

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Wednesday, February 26, 2014

TIME: 8:03 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 8:03 a.m. with a quorum present, welcomed the Committee and announced the first order of business.

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

RS 22534C1 Relating to County Officers to Provide for Duties of the Attorney General Relating to Preliminary Investigations and Actions Against County Elected Officers; presented by Senator Rice.

Senator Rice stated the purpose of the bill would be to eliminate conflicts of interest currently existing for county prosecutors as representatives for elected county officials. He explained that a county prosecutor may have a conflict of interest if an elected county official was being investigated for misconduct and that this legislation would allow the Attorney General to investigate. **Senator Rice** further clarified that the Attorney General's budget request has included sufficient staffing to facilitate this legislation.

MOTION: **Senator Siddoway** moved to print **RS 22534C1**. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

RS 22963 Relating to the Legislature to Confirm and Verify that a Named Substitute for a Legislator is a Qualified Person Residing in that Legislative District; presented by Senator Nonini.

Senator Nonini stated that the purpose of this legislation is to make sure a named substitute for a legislator is a qualified person that resides in the legislative district and that the legislation also describes whose responsibility it is to verify that the substitute's residence is in the appropriate voting district. **Senator Nonini** provided a brief history of the reasons for the legislation and clarified that it would be the legislator's responsibility to verify the substitute's residence. There was also discussion about the separation of powers. The Governor would name a replacement but the legislator would be responsible for finding a qualified substitute.

Senator Werk noted that there was no penalty for failure to verify a substitute. Should someone other than the legislator be responsible to verify? If there was a violation, should the legislator be sanctioned in an election by voters? Senator Nonini answered that it is the legislator who is naming the substitute. Ultimately, the voters could hold the legislator responsible by not reelecting him.

MOTION:

Senator Werk moved to print **RS 22963**. **Senator Winder** seconded the motion.

Senator Lodge recounted how Senators submit a list of substitutes at the beginning of each session and asked if Senator Nonini knew if the person mentioned in the history of this legislation had been named on a submitted list of substitutes. **Senator Nonini** indicated that the person named to fill in for the Representative had not been previously named on a list.

Senator Stennett asked if it was the failure of the legislator not to have seen that the substitute was not in the correct district and wondered if there should be extra oversight by someone else for verification. **Senator Nonini** indicated that it is the ultimate responsibility of the legislator to verify the resident district of the substitute. He had discussed the issue with Senate leadership.

Senator Siddoway questioned whether there should be ramifications if a legislator did not responsibly verify a substitute. **Senator Nonini** clarified that this legislation lays the groundwork for procedures to follow and that there should be no punishment. Discussion ensued concerning the specific history causing the need for legislation. **Senator Lodge** asked why they fill out the list if it isn't being used.

Senator Werk stated that minority leadership had never been contacted concerning substitute validity.

Senator Davis asked if § 67-412 intended to apply to both temporary service as well as those who would benefit from the list compiled after every election cycle. **Senator Nonini** clarified that the list compiled after each election cycle is verified by the Secretary of State's office. **Senator Davis** said that most Senators believe that what is being stated in this bill is what should be done. It may be that the same rules should apply to the list as well as the substitutes.

Chairman McKenzie reviewed § 67-416 concerning permanent emergency interim successors. The language suggests that it is required that they are qualified electors in a district which would be the same thing. If this is being done for the temporary list, it should be done for the emergency list as well.

VOTE:

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

RS 22897C1

A Concurrent Resolution Regarding the Idaho Patriot Academy; presented by Senator Winder.

Senator Winder stated that the purpose of this legislation was to recognize the importance of teaching students about the proper role of good governance, the sacrifices made to protect and preserve a free and moral society and to acknowledge the Idaho Patriot Academy (Academy). The revised **RS 22897C1** addresses a concern about spreading the essay across the journals and removes that requirement since it would set a precedent. The change puts the focus on acknowledging the Academy itself and what it was doing for students.

MOTION:

Senator Davis moved to print **RS 22897C1**. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

RS 22964

A Concurrent Resolution Recognizing and Honoring Kaitlyn Farrington for Her Performance at the 2014 Winter Olympics; presented by Senator Stennett.

Senator Stennett acknowledged Kaitlyn who is from Bellevue, the Senator's home district, for her performance at the 2014 Winter Olympic Games. Kaitlyn is the gold medalist in the woman's half pipe.

MOTION: **Senator Winder** moved to print **RS 22964**. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

S 1350 Relating to the Powers and Duties of the State Treasurer to Establish an Advisory Board Appointed by the Governor; presented by Senator Hill, President Pro Tempore.

Senator Hill explained that **S 1350** sets up an investment advisory board within the State Treasurer's office. He recounted the recommendation made by legislative auditors and the need to reduce the risk of management override controls by creating a five-person board to be appointed by the Governor. **Senator Hill** recounted the qualifications of those persons appointed, costs involved and number of times per year the board would meet. He further explained § 2 and the problems associated with some investments during the downturn, why those investments would not be permitted in the future and time needed to phase out current investments of that type.

