

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Monday, March 07, 2016

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Lodge, Senators Davis, Hill, Winder, Siddoway, Lakey and Stennett

**ABSENT/
EXCUSED:** Senator Buckner-Webb

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 of the Senate State Affairs Committee (Committee) to order at 8:02 a.m. with a quorum present.

RS 24652 UNANIMOUS CONSENT REQUEST from the Commerce and Human Resources Committee relating to durable medical equipment.

Jesse Taylor presented this request relating to a new draft of **S 1264**, which did not pass the Senate. He noted that licensure is important for local independent providers and for patient care. The concern with the previous bill is that it was anti-competitive. **Senator Winder** asked how this legislation is different than the previous bill. **Mr. Taylor** answered that there are extensive changes in the new bill on pages 8-9 that narrow the licensure requirements to only two specific durable medical equipment pieces; the list is on page 8, line 41, and include items such as oxygen or CPap machines. All of these devices require certified technicians to set them up. He noted that a number of hospital discharge providers experience trouble finding providers to serve the rural areas. This only applies to Medicare patients and there is a list of approved providers around the country. There is a problem when a company wins by bidding extraordinarily low; this practice is called suicide bidding. Those low bidders drive the costs down. When the hospitals contract with these companies, they do not provide the services because there is no bonding requirement. **Chairman McKenzie** commented that this request comes from the Senate Commerce and Human Resources Committee.

Senator Stennett asked if the companies that are winning these bids are providing actual services or are they just driving the bid down. **Mr. Taylor** replied that in most cases these companies are not providing the services. An example would be oxygen providers. Centers for Medicaid and Medicare (CMS) has determined that there are 17 oxygen providers located in the Boise area; only 7 of them fall within a 50-mile radius; some are as far away as Florida.

MOTION: **Senator Hill** moved to send **RS 24652** to print. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

RS 24681 UNANIMOUS CONSENT REQUEST relating to tax deeds.

Chris Meyer, Attorney and Partner, Givens Pursley LLP, presented this bill. This bill brings legislation back to the beginning regarding tax deeds.

An Idaho Supreme Court ruling last year changed the way tax deeds have been thought to operate in the State. This bill seeks to remedy that ruling. If a tax payer is delinquent in his or her taxes, then a tax deed may be issued at a tax sale. It eliminates the mortgage and other financial liens and allows the county, city or irrigation district to acquire the property and convey it to another party, free of any liens. The Idaho Supreme Court ruling eliminated all third-party encumbrances including those of government entities. **Mr. Meyer** noted that the concept is simple, but the bill itself is complex in nature.

Senator Winder asked why this bill took so long to get to the Committee. **Mr. Meyer** answered that because there are so many interests involved and because it is so technical in nature, it took a while to get the interested parties to come to a consensus.

MOTION:

Senator Siddoway moved that **RS 24681** be sent to print. **Senator Winder** seconded the motion.

Senator Lakey stated that he had a possible conflict of interest pursuant to Senate Rule 39.

Senator Lakey asked why the references were not the same in two different sections of this bill. Page 3 refers to "easements, highways and rights-of-way" owned by the county unless expressly conveyed; on page 6, lines 12-13, encumbrances includes "easements, highways and rights-of-way" of any type. **Mr. Meyer** replied that this is an example of the technical complexity involved in this bill. He addressed the language in each section; Idaho Code § 31-808 does not deal with the creation of a tax deed but with the subsequent conveyance of the tax deed and he spoke to the intent of that section.

The motion carried by **voice vote**.

H 356

RELATING TO THE MILITARY DIVISION to address the duties of the Adjutant General.

Paul Boice, Lieutenant Colonel, Staff Judge Advocate, Idaho National Guard, presented **H 356**. He reviewed the current statutes regarding the duties of the Adjutant General. This bill clarifies or organizes the duties of this position. The organization refers to the different areas of duties, such as those of the Adjutant General's in the Idaho military division. The current bill makes no distinction of the Adjutant General's roles. He explained the organization that the Adjutant General falls into. **Lt. Col. Boice** noted that there are specific powers and duties listed in this bill.

