rules that can be adopted at the beginning of the convention. This balanced budget amendment is unique in that there are 38 states that have worked together over that past months drafting language for each state that is as identical as possible, given that the states have different ways of passing bills and resolutions. The goal has been to keep it consistent so that Congress would recognize any application as being in the same category. Under the U. S. Constitution, 34 states must file an application for Congress to call a convention of states. There are 38 states working on applications, 21 states have passed one, and, if the Idaho Legislature passes it, Idaho will be 1 of 5 that have a balanced budget request ready right now.

Senator Hill asked about the perpetuity clause on page 2, line 12. The legislature can always reverse a decision but it is better if a piece of legislation says that can be done, i.e. "until the legislatures of a least 2/3 of states" or the application is revoked by the Idaho Legislature or similar language. **Senator Hagerdorn** explained that the reason this language was used was because there are legislatures that do not meet annually. There are some states working on this that won't be a meeting for 18 months. It could be a long time before there would be 34 states that have the same language. It is acknowledged that changes can occur.

Senator Werk stated that, when he reads Article V of the Constitution, there is some confusion about calling a convention for a specific purpose. **Senator Hagerdorn** responded that the same question has been asked for over 220 years; how do you do an Article V convention of the states? The founding fathers never wrote into Article V any limitations, restrictions or powers. That was one of the

reasons the states came together to talk about how to manage a convention of states. The last one was done in 1787 which produced the current Bill of Rights. The concern is: Will this be an open forum for everyone to talk about the entire Constitution and amend the Constitution where they see applicable? Will this be a single subject convention of states? Those rules have not been written. The December meeting was to start to formulate those rules. That decision should be made by the states. The founding fathers put that Article in the Constitution for the states to hold the federal government accountable. The states have not taken the initiative to write those rules and regulations of how the convention would operate until now. The plan is to have all the states involved in formulating the rules of operation for a convention of states. **Senator Werk** commented that "Constitutionalists" want to take everything in the Constitution as the final word on what this country does. This is a different interpretation. The proposal here, along with the legislation that will be following, is specific to one item for a constitutional convention. It is necessary to review economic studies that would indicate what the short and long term impact of a balanced budget amendment at the federal level would be to the federal government, the states and the general economy. **Senator Werk** questioned the accuracy of the fiscal note.

Senator Davis explained that Article V grants Congress the authority to call a convention if 2/3 of both bodies deem it necessary or, in the alternative, Congress shall call a convention based on an application of the legislatures of states. This piece of legislation, as stated on page 1 beginning with line 33, is a formal application of the Idaho Legislature to ask for a constitutional convention. Is this being read correctly and is this the exercise? **Senator Hagerdorn** agreed that this is the exercise. There have been 3 applications previous to this where Congress has been requested to call an Article V convention for a balanced budget amendment. This one is different because the legislatures of the states are calling for a convention of the states. This is not asking for 2/3 of Congress to call it but 2/3 of the legislatures of the states to call it. **Senator Davis** shared his fear of this action and, in the past, has joined colleagues within the Senate to recall every constitutional convention request because, historically, there has been a strong lack of confidence that a limit can be put on Congress as to what they can do. In reading Article V, it says that Congress shall call a convention for proposing amendments, it is in the plural, which, in either case, shall be valid as part of this Constitution. It does not say that the states can define or limit anything. The next RS is trying to put sideboards on it. As a courtesy, this Senator would support printing if the bill would come back to this Committee. This has the possibility of allowing Congress to take up many issues. The argument is that it requires 3/4 of the states to ultimately adopt the results. But there is no limitation as to when the states can adopt it and today's generation may say "no" but tomorrow's might say "yes" and they don't have the benefit of today's wisdom.

Senator Hagerdorn said that, at the meeting in Mt. Vernon hours were spent on this exact same concern. How do you manage a runaway convention? Article V is part of our Constitution and is as important as all the other articles. They are there to guide us in how to manage and lead our country. Article V has never been exercised because no one knows how to and that has to be figured out. Those rules must be written and set in stone. **Senator Hagerdorn** could not speak for future generations. It is his prayer that we are wise enough to set procedures, policies and laws that will help guide them in the decisions they make. **Senator Davis** searched for language in Article V that says that the state legislatures get to define the rules. It seems the entity that has the right to make the call is Congress, because the states can't call it they can only apply for the call; what if Congress says they are going to make the call and here are the rules? **Senator Hagerdorn** stated that the 10th Amendment identifies clearly that it is the states' right under that amendment to the Constitution. The states have the authority and the right to

set those rules because it is not designated as authority to the federal government. Your question is the reason the states need to do that because if the states have 34 applications and Congress calls a convention and sets the rules, that must not be allowed to happen. All 50 states must get together and write those rules so they are in place. This is a convention of states, not a convention of Congress.

