

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Monday, February 24, 2014

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Senators Davis, Johnson (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 meeting to order at 8:00 a.m. with a quorum present.

**VOTE ON GUBERNATORIAL APPOINTMENT:** **Senator Siddoway** moved to send the gubernatorial appointment of **Susan Kerrick** to the Idaho Lottery Commission to the floor with the recommendation that she be confirmed by the Senate. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

**Senator Hill** moved to send the gubernatorial appointments of **Timothy Anderson, John Ewing** and **Candice Allphin** to the State Building Authority be sent to the floor with the recommendation that they be confirmed by the Senate. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

**GUBERNATORIAL APPOINTMENT:** Gubernatorial appointment of Gary Michael to the Idaho Lottery Commission.

**Chairman McKenzie** introduced Gary Michael and welcomed him to the committee. He asked Mr. Michael to describe his experience and how he sees his role with the Idaho Lottery Commission (Commission).

**Mr. Michael** stated that his experience has been positive and that the Commission is well run. Members have a good understanding of the priorities and how the business model is supposed to work.

**Senator Stennett** asked what Mr. Michael could bring to this Commission. **Mr. Michael** replied that his gaming and entertainment business experiences have given him an understanding of what is happening in the industry. He understands the emphasis that must be placed on the risk, compliance and the need for an active review of the financial component, which is his areas of expertise.

**Senator Davis** asked why Mr. Michael voluntarily surrendered his CPA license. **Mr. Michael** explained that he was a CPA with Albertsons, and when he was asked to take over in other administrative areas in the organization, maintaining the license was not a priority and it involved continuing education and actively working in the field. Since he would not be in a position to do this, he voluntarily gave up his license.

**Senator Werk** expressed his concern about using school children in some of the advertisements and requested Mr. Michael's view on advertising for the lottery. **Mr. Michael** responded that advertising is a challenge, but the Commission is aware of the appropriate approach.

**Senator Winder** commented on how often the legislators hear about the amount of money given to schools but no one talks about the amount of money that goes out of Idaho's economy to other areas of the country. How would you find a balance? **Mr. Michael** stated that there are a lot of costly things people do for entertainment. The lottery is part of entertainment and the average transaction is about \$5.

**RS 22866** A Unanimous Consent Request to Print from the Education Committee Relating to the Idaho Professional Technical Education System; presented by Senator Mortimer.

**MOTION:** **Senator Winder** moved to send **RS 22866** to print. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

**RS 22897** A Concurrent Resolution to Spread the Winning Essay from the Idaho Patriot Academy across the Journals of the Senate and House of Representatives; presented by Senator Nuxoll.

**Senator Nuxoll** explained the history and purpose of the Idaho Patriot Academy. She presented the essay of Ms. Elizabeth Harris, the 2013 first place winner. She read Ms. Harris' essay on "What Liberty Means to Me", and she requested that it be spread on the pages of the Journals of both houses.

**MOTION:** **Senator Fulcher** moved to send **RS 22987** to print. **Senator Winder** seconded the motion.

**Senator Davis** commented that he is sure this is a remarkable essay but he can't think of a time when the Legislature passed a concurrent resolution for this purpose. He is concerned about the process and the precedent it may set. It is important to consider those issues before voting.

**SUBSTITUTE MOTION:** **Senator Davis** moved to hold **RS 22897** in Committee until Wednesday morning. **Senator Lodge** seconded the motion.

**Senator Davis** could not recall ever printing a concurrent resolution to spread something on the pages of the Journal. A unanimous consent request is the method to do this. He pointed out that passing a concurrent resolution simply encourages an action, it doesn't constitute the action. Also, if another legislator has a constituent's or organization's paper that means a lot to that legislator, should it be spread on the pages of the Journal? There is a question as to whether we are focusing on the organization or on the message itself. **Senator Davis** expressed a desire to have some time to consider these questions.

**Senator Hill** asked if this essay contest is done periodically or if this is a one time thing. **Senator Nuxoll** replied that it is done every year. **Senator Hill** noted that saying "Be It Resolved" indicates that this will be an annual thing that will automatically be in the pages of the Journal each year. **Senator Nuxoll** replied that the process was suggested by the Legislative Services Office. This essay was to be the first and the only one to be spread across the pages of the Journal. She is willing to do whatever the Committee wants. **Senator Hill** stated that he is trying to determine what the intent is and then to decide if the resolution follows the intent. **Senator Nuxoll** explained that her intent is on the Statement of Purpose (SOP). **Senator Hill** said he didn't disagree with the intent of the SOP, but he is still concerned that as presented, the resolution will be automatically renewed every year and that the winning essay will appear in the Journal. Is your intent that only this one essay will be governed by **RS 22897** or will future essays automatically be included? **Senator Nuxoll** stated that her intent was that only the first one was to be read into the Journal. She could find out if those who made the request agreed with that intention.