Senator Stennett asked for clarification regarding the heads of the military. She asked what is different. **Lt. Col. Boice** answered that things have not changed, the bill simply clarifies and organizes in statute the duties for the State office and also the military offices of Adjutant General.

Senator Hill commented that the current statute and the proposed bill are completely different. He asked for clarification about the specific powers granted by this bill that are new or were not clear before. **Lt. Col. Boice** highlighted section 4 of the bill. He indicated that the shooting at the recruiting stations in Chattanooga, Tennessee, had a huge impact on National Guard sites throughout the nation. This bill allows the Adjutant General to adopt methods of security for National Guard personnel.

MOTION:

Senator Lakey moved to send **H 356** to the floor with a **do pass** recommendation. **Vice Chairman Lodge** seconded the motion. The motion carried by **voice vote**.

STATING LEGISLATIVE FINDINGS AND RECOGNIZING the commitment, sacrifice and courage of Idaho's military families.

Bruce Wong, Colonel, United States Air Force (Retired), asked for the Committee's support on **HCR 28** which recognizes 2016 as the year of Idaho's Military Families. He spoke about his 29 years as a military family and his own experience with other military families. He came to Mountain Home Air Force Base on September 1, 2001, from the Pentagon. He arrived in Idaho just before the terrorist attacks of September 11, 2001. He knew that many families would be affected as soldiers were deployed. He stated that Idaho is one of the most patriotic states he has ever lived in. Military families are the true energy behind the military.

TESTIMONY:

Laurie Smith testified in favor of the resolution. She reviewed her experiences as a military family. She stated that the magnitude of military members' dedication is hard to explain to those not accustomed to it. This resolution will shed light on programs for military families. She indicated that many families are left in need when military family members are deployed.

Barbara Ann Williamson spoke in favor of the resolution and talked about her experience with military family members, such as her husband and father. She explained the fear and horror at deployment, the joy at return and the challenge of settling back into a normal civilian life. She remarked that the military families stand for those who stand for America.

David Wallace, Colonel, United States Air Force (Retired), testified in favor of the resolution. He related that he has helped raised two sons that have served in the military as well. He spoke to his experience helping his son's family during the son's deployment. He indicated at how tough it is.

Lieutenant Colonel John Wasson, United States Army Reserve, testified in favor of the resolution. He told the Committee how important this recognition is for the military families because they have the hard job compared to the military members themselves.

Allen Niksich, Master Sergeant, United States Air Force (Retired), provided written and verbal testimony in favor of the resolution. He remarked that Idaho is full of patriotic and humble Americans. He spoke about the difficult nature of deployments and how military families do not complain much because they understand the nature of this lifestyle. The hope for this resolution is to highlight to the average civilian that America is still at war. He noted that 500 airmen will be returning to Mountain Home soon. He listed the special moments in the lives of military families that occur when a service member is deployed. He quoted a co-worker, who is a military spouse. She said, "Yes, we have challenges, but we are proud, too. I am proud to be a military wife and family. I am happy to deal with all the challenges because it makes me so proud to see the jets in the air and know that my husband is one of those who maintains them and keeps them flying. I am proud that we get through the struggles together; the stress, the long work hours, deployments, financial worries and even when we are physically apart."

Master Sergeant Niksich talked about the constant moving that military families do to follow assignments. He noted that Idaho does a good job with military families and this is a reason that many non-Idahoans in the military choose to retire in Idaho. He noted that military families care about communities (see attachment 2a).

Paul Daigle, Colonel (Retired), spoke in favor of the resolution. He

told the Committee about his childhood growing up as a member of a military family. He remarked that his parents thanked the Committee for this resolution.

Melissa Vanderlaan stood in favor of this resolution. She spoke about being a military wife. She highlighted the encouragement that military families give to each other.

Senator Winder commented that his wife stated that "they" were in the Navy; not just him. He thanked those who serve for their dedication. This resolution represents the appreciation of the Legislature.

MOTION:

Senator Winder moved to send **HCR 28** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion.

