

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Wednesday, March 20, 2019

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairwoman Lodge, Vice Chairman Harris, Senators Hill, Winder, Vick, Anthon, Souza, Stennett, and Mathias (Buckner-Webb)

**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: **Chairwoman Lodge** called the Senate State Affairs Committee (Committee) to order at 8:17 a.m.

MOTION: **Vice Chairman Harris** asked for Unanimous Consent to move **S 1159** to the first order of business. There were no objections.

S 1159 **RELATING TO INITIATIVES AND REFERENDUMS.** Committee discussion only.
Chairwoman Lodge indicated there would be no public testimony since there have already been four hours of testimony and many hours of reading emails and answering telephone calls.

DISCUSSION: **Senator Mathias** stated his concern that, in order to increase voter involvement and to require additional explanatory information, the best thing to do is to remove the time allotted to accomplish those goals from the current limit of approximately 18 months to 180 days as outlined in this bill. He questioned the ability to achieve the purported aims of the bill by shrinking the timeline so drastically.

Senator Winder recalled the horse racing initiative was accomplished in less than 90 days. He remarked he did not think 180 days was unreasonable.

Senator Stennett stated that all components of this bill make it the most restrictive, not just the time frame. She commented that county clerks may cause the initiative to fail without the fault of the sponsors due to the shortened timeline.

Senator Winder quoted from James Madison, father of the U.S. Constitution regarding the Bill of Rights. "I confess that in a government modified like this of the United States, the great danger lies rather in the abuse of the community than in the legislative body. The prescriptions in favor of liberty ought, therefore, to be leveled against that quarter where the greater danger lies, namely, that which possesses the highest prerogative of power. But this is not found in either the executive or legislative department of Government, but in the body of the people, operating by the majority against the minority." **Senator Winder** remarked this was an interesting statement because people have challenged the good will and intent of the members saying items that are being proposed are unconstitutional. He stated there are valid reasons the Idaho Constitution gives the Legislature the oversight of the initiative process. He pointed out

the process should be difficult; how difficult is the debate. The Constitution is to protect the rights of the minority.

Senator Mathias responded to Senator Winder's claim the 180-day requirement seemed reasonable and commented if the requirement was taken in isolation it would be reasonable. He remarked that when proposed provisions viewed together, it becomes a serious burden. Gathering information is difficult as well, most people do not know what legislative district they live in.

Senator Stennett acknowledged it is ironic the people are being requested to do an initiative process, and yet the Legislature is not held to the same rigor. Legislation is passed repeatedly without proper fiscal notes. The Legislature rarely considers local government's long-term financial implications. The fiscal note provides no resources for the Secretary of State to educate the voters. No revenue is allocated to counties for the extra burden of verifying signatures. Rural areas should be given ample time to do all that is expected. She remarked the only people who testified in support of the bill were lobbyists. Out of the thousands of emails, phone calls, and testimony, she has not heard a single person who was part of this initiative process who support this bill.

Senator Souza provided an example of someone who asked her why there was a fiscal note on the initiative. The person thought the Legislature took care of the cost after the process. Most people do not realize the initiative process bypasses the Legislature entirely after the required signatures are gathered. The initiative goes to the Governor who decides whether to sign it or not. If the initiative is signed, it becomes law and the Legislature has no say. What is interesting is that the legislators are being told that the legislative process is not thorough enough. **Senator Souza** remarked her concern is that many people do not understand that in the legislative process, a bill gets drafted. **Senator Souza** explained the full process of putting a bill before the Legislature from when the Legislative Services Office (LSO) crafts the proposed legislation until it is sent to the full body of the Senate or the House. Once approved, the bill is sent to the other side of the legislative body to begin the process. Both the House and the Senate have to approve the bill before it is sent to the Governor.

Senator Souza noted it is very important that everyone understands; when people walk up to a signature gatherer, they need to know what the initiative is about, why it is needed, and how much it is going to cost them as taxpayers now, and in the future.

MOTION:

Vice Chairman Harris moved to send **S 1159** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion.