**Senator Winder** expressed that he would like a few days to resolve this issue.

**Senator Siddoway** said he would be in favor of Senator Davis's motion. His concern dealt with the precedent this sets. Although we may agree with the ideas in Ms. Harris's essay, if we set this precedent, in order to be fair we may find ourselves having to respond to organizations with whom we may not agree and who ask to have their papers in the journals.

**Senator Werk** stated that he would like to see the prompt for this essay, and asked her to provide that. He also is concerned about opening the door to spreading essays across the Journal of the Senate.

The substitute motion carried by **voice vote**.

**VOTE ON  
SUBSTITUTE  
MOTION:**

**RS 22943**

A Concurrent Resolution to Honor Three Idaho Servicemen Who made the Ultimate Sacrifice During the Past Year; presented by Senator Davis.

**Senator Davis** invited intern, Natalie Wilson to present the RS. **Ms. Wilson** introduced the memorial to the following Idaho servicemen killed in action in Afghanistan during the past year:

Thomas Murach

- 22 years old;
- Killed by an improvised explosive device;
- First tour of duty in Afghanistan;
- Worked as a reconnaissance platoon sniper; and
- Survived by his parents and three siblings.

Octavio Herrera

- 26 years old;
- Killed by enemy fire protecting a fellow soldier;
- Third tour of duty in Afghanistan; and
- Survived by his wife, parents and three siblings.

David Lyon

- 28 years old;
- Killed by an improvised explosive device that was detonated near his convoy;
- Worked as a logistics readiness officer and was performing in a combat advisory mission with the Afghan National Army; and
- Survived by his wife, parents and a brother.

**Ms. Wilson** stated that this resolution is the least we can do to honor these men and to show their families our deep appreciation for their sacrifices.

**MOTION:**

**Senator Lodge** moved to send **RS 22943** to print. **Senator Stennett** seconded the motion. The Motion carried by **voice vote**.

**Senator Werk** complimented Ms. Wilson for doing a great job in her presentation.

**H 365**

Relating to Emergency Communications to Delegate to the Adjutant General the Responsibility of Selecting Board Members for the Various Agencies within the Idaho Military Division; presented by Brigadier General Brad Richy, Director, Idaho Bureau of Home Land Security (Bureau).

**General Richy** reported that **H 365** is a housekeeping bill directed toward the Emergency Communication Commission (ECC) and the Statewide Interoperability Executive Council (SIEC) which the Bureau administers. Currently, the selection for appointment is through the Office of the Governor; this legislation changes that portion of the process. As part of the SIEC process, selections would be made according to Idaho Code and the Adjutant General and General Richy would, in collaboration with the Governor's office, select the candidates.

**Senator Fulcher** stated that he has received messages of concern from various sheriffs about moving away from the executive branch. He asked General Richy if he knew why it would be an issue **General Richy** replied that he recently learned that the Sheriffs' Association had some opposition to this bill and has been advised of their concerns. This legislation is a way to expedite the process of appointing members in order to maintain a full committee as opposed to ongoing vacant or expired positions.

**Senator Davis** stated that his understanding of Idaho law is that if you are the occupant of an appointed seat, you continue to serve even after your term expires unless the statute specifies that it does not continue. He quoted Idaho Code § 46-1212 as saying " ... appointed for a term of four years." He said there is nothing that says they cannot be a hold over occupant in that position. **Senator Davis** asked if it was the General's understanding that when a SIEC member's term ends he cannot be a hold-over occupant in that position until a successor is appointed. **General Richy** agreed with Senator Davis that the person could remain in that position. He added that it would be up to the Adjutant General and the Bureau to canvas the association board to ensure that he is the member the association would still like to have. **Senator Davis** asked if the Adjutant General has a legal duty under current law, to canvas that board to determine if that is who they want to continue serving after the term of office expires. **General Richy** said that he did not think so.

**Senator Siddoway** asked what General Richy perceives as the difference between "appoint" and "select". **General Richy** stated that the Governor's office appoints individuals to the ECC. He went on to say that he doesn't think the Adjutant General has the ability to appoint, but does have the ability to select.

**Senator Davis** observed that this provides that the Adjutant General makes the selection; who makes the appointment? **General Richy** said there is no appointment to the ECC. In the new legislation "appoint" was removed and replaced with "select". **Senator Davis** followed up with several questions in order to clarify the difference between "appoint" and "select." **General Richy** clarified that the Governor would appoint and the Adjutant General would select. **Senator Davis** continued asking for clarification regarding the roles of the Adjutant General and the Office of the Governor under this legislation. **General Richy** said that the Adjutant General would have the final decision but that decision would be amenable to the Governor's office. **Senator Davis** said he was hearing that the Adjutant General would make the selection but the Governor would make the appointment. **General Richy** said that is not correct. The Adjutant General would have the final decision but before he made the selection, he would discuss that selection with the Governor's Office to ensure the selection that he is about to make is amenable to the Governor's Office.

