

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Wednesday, February 19, 2014

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman McKenzie, Senators Davis, Johnson (Fulcher), Hill, Winder, Siddoway, Stennett and Werk

ABSENT/ EXCUSED: Senator Lodge

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.

GUBERNATORIAL APPOINTMENTS: The Gubernatorial Reappointments of Megan Ronk, Brian Scigliano and Estella O Zamora to the Idaho Commission on Human Rights (Commission).

Chairman McKenzie asked each appointee to describe their experience on the Commission since their last appointments.

Ms. Ronk discussed the changes in the Commission over the last three years. The Commission was shifted to the Department of Labor (Department) which has been a good change. The Department has provided support and resources which has allowed the Commission to do their work more effectively. There has been a steady number of cases come through the Commission. Good solutions through mediation have been found for discrimination cases. The Commission staff does a good job of directing people through the process. The Commission is diverse with a wide variety of background and perspectives but the group can come together and most often finds consensus in their decisions.

Senator Werk asked for a characterization of the issues coming before the Commission; have there been any changes? **Ms. Ronk** replied that it has been consistent. The majority of the cases are related to unfair discharge, harassment or intimidation and those have remained steady. **Senator Werk** requested the specific nature of the unfair discharge complaints. **Ms. Ronk** stated that the greatest percent of the cases she has reviewed have been harassment related to a conflict with a supervisor. There have been a steady number of sexual harassment, race and religious issues. There are not many cases for failure to accommodate disabilities.

Senator Hill inquired about the functions of the Commission in the process of investigation and mediation or other options. **Ms. Ronk** applauded the staff of the Commission because they do most of the leg work and gave a brief synopsis of the process. Based on the facts reported to the Commission, the Commission makes the final decision. The staff include skilled mediators and there have been successful mediation cases. **Senator Hill** asked at what point information becomes public record. **Ms. Ronk** answered that their general meetings are held in a public forum, but specific cases are reviewed in a closed executive session. She doesn't believe they become public record.

Chairman McKenzie thanked Ms. Ronk and welcomed Mr. Scigliano.

Mr. Scigiliano stated that the cases are in the same categories described by Ms. Ronk. There seemed to be a trend toward age discrimination for a short period but the nature of the cases are similar. In his experience, the number one source of conflict seems to be related to a physical or mental disability.

Senator Hill asked how many cases are handled in a typical year and asked him to define a case. **Mr. Scigiliano** stated that it is considered a case when an investigator compiles a full report that is sent to the Commission who then makes a decision of probable cause or no probable cause. There seems to be approximately 450 - 570 over the last seven years. **Senator Hill** asked about the size of the staff that worked on these cases. **Mr. Scigiliano** said there are ten full time staff members and there are seven individuals on the Commission.

Chairman McKenzie thanked Mr. Scigiliano and introduced Ms. Zamora.

Ms. Zamora agreed with the statements made by Ms. Ronk and Mr. Scigiliano. The merge with the Department has been a tremendous experience in that they now have the resources needed.

Senator Winder referred to the number of cases in the State and asked about the types of education or training the State is doing to reduce those numbers. Ms. Zamora said they needed to have more education for the community, the work force and businesses. There isn't the staff at the Commission to do that; they are capable, but the work load is too heavy.

Senator Werk asked if some of the complaints were about sexual orientation or are they the classic sexual harassment cases. **Ms. Zamora** responded that they have had male on male cases.

Chairman McKenzie echoed Senator Winder's statements about appreciating Ms. Zamora's service on the Commission and all the years of service in Canyon County. The appointments will be voted on at the next meeting.

RS 22913

A Unanimous Consent Request from the Agricultural Committee Rejecting Rules Related to Noxious Weed Free Gravel and Rock Products; presented by Senator Guthrie.

RS 22912

A Unanimous Consent Request from the Agricultural Committee Rejecting a Rule Relating to the State of Idaho Board of Veterinary Medicine; presented by Senator Guthrie.

MOTION:

Senator Davis moved to send **RS 22913** and **RS 22912** to print. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

SJR 103

Proposing an Amendment to the Constitution of the State of Idaho Relating to Persons Subject to Military Duty to Make the Law Consistent with Current Practice; presented by Senator Rice.

Senator Rice explained that **SJR 103** is in the nature of a clean up. The current language in Article XIV § 1 requires the enrollment of every ably bodied male ages 18-45 in the State militia; that is not the current practice. **Senator Rice** provided the history of militia and how that act has changed since Idaho's original act was adopted using language that mirrors the first militia act passed in 1792. There are three types of militia:

1. The organized militia.
2. The unorganized militia.
3. The unorganized militia used for Federal Constitutional purposes.

The Federal Court of the United States (Court) has held that the term militia means "all males physically capable of acting in concert for the common defense." The Court also refers to it as "the body of all citizens capable of military service." **Senator Rice** explained other changes that have happened over time, i.e., gender and race. The proposed amendment aligns Idaho's

Constitution with the definition of the unorganized militia without gender discrimination. In the Heller decision, the U.S. Supreme Court stated that "the militia is assumed by Article 1, already to be in existence ... but to organize the militia connoting a body already in existence." This bill aligns the general definition of the unorganized militia with existing Supreme Court decisions and the historical definition of militia.