DISCUSSION:

Senator Stennett stated she would not be able to support the motion. She stated she had hoped the Committee would at least give consideration to allow more time to thoroughly examine the bill. She asked for a roll call vote.

Senator Mathias remarked he was in support of Senator Stennett's remarks. He stated he would not be supporting the motion. He noted it seemed there was a deep irony that in an attempt to avoid becoming like another state whose legislative impulse is to impose new restrictions and fiscal impact statement requirements on the people, that this is the route the Committee has decided to pursue.

Senator Winder remarked he has struggled with the bill and there is an error that needs to be addressed. The timing and the image of the bill is not good. He stated there is a reason to be concerned about the initiative

process and to realize the Legislature does not have the Constitutional oversight in this process.

Vice Chairman Harris stated it is important the rural areas continue to have a voice in what is and what is not put on the ballot. He remarked he has looked and watched other states as the larger cities in those states have brought forth legislation. The rural areas of the states do not have any voice until the vote is before them. It is very important the ability to do an initiative is spread throughout the state as much as possible and this bill does that to an extent by extending the legislative districts to 32 out of 35. That is important in future initiatives.

Senator Winder addressed what the initiative really was trying to accomplish and that was to get Medicaid expansion. He stated the Senate has reacted well to that initiative. He stated he hoped the Legislature would receive some credit for listening and moving forward with what the initiative actually accomplished. He remarked he wanted to assure the public that the Senate has made an effort to hear what the people said and to bring forward the funding without any sideboards.

Senator Anthon stated he wanted to withdraw the second on the motion based on what the Majority Leader, Senator Winder, stated was a fatal flaw in the bill. He wanted to make a substitute motion.

MOTION:

Senator Anthon moved to send **S 1159** to the 14th Order of Business for possible amendment. **Senator Vick** seconded the motion.

DISCUSSION:

Senator Hill stated there was an original motion with the second withdrawn and queried if Senator Anthon's motion has become the primary motion or was it a substitute motion. He asked Chairwoman Lodge to rule on this item. **Vice Chairman Harris** withdrew his motion for lack of a second.

Senator Stennett reported she was not comfortable with sending the bill to the amending order. She suggested the bill stay in Committee. She voiced her concern that the Legislature is responsible for what kind of legislation goes forward. She expressed trepidation about the difficulty of changing this bill. She remarked this bill will allow companies and big money from outside of the state to take over the process, pedal initiatives to the state from a national platform, and bring in and pay themselves to buy signatures to bring initiatives that are not reflective of Idaho politics and people.

SUBSTITUTE MOTION:

Senator Stennett moved to hold **S 1159** in Committee. **Senator Mathias** seconded the motion.

**ROLL CALL VOTE ON
SUBSTITUTE MOTION:**

Senator Stennett called for a roll call vote. **Vice Chairman Harris** and **Senators Hill, Vick, Anthon, Souza** and **Chairwoman Lodge** voted nay. **Senators Winder, Stennett,** and **Mathias** voted aye. **Senator Winder** changed his vote to nay. The motion failed.

Chairwoman Lodge called for the vote on the original motion to send **S 1159** to the 14th Order of Business.

**ROLL CALL VOTE ON
ORIGINAL MOTION:**

Vice Chairman Harris and **Senators Winder, Vick, Anthon, Souza** and **Chairwoman Lodge** voted aye. **Senators Hill, Stennett,** and **Mathias** voted nay. The motion carried.

DISCUSSION:

Chairwoman Lodge thanked all for attending and for the attention and courtesy shown. She said the Committee has listened and worked hard on this bill. This has not been brought about by Medicaid. **Chairwoman Lodge** stated she was very active in the horse racing initiative and understood the initiative process and how difficult it is to gather signatures.

**VOTE ON
GUBERNATORIAL
APPOINTMENT:**

THE GUBERNATORIAL APPOINTMENT of Thomas J. Wilford to the Idaho Endowment Fund Investment Board.