Senator Davis asked if the 10th Amendment was working right now. **Senator Hagerdorn** responded that it is not working as well as our forefathers intended because of all the Supreme Court decisions that have been centered around the 10th Amendment. There are no Supreme Court decisions attached to Article V.

Senator Stennett stated that, if there is a debate, the process should be made much clearer so there wouldn't be any question that the convention would be for only one subject.

MOTION: **Senator Davis** moved, seconded by **Senator Siddoway**, to send **RS 22615** to print with the understanding that it would be returned to this Committee.

Senator Werk commented that he will vote to print but this RS is problematic.

Senator Winder stated that there are grave concerns. More explanation is needed about the process, more discussion about the ramifications and defining what the goal is. This issue has been handled very well in the past and so he will support the motion but he has concerns.

Senator Fulcher stated that this is a noble intent and he has confidence in the Senators who are sponsoring this. However, there are concerns so he will not be supporting the motion.

VOTE: Motion carried by **voice vote**. **Senator Fulcher** is recorded as voting nay.

PASSED THE GAVEL: Chairman McKenzie passed the gavel to Senator Lodge, acting Vice Chairman.

Vice Chairman Lodge stated that **RS 22774** was before the Committee.

RS 22774 **Chairman McKenzie** asked the Committee's consideration to print **RS 22774**. This is a process for selecting delegates to a convention if it was called. This doesn't say that there is a belief that a convention will be called but in the event that states do call a convention, and the delegates to that convention are agents of the state legislatures, we need a process by which Idaho selects those delegates. This is clearly intended and supported by history with the types of conventions that were called during the early part of our nation's history. Regardless of whether, as a body, we are ready to move forward on an application to call for a convention or address specific amendments, we do need to have a process in place for how we would pick delegates in the event that it happens. The language has been developed after research into models from other states and it is better language. **Chairman McKenzie** asked that the RS be printed and then there could be further hearings.

MOTION: **Senator Davis** moved, seconded by **Senator Werk** to send **RS 22774** to print with the understanding that it would be returned to this Committee.

Senator Werk stated his interest about how the Legislature would select alternate delegates without the ability to create rules.

Senator Stennett asked if delegates were selected through whatever process that is implemented, are they obligated to be of like mind on an issue or in agreement? **Chairman McKenzie** compared it to the electors in the electoral college who elect a president. There is a popular vote and then the electors are expected to vote in accordance with the popular vote although they are not necessarily compelled to do so. If Idaho should call for a convention on a particular issue, the members of the delegation would have the right and ability to vote in favor of the proposed amendment on that issue by a majority vote of the seven delegates. If the convention takes up issues beyond the designated issue, then the instruction is to debate against consideration of the additional issue and vote against it.

Vice Chairman Lodge called for the Committee's wishes on **RS 22774**.

VOTE:

Motion carried by **voice vote**. **Senator Fulcher** is recorded as voting nay.

**PASSED THE
GAVEL:**

Vice Chairman Lodge passed the gavel back to Chairman McKenzie.

Chairman McKenzie announced that there would not be a meeting on Friday. He would be in attendance at his daughter's school where she would be receiving the Citizen of the Month award.

Senator Davis said that the Scouts from around the State are having an annual event today and some of those delegates have joined the Committee. Those from Eastern Idaho are led by a former member of this body, former Chairman of the Local Government and Tax Committee and this Senator's Scout Master when he became an Eagle Scout, Senator Dane Watkins.

Chairman McKenzie welcomed Senator Watkins and acknowledged another Eagle Scout, Senator Davis.

ADJOURNED:

There being no further business, **Chairman McKenzie** adjourned the meeting at 9:04 a.m.

Senator McKenzie
Chair

Twyla Melton
Secretary