

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Wednesday, February 11, 2015

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

**PLACE:** Room WW02 - Lincoln Auditorium

**MEMBERS PRESENT:** Chairman McKenzie, Senators Davis, Hill, Winder, Siddoway, Lakey, Johnson(Lodge), 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:** **Senator McKenzie** called the Senate State Affairs Committee (Committee) meeting to order at 8:00 a.m.

**RS 23568** **Relating to Primary Elections.** **Senator Winder** explained that **RS 23568** is a new version of legislation previously heard by the Committee. **Senator Werk** asked if the potential fiscal impact of \$2 million for the taxpayers to pay for this potentially closed primary was still operative in this version of the legislation. **Senator Winder** answered that was correct.

**MOTION:** **Senator Hill** moved to send **RS 23568** to print. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

**S 1011 (CONT.):** **Chairman McKenzie** indicated that testimony would continue for those that signed up to testify on February 9, 2015 then the sponsor would have an opportunity to close the debate.

**Those who spoke in favor of S 1011 were:**

**Yvonne Sandmeyer**, representing her self, stated:

- Many industries with financial challenges would love to have gambling machines save their businesses.
- The revenue potential is huge in any gambling related venture.
- The machines were originally presented as horse racing machines but are gambling machines.

**Grant Ipsen**, former Senator, representing himself, advised the Committee that:

- Historical horse racing is all about expanding gambling in Idaho and adding illegal and unconstitutional casino type slot machines.
- The current historical horse racing machines do not match the form or the number that was proposed and shown to the Legislature two years ago.
- The machines violate Article 3, Section 20, of the Idaho Constitution.
- If present law is not rejected it will permit expanded illegal gambling at any location with a track.

**John Evans**, Mayor, Garden City, Idaho, said:

- The principal issue with the repeal of the previous legislation is contained in Article 3, Section 20, of the Idaho Constitution. Subsection 1b exempts pari-mutuel betting if in conformity with enabling legislation.
- In the Idaho Constitution, Article 3, Section 20, Subsection 2, it states that no activities permitted in Subsection 1b shall employ any form of casino gambling including simulation of slot machines.

**Those who spoke in opposition of S 1011 were:**

**John Sheldon**, President, Treasure Valley Racing, Les Bois Park, provided information about the current state of the racing industry since the passing of the historical racing statute in 2013. He then outlined what would happen if that statute was repealed.

**Senator Hill** asked if \$900,000 in taxes were being paid in Idaho. **Mr. Sheldon** said that amount is for both live simulcasting and historical racing, but the bulk comes from historical racing. **Senator Hill** inquired about the kind of taxes that are coming to the State. **Mr. Sheldon** said that one and one-half percent of gross revenue goes to the State in taxes. He listed the entities and how much funding each one received from revenues from horse racing. **Senator Hill** noted that the funding to all entities was counted as taxes. **Mr. Sheldon** concurred.

**Senator Johnson (Lodge)** asked what the future of the track would be without historical racing. **Mr. Sheldon** said it would close.

**Tawnja Elison**, President, Idaho Thoroughbred Association, and a trainer and owner of thoroughbreds said:

- Historical racing offers pari-mutuel wagering with the technology of terminals, and there is no doubt that pari-mutuel wagering is legal in Idaho.
- Scholarships are funded using money returned from the State to equine organizations.

**Ed McNelis**, Past President, Idaho Horse Council, member of the Idaho Horse Board and the American Quarter Horse Board stated:

- Utah is dependent on Idaho for their large racing and equine programs, which nearly doubles Idahos' equine industry.
- The equine industry uses large amounts of Idaho agricultural products.

**Mark Brown**, Idaho Quarter Horse Association, informed the Committee that:

- The historical racing industry has increased the horse industry in Idaho dramatically.
- Horse racing brings business from Utah to Idaho.
- Breeders from all over the western United States send horses to Idaho to compete.
- The Idaho economy overall benefits from the horse racing industry.
- If historical racing is taken away from Idaho, live horse racing will be decimated.

**Debbie Amsden**, Idaho Horse Council, said:

- Terminals are based on past or historical races.
- Repealing historical racing will decimate the equine industry in Idaho.