Senator Lakey echoed his gratitude to Colonel Wong and the family members who came in support of this resolution. He noted that service members are recognized regularly, but the family members are not always recognized for their sacrifices. This is equally important. He explained that service members do the things they do because they love their country, they desire to support their comrades in arms and because they love their families.

The motion carried by **voice vote**.

Chairman Mckenzie thanked all those who testified for their support of the military.

H 478

H 478 was deferred for a week to coincide with related bills.

PASSED THE GAVEL:

Chairman McKenzie passed the gavel to Vice Chairman Lodge.

RS 24682

RELATING TO CONCEALED WEAPONS with the purpose of making consistent State law regarding concealed weapons carry between counties and cities.

Senator McKenzie explained that **RS 24682** relates to concealed carry of a firearm. The Sheriff's Association had expressed concern that in current statute there is language that only allows for concealed carry without a permit outside the limits of any city if you are over the age of 21. This bill is not a strike and replace, but rather an amendment to the existing statute. The goal of this bill is to expand the rights to carry concealed weapons without a permit inside city limits and to lower the age requirements.

MOTION:

Senator Siddoway moved to print **RS 24682**. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

S 1350

RELATING TO THE IDAHO LIMITED ARTICLE V CONVENTION ACT to provide for definitions, instructions and limitations on authority of delegates.

Senator McKenzie reviewed the background information relating to **S 1350**. Article V of the United States Constitution (Constitution) allows for either Congress or the states to call for a convention of states to consider amending the Constitution. It requires two-thirds of the states to call a convention and then three-fourths of the states must ratify the proposed amendments. He noted that there has not been a convention called by the states in the history of this country.

Senator McKenzie explained that this bill is not a call for a convention nor an application for a convention. He noted that the State had requested

that Congress keep the State informed on the number of states calling for a convention. There are still open applications for a convention. Since 2012 there have been 24 applications for a convention, with most of the applications centering around an amendment for a balanced budget.

Senator McKenzie stated that regardless of the opinions in Idaho as to whether or not Idaho should file an application for a convention, there needs to be a process established in statute to select delegates for a convention. He commented that under Article V, the delegates are an extension of the Legislature. This bill would allow the Legislature to name those delegates. Delegates in this bill are defined as public officials selected by joint rules of the Idaho House and Senate. Delegates would not be selected from the United States Congress. The bill then defines acceptable topics and unauthorized topics. Delegates would have to take a specific oath prior to taking office and there are defined punishments for violation of that oath.

Senator McKenzie indicated that the remaining sections of the bill speak to the process of selecting delegates. There would be a total of seven delegates selected. There would be two selected by the Idaho House of Representatives; two selected by the Idaho Senate; and the remaining three delegates would be jointly selected. When voting at the convention, two-thirds of the delegates votes would be required to constitute the actual vote. There would be reimbursement of expenses for the delegates pursuant to current Idaho statute. The delegates could not accept any gifts over \$50.

Senator McKenzie noted that opponents are concerned that a convention will result in the consideration of issues beyond the scope of the states' applications, otherwise known as a runaway convention. The Founding Fathers were familiar with this type of convention. **Senator McKenzie** indicated that regardless of the feelings surrounding a convention, it is important that the Legislature has in place a process for selecting delegates for a convention.

Senator Stennett asked if the language in this bill is similar to legislation in other states. **Senator McKenzie** answered that the language has been modified from other states, but it is similar. **Senator Stennett** asked if the rules are not similar across states, then how will there be equal parity if a convention is called. **Senator McKenzie** replied that if there is a convention called, setting the rules for the convention will be one of the first items of business. The bill indicates that delegates would be instructed to set rules consistent with guidelines enumerated in the bill. He explained that the parity will come because the convention will have to define its own rules. The first order of business would be to limit the scope of the convention. **Senator Stennett** noted that the Constitution provides no guidance for what the ground rules for a convention would be. She asked how the convention would agree to keep the scope down to one topic. **Senator McKenzie** answered that this would happen by rules of the convention. Every application has set limits on the convention. The Constitution has also limited the convention by requiring a ratification by three-fourths of the states for anything coming out of the convention. The safeguard is the states.