Senator Werk asked if the nature of the board concerned investments or procedures. **Senator Hill** clarified that this was only an advisory board and cited wording in the legislation directing the areas where the board could offer advice. **Senator Werk** asked if it was in the purview of the investment advisory board to observe and make recommendations for transfers between funds. **Senator Hill** said the advisory board would have the ability to observe and advise concerning transfers between funds.

Senator Stennett asked what ensures that the oversight of the advisory board is actually implemented. **Senator Hill** noted that an appointed board would have difficulty removing powers from an elected official and explained that the board is "another set of eyes" that might catch mistakes and prevent false accusations. The advisory board would also provide accountability.

MOTION: **Senator Siddoway** moved that **S 1350** be sent to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion.

Senator Hill cited a letter from the State Treasurer voicing full support of this legislation which is included with these minutes (see attachment a).

Senator Davis emphasized that, by reference, this legislation incorporates the Idaho Uniform Prudent Investor Act, Chapter 5, Title 68, Idaho Code and that the advisory board mentioned would operate in accordance with that act.

VOTE: The motion carried by **voice vote**.

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

SJM 104 A Joint Memorial to Request Congress to Comply with its Constitutional Duty to Keep a Public Record of Applications for the States for a Convention Pursuant to Article V of the U.S. Constitution; presented by Chairman McKenzie.

Chairman McKenzie explained that the next two pieces of legislation relate to Article V of the U.S. Constitution. Neither are calling for a convention under Article V, neither of them promote the call of a convention but there are things that should be in place to deal with Article V. There are two ways in which an Article V convention may be called; one being a call by Congress and the other by the several States. **Chairman McKenzie** stated that, in his research, he

found Congress does not keep track of the applications from the states. There is no official public record of applications that have been filed. Under Article V, Congress has a duty to keep those records. As a state, Idaho should be aware of those applications. He explained that **SJM 104** would require Congress to keep a record of applications from states in a form that is accessible to the people of the U.S.

Senator Stennett asked if Congress was already required to keep a record via the U.S. Constitution. **Chairman McKenzie** said the duty is implied in Article V. **Senator Stennett** stated that if Congress is ignoring the duty implied in Article V now, would Congress ignore **SJM 104**. **Chairman McKenzie** said that historically, when a number of states have made application, Congress will call for a convention, but there needs to be an easily accessible record as to which states have made an application.

Senator Fulcher asked if this is a record keeping request; what will be the ramifications if that record was not kept? **Chairman McKenzie** clarified that if a record is not kept then states may not be aware of what applications exist. There could be outstanding applications that need to be terminated.

MOTION:

Senator Davis moved to send **SJM 104** to the floor with a **do pass** recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

S 1289

Relating to an Application of the State of Idaho Under Article V of the U.S. Constitution to Provide a Process for the Selection of Idaho Delegates; presented by Chairman McKenzie.

Chairman McKenzie explained that this legislation addresses a procedure to provide for delegate selection to an Article V Convention and the oath administered to a delegate. He further recounted other states' experience with similar legislation and the recent history of states calling for a convention. Currently, there are 20 states that have called for a balanced budget convention. Before or if a convention happens, a mechanism should be in place to pick a delegation. Historically, what is most likely to happen is that as the number of states gets closer to the requirement, Congress will act.

Senator Davis asked about the number of delegates each state would have in an Article V convention. **Chairman McKenzie** answered that each state would have one vote but that seven delegates would be selected to represent Idaho's one vote. **Senator Davis** questioned the language of the legislation wondering why the vote of a single delegate would be void rather than the vote of the state. **Chairman McKenzie** clarified that the legislation is targeting an unfaithful delegate. Discussion ensued concerning convention calls and compliance of delegates.

Senator Davis questioned whether Article V allows the scope of a convention to be limited and mentioned Judge Bork's statement indicating the ability of the state to restrict the scope of a constitutional convention. **Senator Davis** asked to have the absence of express language addressed as well as Judge Bork's statement. **Chairman McKenzie** indicated that this is a tool for both Congress and the states equally as mentioned in the Federalist Papers, Article 43. He stated that in prior calls for amending conventions, the states set parameters for the delegates to follow; those delegates are agents of the state legislature. **Chairman McKenzie** clarified that the oath administered to a delegate would limit the scope of the convention and that unfaithful delegates would be replaced. He indicated that if the scope of the convention were changed, the delegates would withdraw. **Chairman McKenzie** stated that scholarly writing on this issue

disagrees with Judge Bork's conclusion. **Senator Davis** noted that there is other scholarly writing that supports Judge Bork.

