

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Wednesday, March 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 8:03 a.m. with a quorum present.

RS 23059 A Unanimous Consent Request to Print by the Agriculture Committee Relating to the Seed Indemnity Fund and the Commodity Warehouse Fund to Provide a Procedure for Review and Determination of Producer Claims; presented by Senator Bair

MOTION: **Senator Siddoway** moved to send **RS 23059** to print. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

RS 23032 A Concurrent Resolution to Recognize the 50th Anniversary of the Passage of the Civil Rights Act of 1964; presented by Senator Buckner-Webb.

Senator Buckner-Webb requested the Committee's consideration of **RS 23032** to commemorate the 50th Anniversary of the Civil Rights Act of 1964 (Act). The Act acknowledged the need to change the culture of the United States and put that change into law. This Act is often referred to as the most important law passed in the last century. It broke down barriers to equal employment opportunities and grant equal access to public accommodations without regard to race, religion or gender. President John F. Kennedy proposed the legislation initially in 1963, and it was signed on July 2, 1964 by President Lyndon B. Johnson. The Act was enshrined in Idaho statute as the Idaho Human Rights Act in 1969 under the leadership of Senator Phil Batt. **Senator Buckner-Webb** gave her own personal story of the effect it had on her family and community.

MOTION: **Senator Hill** moved to send **RS 23032** to print. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

S 1356 Relating to the Uniform Electronic Legal Material Act Relating to the Authentication and Preservation of Electronic Legal Material in Perpetuity and Allows for Permanent Access; presented by Dale Higer, Chairman, Uniform Law Commission (Commission).

Mr. Higer introduced Michael Greenlee, Associate Law Librarian, University of Idaho, College of Law at the Boise campus. **S 1356** addresses how the Uniform Electronic Legal Material Act should operate. If a state was to designate legal material, then it must ensure the material is authenticated, preserved for the future and provide for public access. **Mr. Higer** went through the bill and explained each section. He defined legal material, what "Official Publisher" meant, when the law is applicable, how electronic material is designated as official, the authentication of the official electronic record, and the effect of the authentication and how it

can be used. He went on to describe preservation and security, public access, standards uniformity and electronic signatures. The Act was circulated, with the help of Mr. Greenlee, to the Secretary of State's office, the Idaho Supreme Court and the Department of Administration. They are all supportive of this legislation.

Senator Hill asked about the fiscal note which reflected no fiscal impact. Will the effect of this bill result in upgrades to equipment, software, storage and personnel? That could be large sum of money. **Mr. Higer** said that the bill itself has no fiscal impact but if an entity wanted to upgrade, they would come to the Legislature to request funding. **Senator Hill** asked if the cost entered into any of the conversations. **Mr. Higer** deferred to Mr. Greenlee to address that question.

Mr. Greenlee stated that there might be an agency that would request funding to implement this program. Currently, only the Department of Administration uses an electronic program. The current computer capabilities would have to be evaluated to see what additional technology would be required. The effective date of the bill has been delayed until July 1, 2015 to allow time for the departments to evaluate their needs (see attachment a).

Chairman McKenzie asked what would be the different ways used to provide authentication under Section 60-305. **Mr. Higer** said that Section 60-309 sets the standards used to authenticate documents.

MOTION: **Senator Davis** moved to send **S 1356** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

S 1370 Relating to the Legislature Relating to the Designation of a Qualified Substitute; presented by Senator Nonini.

Senator Nonini explained that the purpose of **S 1370** is to clarify in code how a legislator, if they are going to be absent during the session, might name a replacement and who had the responsibility to ensure that the substitute legislator was qualified. He went on to explain how the issue was brought to his attention and then went through the changes in the current code and reviewed the new section.

Senator Werk referred to the new Section 67-412 where the designated person must be capable of assuming that role. The residency requirement is not an accurate standard because the person must be a registered elector within the district for one year prior to the election date. His concern is about the requirements when someone is actually qualified to be a substitute, and who makes that determination. **Senator Nonini** stated that his understanding was that a qualified person would be the same as a qualified elector. They would have to live in the district for a year prior to the general election. **Senator Werk** noted that the standard is not living in the district but being a registered voter in the district for a full year prior to the election date. He is concerned about the legislator understanding that point.

Senator Werk referred to Section 59-917 where a legislator becomes wholly incapacitated. Section 67-412 implies that a legislator has the capacity to select someone to succeed them in office for an undetermined amount of time and then verify that person themselves. Is there another procedure in case of a long-term replacement? **Senator Nonini** answered that there is another code section that deals with a replacement. When legislators are elected, they must submit a list for replacements to the Secretary of State's office, and that office will certify that they are qualified. This bill is for a substitute for a short period of time.

MOTION: **Senator Fulcher** moved to send **S 1370** to the floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion.