Senator Davis noted that this is different than previously proposed legislation on this topic. He asked that since the Idaho Legislature only meets three months out of the year, how will the delegate know what the direction of the Legislature would be? **Senator McKenzie** replied that this

bill would provide direction, as would Idaho's application for a convention (if one is made) and also from concurrent resolution of the Idaho Legislature. He anticipated that the Governor would call the Legislature back into session if a convention was called during the legislative interim because of how historic this process would be. The only authority the concurrent resolution would have under this bill would be to expand the authority already in statute. **Senator Davis** commented that a predicate to this bill should be an amendment to the Idaho Constitution allowing the Legislature to call itself into a special session to select delegates and send them to the convention with a specific charge. He asked for Senator McKenzie's thoughts on this. **Senator McKenzie** responded that this would be a logical amendment to the Idaho Constitution. **Senator Davis** asked what would happen for the selection of delegates if there was a Governor who refused to call a special session of the Legislature, the Legislature was adjourned sine die, and a convention was called for October or November. He asked if Idaho has then been precluded from participating in the convention. **Senator McKenzie** answered that Idaho would not be precluded because a procedure could be set out in the joint rules. The easiest way to set the procedure for delegate selection is to do it in rule making during the session.

Senator Davis remarked that his historic understanding of the Senate is that one of the first motions made at the beginning of every session is a motion to adopt as temporary rules, the rules of the prior legislative session. There are not permanent rules of the Senate. Sine die means that rules of the Senate no longer have force and effect. Any other session that follows moves quickly to the 10th Order to adopt temporary rules from the prior session. He asked if there is problem for the delegates of the convention to be subject to a joint rule if those rules do not have application post Sine Die. **Senator McKenzie** answered that the delegates are subject to the statute and the limitations therein. The selection of those delegates would be established by joint rule. The only case where a joint rule would be required is if Idaho wanted to make an application to consider a new subject for possible amendment. If this were the case, then a concurrent resolution would be needed and the Legislature would have to be called back in session if they are not currently in session. **Senator Davis** stated that he is wary of having a statute presiding over the delegates between the gap of sine die and the next session.

Senator Davis spoke to the bill language referring to a "bad" delegate. He asked if the House has a bad delegate, why would the President Pro Tem have a say in the replacement delegate for that delegate? **Senator McKenzie** answered that the selection of the replacement delegate would be done by the House. The investigation to determine if a delegate is "bad" belongs to both chambers. The rules that are yet to be written for governing the selection of delegates would have to say how that delegate's place would be filled. **Senator Davis** indicated that the bill states that a vacancy would be filled jointly. **Senator McKenzie** replied that the chambers would jointly fill the vacancy pursuant to the joint rules that will be put in place. The rules would provide exactly how this would be done. There is no anticipation that the rules would be made to take away the authority of either chamber to fill a position that they had originally designated.

Senator Davis noted the language regarding the oath makes any vote taken in violation by the delegate as null and void. The credentials of that delegate are revoked by the actions of the delegate. He put forth the

scenario were he personally would give up his seat in the Senate over the ability to vote on the issue of a 1973 Supreme Court Decision. He indicated that this is a big ask for the State to require a delegate to keep an oath regardless of personal opinions. He asked for reassurance that this should be the right public policy for the State. **Senator McKenzie** answered that the State would select delegates, such as Senator Davis, who would give up their seat over an issue but would not give up their integrity or oath over an issue. Even if two-thirds of the states misjudge their delegates and send delegates that end up violating their oaths, there still has to be a ratification by three-fourths of the states on any amendment that is put forth.

Senator Davis commented that we vote as states and not as delegates. He asked for clarification regarding the revocation of delegates. **Senator McKenzie** answered that it would depend on the vote of the delegate at the meeting of the state delegates. This part was not in previously proposed legislation.