**Chairman McKenzie** recognized Michael Kane to testify.

**Michael Kane**, representing the Sheriff's Association (Association), stated that the Association has a very good working relationship with the Adjutant General's office, but they do oppose this bill. He asked that the bill go to the Amending Order because there are concerns about the Governor being cut out of the process for appointing committee members. This bill would produce an unusual situation where elected officials would be appointed by non-elected officials. Another concern is that one member of the board would appoint all the other members of the board as well as having the ability to appoint the chair and vice chair. **Mr. Kane** said that the Association supports Section 2 of the bill which removes the Governor from the process involving administrative support of the SIEC. **Mr. Kane** requested that **H 365** go to the Amending Order. Section 2 would remain and all other parts would be deleted because they believe the members should be appointed by the Governor.

**Senator Fulcher** asked if members of the ECC would have any oversight over how money is spent for the police force. **Mr. Kane** explained that the Sheriffs' involvement with the fund was created about ten years ago when they wanted cell phone providers to pay into the ECC fund. Most of that money goes directly to the counties from the providers, but a percentage goes to the ECC and then they grant funds to the police agencies.

**Senator Winder** referred to the statement that it would be unusual that the person selecting the group could actually serve as the chairman. He asked if the chairman has historically been a member. **Mr. Kane** replied that one of the members of the ECC is the Adjutant General, so there could be a situation where one of the board members would be in a position to appoint the other board members. In Section 3, they are also selecting the Chair and the Vice Chair. The Sheriffs do have concerns about that.

**Senator Siddoway** asked for clarification regarding an elected official being appointed by a non elected official. **Mr. Kane** pointed out that members of the Commission include elected officials such as mayors, sheriffs, or a prosecutor. The Governor would no longer be making the appointment, instead a director of a state agency would be making that appointment. **Senator Siddoway** asked if there are boards where elected officials serve as members. **Mr. Kane** answered that there are, but there are none he is aware of where a non-elected official appoints a state commissioner.

**General Richy** commented that the SIEC elects the chair position as set out in statute and that the Governor will appoint the chair. The vice chairman is elected from the membership in both the SIEC and the ECC.

**Senator Fulcher** stated that the intent of this bill is to relieve administrative burden. There are some ramifications such as the situation where we could have a non elected official that has some degree of oversight for the funds and operations of police forces. He said that he would not be able to support the bill.

**Senator Werk** asked if there is a sense of urgency with this bill. He stated that with all of the questions about the bill, he would prefer to not vote on it at this time.

**MOTION:**

**Senator Werk** moved to hold **H 365** in committee. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

**H 366**

Relates to the National Guard by Removing an Entitlement to Pay an Amount that is Below Minimum Wage; introduced by Brigadier General Dick Turner, Asst. Adjutant General for Air, Military Division.

**General Turner** explained that **H 366** is housekeeping in nature and pertains to State active duty. According to statute enlisted personnel, commissioned officers

and warrant officers shall be paid \$55.00 per day or the same pay as personnel of like grade and length of service in the Armed Forces of the United States, whichever sum is greater. A daily wage of \$55.00 is less than minimum wage in Idaho. The lowest military pay grade is approximately \$78.00 per day. The intent of this bill is to strike the language referring to \$55.00 per day and change the statute to say that when the National Guard is ordered to active duty in the service of the State, the enlisted personnel, the commissioned officers and the warrant officers shall be entitled to the same allowances as those personnel of like grade and length of service that are in the Armed Forces of the United States.

**Senator Stennett** asked where the \$55.00 started. **General Turner** replied that he could not find where it started; they are just trying update the statute. **Senator Stennett** asked how much are enlisted personnel making now. **General Turner** responded that the lowest is \$78.00 per day, including a basic allowance for housing and for subsistence.

**Senator Winder** asked if this is only when they are called to active duty in the State and if it applies to a full time job with the Guard. What would happen if they were called up by the Federal government or the Department of Defense for deployment? **General Turner** said they are called to duty in the State for emergencies; we are called up in support of the Bureau of Homeland Security. He explained that when they are called up on the Federal side they are paid the same amount as active service according to their rank and length of service.

**MOTION:**

**Senator Siddoway** moved to send **H 366** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**H 378**

Relating to Idaho Day to Officially Recognize March 4th each year as Idaho Day; presented by Representative Bateman.

**Representative Bateman** stated that this is an indirect product of the Sesquicentennial Celebration of the founding of Idaho in 1863. This legislation is the result of discussions with historical societies, educators, the Commission of the Arts, and many others, who did not want to not wait another 50 years. He pointed out that the legislation does not call for the closing of state offices or schools. March 4th was chosen because both the schools and the Legislature are in session. **H 378** establishes an Idaho Day to be celebrated each year on March 4th to commemorate the creation of Idaho by President Abraham Lincoln on that day in 1863. **Representative Bateman** then gave a tribute to Idaho.

**MOTION:**

**Senator Davis** moved to send **H 378** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion.

**Senator Werk** wanted to point out that the day is actually a command as well as a day on the calendar—"March Fo(u)rth".

The motion carried by **voice vote**.

**ADJOURNED:**

**Chairman McKenzie** adjourned the meeting at 9:12 a.m.

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Senator McKenzie  
Chair

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Twyla Melton, Secretary

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Assisted by Carol Cornwall