Senator Werk noted that it is a laudable goal to clean up the language in the Constitution and remove any gender language. However, there may be Second Amendment considerations here that are not being stated. **Senator Rice** replied that for Second Amendment purposes, this only makes it clear that Idaho has not changed the definition of militia from what it was originally other than eliminating gender discrimination. **Senator Werk** asked why would we want to make any person over 18 part of the militia. **Senator Rice** said that changes can be made more readily in statute than in the Constitution. Constitution changes would hinder the organization of the militia in the case of an emergency. **Senator Werk** shared an Attorney General's opinion indicating this could potentially result in a loss of state sovereignty if everyone is in the militia and Congress decides to call up the militia to enforce law within the State of Idaho. **Senator Rice** pointed out the problem with that opinion. It uses the premise that the militia is narrower than what Article I of the U.S. Constitution and the U.S. Supreme Court says it is. So the rest of the conclusions are far from accurate.

Senator Hill asked for the motivation behind **SJR 103**; what is the necessity of the bill? **Senator Rice** outlined the problem; elected bodies deviate from constitutional authority. Laws are made that purport to change what constitutions say they are required to do. Elected bodies do not have that authority. Constitutions do mean something, must mean something or the rule of law is lost. There are situations that ignore constitutional provisions. Elected officials are not the final say on law. The people, through their constitution, are the final arbiters. **Senator Hill** agrees with the principles. Has the Legislature made laws contrary to what the State Constitution now says, so it now needs to be changed to comply with the statutes? Does everyone over 18 have to enroll? **Senator Rice** said the requirement to enroll was removed which allows Idaho to be in compliance. It moves actual military service into statute to provide for a voluntary National Guard which is, by statute, the active militia.

Senator Winder requested an explanation of "all able bodied persons."
Senator Rice stated that it means capable of bearing arms which is broader than might be expected.

Senator Werk asked about a law that excuses the need for enrollment in the militia; is that law specific or general? This bill expands the members of the militia from men 18-45 to men and women 18 and up. **Senator Rice** explained what statute requires now. There are a number of inconsistencies. This bill does not change what the militia is, it changes the enrollment requirement and who will be required to serve in the active duty militia at any given time. **Senator Werk** returned to the Attorney General's opinion and how it could be incongruous with Article 1, § 8 of the U.S. Constitution for the definition of the militia. **Senator Rice** explained that it starts out with the assumption that the State has the ability to limit the age range that the U.S. Government could require to be organized. That assumption is incorrect as the U.S. Supreme Court held in Heller and numerous other decisions.

Senator Davis said it might be wise to speak with the Attorney General to hit the target and address the concerns that have arisen. The Legislative Council has the responsibility to write the arguments for and against, and the against argument would include the concerns of the Attorney General's office. Before the bill currently before the Committee is voted on, maybe Senator Rice should address those concerns with the Attorney General. This is not a motion, it is a friendly approach. **Senator Rice** responded that he did approach the writer of the opinion who declined to address the matter. However, he would be willing to discuss it further with the Attorney General's office. **Senator Davis** offered the assistance of the Pro Tem to work with the Attorney General's office. **Senator Rice** agreed.

Chairman McKenzie accepted the request of the sponsor to delay any action on **SJR 103** subject to the call of the Chair.

S 1270

Relating to Idaho Veterans Homes to Provide for Nonmilitary Parents Whose Child Died While Serving in the Armed Forces; presented by Tamara Mackenthun, Deputy Administrator, Idaho Division of Veteran Services.

Ms. Mackenthun explained that **S 1270** will allow the three Idaho State Veterans Homes in Boise, Pocatello and Lewiston to admit as residents, the parents of service members who died while in active service in the military. The veterans homes are skilled nursing facilities and the parents, like all residents, will have to be certified by a physician as requiring around the clock nursing care. Spouses and parents are limited by federal statute, to 25 percent of the population of the veterans homes. If the home is 95 percent occupied, they will not accept spouses for admission and that would apply to parents as well. Parents will pay the full amount to live in the homes; they will not receive federal per diem payments. This will have a very small impact on the homes. The additional source would be beneficial to the Lewiston and Pocatello homes which are currently operating below capacity. **Ms. Mackenthun** asked for support for the legislation.

Senator Stennett asked about the admission process. **Ms. Mackenthun** responded that the requirement is that an individual must be a veteran or spouse of a veteran and that the individual requires long-term nursing care. The admission process is rigorous, and one must meet all the requirements to be eligible. **Senator Stennett** asked what would happen if a non veteran was accepted putting the home at capacity then a veteran applied for admission. **Ms. Mackenthun** said they would not "kick someone out." The populations are fluid because the residents are fragile and waiting lists do not exist for a long period of time. **Senator Stennett** asked if changing this will improve the resources the home receives. **Ms. Mackenthun** responded that it would neither help nor hurt.