Senator Lakey asked for clarification regarding the bill and its intent. **Senator McKenzie** replied that this bill is for delegate selection. It is not a call for convention.

Senator Hill asked if the Legislature can modify this statute anytime up to the time that a convention is called. **Senator McKenzie** answered yes. **Senator Hill** noted that there is no specific expiration; if a convention is called in ten years, would this bill then go into effect? **Senator McKenzie** replied that Senator Hill was correct.

TESTIMONY:

Res Peters testified in favor of the bill. She spoke about the Founding Fathers. She commented that the delegation controls are realistic and prudent.

Don Farthingham spoke in opposition to the bill. He noted that structurally, this bill does not work because the Legislature only has statutory authority. He read a quote from James Madison. It is the sovereign power of the people that reigns supreme. He stated that there is nothing in the bill that can bind a convention.

Tom Mund spoke in opposition to the bill. He stated that the Legislature makes laws, but does not enforce them. He commented that if Congress cannot understand the Constitution, then it is left up to the states and citizens to make the necessary changes. He stated that Congress believes it has substantive authority over a full range of Article V conventions. He mentioned that any legislation regarding this issue will be moot because Congress ultimately has the authority for these conventions. **Senator Davis** indicated that he believed that Congress can say whatever they want, but the convention itself will have the power to make the rules of the convention. There is benefit for most of the states coming into the convention with a set of common rules in mind. **Senator Davis** asked for Justice Antonin Scalia's remarks to the Federalist Society in 2014 on Article V issues. **Tom Mund** answered that he does not have a copy of those remarks but would try to get a copy. He indicated that the Legislature is unconstitutional in some degree and asked a hypothetical question about how the Legislature can select Constitutional delegates.

Dale Pearce spoke in opposition to the bill. He stated that the rationale for a convention is that the Constitution must be flawed, but it is not. It might be a bit dusty but only from neglect. He expressed his gratitude for the Committee and that they have taken an oath to uphold and defend the

Constitution. He indicated that the Constitutional Convention of 1787 was a runaway convention. He listed the names of those who are pushing the convention effort. It is good council to beware of these efforts.

Walter Donnavan spoke in opposition to the bill. He indicated that the language proposed by the balanced budget convention supporters also provides for consideration in the case of a national emergency. There is no indication of what constitutes an emergency. Statues and regulations that limit delegates to certain issues in a general sense would not work. He asked for the Committee to hold this legislation.

Brian Gross testified in support of this bill. He stated that he is a United States Army veteran. He indicated that this bill addresses all the questions brought against previous legislation. He asked the rhetorical question, "How many more controls are necessary to get the Idaho Legislature to use their Constitutional authority to reign in the national Congress?"

Paula Davina spoke in opposition to the bill. She remarked that the Legislature is voting on something they cannot see. There is a tried and true way to amend the Constitution that has been done 27 times. It would be better to use the traditional means.

Craig Jensen spoke in support of the bill. He emphasized that the desire for this convention is created by the runaway federal government. There are two ways to deal with this type of government. The first is the Constitutional measures that are allowed and the second is that the people take matters into their own hands by means of a revolution. The 1787 convention had all the same concerns. He stated that the State of Idaho has to take some action before it becomes too late.

Doug Davina spoke in opposition to the bill. He remarked that this bill opens up the idea that Idaho is leaning towards a convention call. He noted that there are good legal minds on both sides of the issue. Idaho should avoid any law or rule that indicates Idaho is leaning towards a convention. He indicated that states need to consider the nullification measure in Article X of the Constitution.

Barry Peters, attorney, spoke in support of this bill. He gave an outline of the process for calling and having a convention. This bill is an important first step in the process. Idaho will be left "flat-footed" if this action is not taken.

Darryl Ford spoke in opposition to the bill. He noted that Hawaii has a list of issues to address at a convention. He indicated that the states need to get together and straighten everything out so there is no need for an Article V convention.

Julie Lynde, Convention of States, Idaho Legislative Liaison Support, spoke in favor of this bill. This is a necessary and prudent step for Idaho to be prepared. Regardless of Idaho's participation in calling a convention, once the necessary number of petitions is reached, Congress is required to call a convention.