Senator Werk expressed concern about the definition section. Article V in the U.S. Constitution and Article V in this bill do not match relating to specific amendments. There is a concern about "Application" in (3), line 35, making reference to "any state" instead of only the State of Idaho. **Chairman McKenzie** indicated that it is a general term and applies to any application by any state. In (4) it states that if the application of another state went beyond the scope set forth by Idaho, the Idaho delegates would not be authorized to vote for that application because it is beyond the scope Idaho set. An Article V convention defined in this statute is a convention calling for specific amendments and anything that goes beyond the scope that Idaho calls, the delegates will vote "no." **Senator Werk** questioned the point of a delegation that could not enter into a discussion about a different scope than what was called for by Idaho, expressing that the language was confusing. **Chairman McKenzie** outlined the concerns about a runaway convention that would go beyond the scope of what Idaho called for in a convention. Dialogue resulted concerning limiting the scope of the convention.

Senator Hill asked for an explanation of the ratification process and asked if it was a simple majority of both houses of Congress that could call a convention. **Chairman McKenzie** said it would take two-thirds to call a convention but a majority of legislatures in three-fourths of the states to ratify. **Senator Hill** questioned if a state could abstain from voting in a convention. **Chairman McKenzie** said the purpose of the two-thirds is to put a safeguard beyond the scope for which we send the delegates and cited the example of electoral voters in a presidential election.

Senator Werk revisited the oath administered to a delegate and the language he thought was in conflict. **Chairman McKenzie** clarified stating the language was compatible concerning a motion at the convention that is beyond the scope of the purpose the delegates were sent for and the duty to debate against any motion as well as vote against it.

Senator Winder questioned what happens if a convention is called and the scope is changed, whether Idaho delegates would have any other recourse than to go home or if there would be safeguards against establishing any rules outside of the scope. **Chairman McKenzie** explained that if Congress called a convention, which has happened numerous times, then Congress sets the procedures for that, and the states need to ratify it by legislature or by convention and they set the parameters for the convention. He further explained that if a convention is called by the states and Congress preempts the convention, the remedy would be with the courts.

Senator Werk spoke about his desire to have delegates negotiate and have dialogue concerning subjects not within the scope of what was called for by Idaho. **Chairman McKenzie** reiterated that the delegates are sent as agents of the legislature and limited in scope for the reason they were sent to the convention and explained further the mechanics of the legislature directing the delegates.

Vice Chairman Lodge recognized **Dale Pearce** as an interested party wishing to testify.

Mr. Pearce spoke about the history of a Convention of States and spoke in opposition to **S 1289**. What about the limitations that will be put on Idaho's delegates? Doesn't Article V say that Congress, when they call a convention, has the opportunity to say what will be done as far as delegates and how many each state can send? What about states with large delegations; would they like the votes based on population, not just one per state? **Mr. Pearce** quoted Robert Natelson from the Goldwater Institute, "the convention delegates have the power to draft amendments and to deliberate." That was Mr. Natelson's opinion. **Mr. Pearce** continued with several observations and examples of what could happen at a convention and pointed out that the "power brokers" would be there. He thanked the Committee for the opportunity to speak.

Chairman McKenzie asked if Mr. Pearce's research suggested that Congress would control a convention or change the requirements to ratify. If there is any doubt, why shouldn't we try to limit our delegates so there is a stronger possibility to control that convention? **Mr. Pearce** said that after a convention of states was called, Congress would not control that convention; the delegates would control the convention. **Chairman McKenzie** responded that if there is any possibility that the states can put limitations on the delegates that they send, why wouldn't that be put into statute? **Mr. Pearce** agreed.

Senator Siddoway asked if Mr. Pearce was opposed to a convention and questioned why he spoke so highly of the founding fathers that chose to place Article V in the Constitution. **Mr. Pearce** explained his hesitation concerns the type of delegates the states would put forward because of power and that Article V is only there to change the government. Discussion ensued concerning fear of a run away convention.

MOTION: **Senator Siddoway** moved to send **S 1289** to the floor with a **do pass** recommendation. **Chairman McKenzie** seconded the motion.

SUBSTITUTE MOTION: **Senator Fulcher** expressed his concern and made a substitute motion to hold **S 1289** in committee. **Senator Werk** seconded the motion.

Senator Davis expressed fear that a state would have a false sense of comfort in making a call for a convention of states. He recounted the history of the first convention and Rhode Island's lack of involvement. **Senator Fulcher** expressed the need for discussion on this matter and his respect for Chairman McKenzie. **Senator Werk** and **Vice Chairman Lodge** echoed respect for Chairman McKenzie and the importance of the issues that have been discussed. **Senator Siddoway** voiced willingness to risk everything, as our founding father's did, for this great nation and stated that the nation needs to control spending. He further stated his support for this legislation. **Senator Winder** echoed support for Chairman McKenzie

VOTE: The substitute motion carried by a **voice vote**.

PASSED THE GAVEL: Vice Chairman Lodge passed the gavel back to Chairman McKenzie.

ADJOURNED: There being no further business, **Chairman McKenzie** adjourned the meeting at 9:58.

Chairman McKenzie
Chair

Twyla Melton, Secretary

Assisted by Marian Smith