**Melissa Bernard**, Chief Executive Officer, Intermountain Racing, Sandy Downs Racing, Inc. and Double Down Betting Bar & Grill, testified:

- Technology has evolved and now pari-mutuel terminals appear as slot machines.
- The City of Idaho Falls has approved this business (see Attachment I).
- Significant financial investment has been made for the historical horse racing business.
- Over 50 percent of the workforce at Sandy Downs Racing, Inc. and Double Down Betting Bar & Grill is a single provider of the household.
- If this bill is approved, businesses will be destroyed and employees will lose jobs.

**Amber Jobe**, Manager, Double Down Betting Bar & Grill in Idaho Falls, stated:

- Horse racing in Idaho is dependent on the historical horse racing business.
- Employees dependent on the historical horse racing business will lose employment if **S 1011** is passed.
- historical horse racing terminals (HHRT) appear to be like slot machines because that is brilliant marketing.

**Steve Laughlin**, operator of Double Down Betting Bar & Grill, Idaho Falls, noted:

- The Idaho Racing Commission and others worked diligently to create an opportunity in accordance with Idaho law to avoid the mistakes created in other states.
- The appearance of an HHRT does not change its function.
- Idaho businesses benefit from historical horse racing.
- By repealing the law, promises will be broken and businesses will no longer trust the Legislature.
- Millions of dollars of business revenue and many jobs will be lost.

**Nikila Black**, lawyer, race horse jockey and breeder, stated:

- Formerly, race tracks closed due to inability to fund purses and maintain race tracks.
- Many people have made major financial and personal life decisions based on the 2013 law allowing historical racing.
- No matter how the machines look, the important thing is how they work, which involves pari-mutuel wagering.
- Horse racing creates jobs.

**Trina Fackrell**, employee of Sandy Downs Racing, Inc. and Double Down Betting Bar & Grill, pointed out:

- Article 3, Section 20, allows for pari-mutuel betting into a pool.
- Machines do not have a random number generator.
- Racing has a vast economic fiscal impact.
- Historical racing will not hurt tribal gaming.

**Senator Johnson (Lodge)** asked what Ms. Fackrell's connection was to the racing industry. **Ms. Fackrell** responded that she doesn't breed, raise or train race horses. She works professionally in the industry. Currently she works for Double Down Betting Bar & Grill as a simulcast and off track teller, she works for Sandy Downs Race Track in various positions, and she has been a placing judge in New Mexico, as well as a variety of positions within racing.

**Sharon Mueller**, owner of Phoenix Breeding Farms and Publisher of Idaho Life Publications, said:

- The Committee should look at this issue in terms of the human impact.
- Costs involved in the horse racing industry increased but horse racing purses did not until historical racing was approved.
- Racing participants and enthusiasts will participate in racing in other states if not provided for in Idaho.

**Chairman McKenzie** introduced Brian Kane from the Idaho Attorney General's office. **Senator Werk** asked Mr. Kane questions concerning pooled wagering and if pool wagers are always pari-mutuel. **Mr. Kane** referred the Committee to the administrative rules of the Idaho State Racing Commission where details for pari-mutuel wagering are outlined.

**Senator Werk** asked if the machines comply with the administrative rules of the Idaho State Racing Commission. **Mr. Kane** replied that the machines that were shown to the Idaho Attorney General's office in 2012 did meet the requirements for pari-mutuel betting within Idaho. The current machines that are installed are not the same machines that were reviewed by the Idaho Attorney General's office in 2012. At the request of Senator Werk, **Mr. Kane** provided a detailed explanation of the 2012 review of the machines.

**Senator Johnson (Lodge)** questioned whether any Legislator had requested a review of the current machines by the Idaho Attorney General's office. **Mr. Kane** reviewed the history of the Idaho Attorney General's involvement pursuant to a Legislator's request and stated that the important evaluation for the Legislature is to determine whether or not what was authorized in 2013 is actually what has been installed. He further indicated that the reason the current machines have not been evaluated is because the responsibility of the Idaho Attorney General's office is different now than prior to legislation. He explained that the Legislature gave very broad rulemaking authority to the Idaho Racing Commission and the responsibility of the Idaho Attorney General's office is to defend the statutes.

**Senator Lakey** asked additional questions concerning pari-mutuel wagering. **Mr. Kane** responded that the rules clearly define pari-mutuel wagering.