Duncan Farris spoke in opposition to the bill. He acknowledged that this bill does not call for a convention. He quoted the United States Senate Judiciary Committee from 1984. They stated that Congress has the authority to set a convention. **Mr. Farris** said that the solution to our problems is with the Idaho Legislature. He suggested that nullification is the right course of action.

Stephen Damron spoke in favor of this bill. He observed that people are seeing no choice when it comes to reining in a runaway federal government. The only choice left is an Article V convention. He cited perceived abuses of the federal government.

Daniel Dow spoke in favor of the bill. He indicated that the reason for his support of this bill is the fear of the federal government overstepping its authority. This bill is a necessary part of addressing this issue so that Idaho will have a "place at the table."

Carol Menges spoke in favor of the bill. She explained that a meeting of states must be called to limit the abuses of the federal government. She listed some crises that have taken place because of federal abuse. Without the intervention of a convention of states, the overreach of the federal government will continue.

Vice Chairman Lodge called for further testimony that would address something that has not already be discussed.

Roxanne Wiltzie asked the Committee to consider if a special session could be called to determine who the delegates would be after a call for a convention is made. She noted that there is a concerted effort to dissolve the state borders and turn sections of the country into regions. She asked if a Constitutional Convention is called and a new U. S. Constitution is presented, has the Committee considered that the oath they have made to defend the Constitution will be to something that they have no current knowledge?

Sheila Ford advocated for the Legislature to use the power of nullification in Article X of the Constitution. The states should dictate to the federal government, not the other way around.

Senator McKenzie closed his testimony with a few remarks. He quoted Antonin Scalia when he was a law professor at the University of Chicago (see attachment 2). If a convention happens, Idaho would have to send delegates. Regardless, Idaho needs to set out a process for selecting delegates.

MOTION:

There being no further discussion, **Senator McKenzie** moved that **S 1350** be sent to the floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion. **Senator Davis** indicated that Justice Antonin Scalia talked about an Article V convention and indicated that the genius of the Constitution is its structure. Justice Scalia stated that it was a horrible idea for a convention and that this "was not a good century for a convention." **Senator Davis** indicated that he will not vote for the bill.

Senator Hill reiterated that this bill is not a call for a convention. He indicated that this bill seems to be a prudent safeguard if Idaho does need it. He stated his support for this bill.

Senator Siddoway remarked that he was concerned that those in opposition of an Article V convention speak so highly of the Founding Fathers. Though this bill does not call for a convention, the Founding Fathers put Article V in the Constitution because they thought it was necessary. The federal budget is headed to \$20 trillion in debt. To ask Congress to call a convention to reel in themselves is unrealistic. He reiterated that this bill is simply a process of selecting delegates if a convention takes place. He indicated his support for the bill.

Senator Stennett observed that there is no safeguard to keep our delegates focused only on the prerogatives of the Idaho Legislature when they are in the fray with delegates from other states that do not have the same focus. She indicated her opposition to the bill.

Senator Lakey commented that he will be supporting the bill. He reiterated that this bill does not call for a convention. He remarked that the states need to step up and fill in the gap that the federal government will not do. This bill is only a preparation for a convention.

Senator Winder stated that the bill is an improvement over previous proposed legislation. He stated his concern is that this bill only addresses some of the process and not the entire thing. He indicated his opposition to the bill.

Vice Chairman Lodge thanked all those who testified. She is concerned about an Article V convention, but this bill is to set rules. There is time to work out any problems. Idaho has to start someplace so that it can be protected. She stated her support of the bill.

The motion carried by **voice vote**. Senators Stennett, Davis and Winder asked to be recorded as voting nay.

PASSED THE GAVEL:

Vice Chairman Lodge passed the gavel to Chairman McKenzie .

ADJOURNED:

There being no further business, **Chairman McKenzie** adjourned the meeting at 10:45 a.m.

Senator McKenzie
Chair

Twyla Melton, Secretary

Assisted by Michael Jeppson