Senator Winder referred to the print hearing where it was stated this would make our Idaho laws in compliance with federal law; is that correct? **Ms. Mackenthun** said it does put Idaho in compliance with federal regulations.

MOTION:

Senator Stennett moved to send **S 1270** to the floor with a **do pass** recommendation. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

S 1272

Relating to the Legislative Council to Provide for the Council to Match Current Practice and Policy Regarding the Selection of co-chairs; presented by Jeff Youtz, Director, Legislative Services Office.

Mr. Youtz presented **S 1272** on behalf of the Legislative Council (Council). The bill deals with how co-chairmen of the Council are selected. The original statute stated that there would be a chairman and vice chairman selected by the members of the council. Current practice is that the Pro Tem and Speaker serve in the capacity of co-chairmen. This bill aligns the statute with current practice on how the co-chairs are selected.

MOTION: **Senator Stennett** moved to send **S 1272** to the floor with a **do pass** recommendation. **Senator Johnson** seconded the motion. The motion carried by **voice vote**.

S 1333 Relating to Public Works to Clarify Language Ensuring all Honorable Discharged Members of the Armed Forces are Included Within Exception; presented by Jerry Deckard with Capital West Public Policy Group.

Mr. Deckard introduced Colonel Bruce Wong, United States Air Force Retired and Director, Ada County Highway District, to speak to **S 1333**.

Colonel Wong asked for support of **S 1333** and provided some background about his service and how he arrived in Idaho. A previous reiteration of this bill left the air force out of the definition for veterans and this bill simply adds them in.

Senator Siddoway asked if there are other military groups missing and what happens when the National Guard is activated and serving in foreign countries. **Colonel Wong** answered that they are included.

MOTION: **Senator Werk** moved to send **S 1333** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

S 1253 Relating to Wine to Provide that Manufacturing or Bottling Functions of a Winery shall not be Subject to Suspension, Revocation or Non-renewal of a License; presented by Roger Batt, representing the Idaho Grape Growers and Wine Producers.

Mr. Batt explained that a winery has multiple functions that include: the manufacturing involving growing, harvest and storage of the juice; the bottling segment; and, the retail and distribution which includes warehousing and outlets including tasting rooms. All of these functions are covered under one license. The objective of this bill is to allow the continuation of the manufacturing and bottling operations if that winery license is suspended, revoked or not renewed unless the cause was pertinent to those two segments. If either of these operations were to be shut down, even for a short period of time, it could have a serious negative impact on that business. Members of the industry agree that if a winery license is not renewed, that winery should not be able to distribute or sell those products. Lieutenant Russ Wheatley, Alcohol Beverage Control, was not opposed to this language. **Mr. Batt** discussed the economics of the wine industry within the State where it provides 650 full or part-time jobs and about \$90 million in revenue. There is no fiscal impact from this legislation. **Mr. Batt** asked for the Committee's support of the bill.

Senator Davis asked how other states with a strong wine industry deal with this issue. **Mr. Batt** has researched about 17 different codes with respect to winery licenses. He could not find any exemptions like this in any of the other statutes. **Senator Davis** said that if there was this type of violation, that winery could lose its license. **Mr. Batt** concurred.

Senator Siddoway asked what would be the resolution to having an inventory but unable to sell the product. **Mr. Batt** explained that when a license is not renewed it is for a period of time until issues are resolved and the license is renewed. This would allow those operations to continue for that particular growing season for future storage and sale when the license is renewed. **Senator Siddoway** asked for examples of why a license would be lost. **Mr. Batt** listed a tax violation, license not renewed on time or the biggest violation which would be if someone inadvertently sold wine to a minor in a tasting room.

Senator Stennett asked if this helps to keep production going until the licensure is rectified so those production portions of the business are not a total loss to the winery. **Mr. Batt** agreed that was the case. This legislation protects jobs and particularly the grape growers the wineries contract with. **Senator Stennett** asked what the course of action would be if the winery was unable to get the license renewed. What would happen to the inventory that had been produced? **Mr. Batt** said they would have to work that out with Alcohol and Beverage Control.

MOTION:

Senator Stennett moved to send **S 1253** to the floor with a **do pass** recommendation. **Senator Winder** seconded the motion.

Senator Davis requested that Alcohol and Beverage Control provide written direction about any concerns they may have before the bill goes on the floor. **Senator Davis** stated his reluctance to go forward without that since Idaho is the "point of the spear" on this issue.

Senator Werk said he is supportive but there is a question because specific instances are not being defined as to when activities should not continue such as an egregious violation. This is a broad exemption. However, he will not oppose the motion.

VOTE:

The motion carried by **voice vote**.

ADJOURNED:

There being no further business, **Chairman McKenzie** adjourned the meeting at 9:15 a.m.

Senator McKenzie
Chair

Twyla Melton
Secretary