**Senator Winder** indicated the rules for racing appear in the section of Idaho Code within the purview of the Idaho State Police. He asked what role should the Idaho State Police have in regulating the machines. **Mr. Kane** indicated that there must be some oversight by the Idaho State Police. **Senator Winder** asked if Mr. Kane was aware of any action by any Idaho law enforcement agency towards any of the historical horse racing entities. **Mr. Kane** answered that there were no official updates as to any prosecution. **Senator Winder** asked for suggestions for future monitoring of whether games are legal. **Mr. Kane** stated that the Legislature could hire an expert or clarify statutorily what is expected and what the consequences would be for noncompliance.

**Senator Werk** asked Mr. Kane to clarify the Idaho Attorney General's current stand. **Mr. Kane** reiterated that once the Legislature passed the 2013 legislation the Idaho Attorney General can only defend the position of the statute, and the Idaho State Racing Commission acted within the broad umbrella of what the statute allows.

**Chairman McKenzie** asked for closing remarks from Bill Roden, a representative for the Coeur d'Alene Tribe. **Mr. Roden** summarized the history of pari-mutuel racing in Idaho and the 2013 testimony during hearings for the current historical horse racing legislation. He also stated that in 2014, rules presented for approval to the Legislature included the terminology of "instant horse racing" for the first time. **Mr. Roden** summarized Article 3, Section 20, of the Idaho Constitution and compared it to current historical racing practices. He reiterated that historical horse racing does not conform to the Idaho Constitution.

**Senator Johnson (Lodge)** inquired if the tribe had sought any other alternatives such as local police enforcement. **Mr. Roden** said that discussions have occurred with local prosecutors. A formal complaint has not been filed.

**MOTION:** **Senator Davis** moved to send **S 1011** to the floor with a **do pass** recommendation. **Senator Hill** seconded the motion.

**SUBSTITUTE MOTION:** **Senator Winder** moved to hold the bill in Committee and to request that the Idaho Attorney General and the Idaho State Police investigate the machines to determine if they violate the provisions of the laws and the Idaho Constitution. **Senator Johnson (Lodge)** seconded the motion.

**Senator Davis** stated that the motion should be passed by the Committee as phrased since, as Mr. Kane stated, the Attorney General's office could not give an opinion because the statute was already in place.

**Senator Hill** reiterated that the Idaho Constitution states that pari-mutuel wagering is legal in Idaho. However, that type of wagering cannot employ any form of casino gambling, including, but not limited to, blackjack, craps, roulette, poker, baccarat, keno and slot machines, or employ any electronic or electromechanical imitation or simulation of any form of casino gambling. There is no doubt about what the intention of the Legislature was in 1992 or what the intention was of the people of Idaho who voted to put this in the Idaho Constitution in 1992.

**Senator Werk** expressed sympathy to those who might be hurt with the elimination of historical racing. He expressed that he had no doubt that the existing machines are in violation of the Idaho Constitution and expressed support of the original motion.

**Chairman McKenzie** noted that Senator Johnson (Lodge) had invoked Senate Rule 39 (H) at the first meeting on February 9, 2015, and that would carry through to this meeting.

**Senator Winder** clarified that his substitute motion only meant that the Idaho State Police and Idaho Attorney General should guide the Legislature through the process to make those determinations. There could be more at stake here than just these machines and what impact it could have on other gaming in the State.

**VOTE ON SUBSTITUTE MOTION:** **Chairman McKenzie** called for the vote on the motion to hold **S 1011** in Committee. The motion failed by **voice vote**.

**Chairman McKenzie** said that the original motion to send **S 1011** to the floor with a **do pass** recommendation was before the Committee.

**Senator Lakey** remarked that the focus of the machines is not on the horse race and the process does not meet the definition of pari-mutuel as far as the outcome being based on a single race with betters pooling their wagers on that single race. The Committee is bound by the Idaho Constitution which states that gambling is strictly prohibited except in limited situations, pari-mutuel being one of them. He also emphasized that Article 3, Section 20, Subsection 2 of the Idaho Constitution states you can not imitate or simulate casino gambling. He will support the motion.

**Senator Winder** stated that his understanding was that this repeal would be effective June 30, 2015. He asked for a "softer landing" for the human side of the repeal.

**VOTE ON ORIGINAL MOTION:**

The motion carried by **voice vote**.

**ADJOURNED:** **Chairman McKenzie** adjourned the meeting at 11:07 a.m.

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Senator McKenzie

Chair

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Twyla Melton, Secretary

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Marian Smith, Assistant Secretary