Senator Davis asked about references to a phone call from the Idaho Supreme Court at both the print hearing and the hearing today. Who called? Who did they call? As far as he knows, Senator Davis has never heard of the Idaho Supreme Court pro-actively engaging in that manner. **Senator Nonini** said that information was given to him by Brooke Brouman in Legislative Services. **Senator Nonini** said that he was told the question was: "where in code is it laid out how a replacement is picked by a legislator?"

Senator Hill referred back to the "separation of powers." Why is that a concern? If there is a permanent vacancy in the Legislature, recommendations are made and the Governor makes that appointment. Why would the appointment of a temporary replacement be a greater threat to the separation of power? **Senator Nonini** explained that Ms. Brouman suggested that, because there would be a temporary substitute and not a permanent replacement, there should be new language so there wasn't the ability by the executive branch to name a temporary substitute. **Senator Hill** asked if she thought it was alright that the Governor should appoint a permanent replacement but not a temporary substitute; is that correct? **Senator Nonini** concurred.

SUBSTITUTE MOTION:

Senator Davis said he wants to vote for Section 2, but not for Section 1. **Senator Davis** moved to send **S 1370** to the 14th Order for possible amendment. **Senator Werk** seconded the motion. The substitute motion carried by **voice vote**.

SJR 106

Proposing and Amendment to the Constitution to Allow the Legislature to Reconvene in a Special Session to Consider Bills Vetoed by the Governor Following the Adjournment of the Regular Session; presented by Senator Vick.

Senator Vick explained that currently, the Legislature has the ability to override the Governor's veto during the session, but the Legislature does not have the ability to address any bill that is vetoed after the session has ended. This amendment gives the Legislature that ability. Idaho is one of seven states that does not have a mechanism in place to override a veto once a session is adjourned. **Senator Vick** read the one addition to existing code that set forth the requirements to reconvene the Legislature. He then read the section from the Idaho Constitution that explained the separation of powers between the legislative, executive and judicial branches. The language in this bill allowing the Legislature to call a special session is not unique to Idaho. **SJR 106** was written in a way that would eliminate the need for more than one amendment to be put on the ballot.

Senator Stennett asked why other states are held to stricter standards than this bill sets out. **Senator Vick** responded that by specifying the ability to call a special session and the way it is called, it becomes more than one subject.

Senator Werk inquired about who made the determination about what was a single subject or what constituted multiple subjects. **Senator Vick** said that information came from the Attorney General's (AG) office but is not in writing.

MOTION:

Senator Winder stated his approval of the approach and noted that they do have the ability to add constraints if it is passed by the citizens of Idaho. **Senator Winder** moved to send **SJR 106** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

S 1369

Relating to County Officers to Eliminate a Conflict of Interest for County Prosecutors and in Certain Cases Moves the Misconduct Authority to the Attorney General (AG); presented by Senator Rice.

Senator Rice stated that a similar bill was passed last year, but the AG did not have the resources at that time to carry out the additional responsibilities. This year the Finance Committee has approved additional funding for that budget. The problem **S 1369** addresses is one where the AG may need to assume the responsibility for a case when a local prosecutor is not pursuing it effectively. If a county elected official, including the prosecutor, violates State law, the only person that can intercede is the county prosecutor. There are instances when that may not happen. This bill will move the misconduct authority to the AG. The county prosecutors have been involved in drafting this legislation as well as the AG's office.

Senator Winder asked if the Governor was included in the conversations. **Senator Rice** stated that this bill follows the instructions in the Governor's veto letter from last year's bill.

Senator Werk clarified that all preliminary investigations of any allegation against an elected official will be conducted by the AG's office. **Senator Rice** agreed.

MOTION: **Senator Winder** moved to send **S 1369** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

SJR 103 Proposing an Amendment to the Constitution Relating to Persons Subject to Military Duty to Provide that All Able Body Persons Would be Subject to Military Duty; presented by Senator Rice.

Senator Rice addressed the concerns raised at the print hearing and the concerns in the letter from the AG's office. That letter was talking about organized militia while this bill is referring to unorganized militia. After conversations with the AG's office, it was agreed to add the word "unorganized" in Section 1, line 15, before the word militia at the beginning of that line. This provision would then read consistently with the U.S. Supreme Court's interpretation of the U.S. Constitution's Second Amendment. **Senator Rice** requested that **SJR 103** be sent to the 14th Order for amendment.

Senator Davis noted that Rule 36 would be the controlling rule which would allow amendment.

MOTION: **Senator Fulcher** moved to send **SJR 103** to the 14th Order for possible amendment. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: **Chairman McKenzie** announced that there would be a meeting on Friday. There being no further business, **Chairman McKenzie** adjourned the meeting at 8:57 a.m.

Senator McKenzie
Chair

Twyla Melton
Secretary