MOTION:

Senator Vick moved to send the Gubernatorial appointment of Thomas J. Wilford to the Idaho Endowment Fund Investment Board to the floor with the recommendation that he be confirmed by the Senate. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

RS 27130C1

REQUEST FROM THE HEALTH & WELFARE COMMITTEE relating to Medicaid and health risk assessments.

Senator Martin explained the purpose of Section I of this legislation is to direct the Idaho Department of Health and Welfare (IDHW) to research options related to Medicaid coverage of behavioral health services for adults between the ages of 21 and 64 in hospitals or nursing facilities of more than 16 beds that are primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, also known as institutions for mental diseases. Recent federal guidance has allowed states to receive waivers to provide this coverage, which may be advantageous for Idaho citizens.

Senator Martin reported the purpose of Section II of this legislation is to ensure that all individuals eligible for Medicaid have access to the Work Services Program (WSP) which will provide opportunities for participants to create pathways to employment in their communities, including access to job search, career coaching, job training, and educational opportunities. Enrollment in the WSP will be made available to everyone enrolled in the Medicaid program. Individuals will be given the opportunity to enroll in the WSP at application and renewal of Medicaid eligibility.

Senator Martin outlined the purpose of Section III. There are three elements: 1.) implementation of Proposition 2 shall not be delayed due to action or inaction of the federal government; 2.) should Congress amend or a court order set aside 42 U.S. Code § 1396(y), the Legislature may declare Idaho Code § 56-267 null and void; 3.) should the federal participation rate for funding fall below 90 percent, this section of Idaho Code § 56-267 shall become null and void.

Senator Martin explained the cost and continuance of certain programs. He gave some estimated percentages of people that use the indigent program. He noted there should be some savings in the program.

MOTION:

Senator Hill moved to send **RS 27130C1** to print. **Vice Chairman Harris** seconded the motion.

DISCUSSION:

Senator Winder referred to page 8, section 5 of the bill and stated, as he understood the testimony, that if item 4 was declared unconstitutional or the percentage was below 90 percent, Idaho Code § 56-267 of the bill would become null and void. **Senator Martin** indicated if the Affordable Care Act (ACA) is held unconstitutional, the Legislature may declare this section to be null and void and not in effect. His intention was for the Legislature to have the opportunity to decide what is best for the State of Idaho and not be totally controlled by outside forces.

Senator Stennett asked for further explanation of pages 1 and 2 as it pertained to substance abuse disorders or mental health disease. **Senator Stennett** and **Senator Martin** discussed Institution for Mental Diseases (IMD) waivers and the universal desire to request that waiver. **Senator Martin** explained what happened with the waiver. The Idaho

Department of Health and Welfare (IDHW) has proceeded to start the IMD waiver, which would shift the costs of services from medical facilities through Medicaid expansion to the federal government.

VOTE:

The motion to send **RS 27130C1** to print carried by **voice vote**. **Senator Stennett** and **Senator Mathias** asked to be recorded as voting nay.

RS 27126

A CONCURRENT RESOLUTION extending temporary rules, with exceptions.

Vice Chairman Harris reported the concurrent resolution approves all temporary rules adopted by state agencies and submitted to the Legislature for review during the 2019 legislative session, with the exception of the following dockets: Idaho Administration Procedures Act (IDAPA) 25.01.01, the Idaho Outfitters and Guides Licensing Board, **Docket Number 25-0101-1802** in its entirety; and IDAPA 29.01.03, the Idaho Potato Commission concerning Rules Governing Nominations for Appointment as a Commissioner to the Idaho Potato Commission, **Docket Number 29-0103-1802** in its entirety.

RS 27127

A CONCURRENT RESOLUTION approving administrative rules that impose a fee or charge, with exceptions.

Vice Chairman Harris stated **RS 27127** explained Idaho Administration Procedures Act (IDAPA) 24.28.01, Rules of the Idaho Bureau of Occupational Licenses of the Barber and Cosmetology Services Licensing Board, Section 851., Subsections .05, .06, and .07., only, adopted as pending fee rules under **Docket Number 24-2801-1802**; and IDAPA 26-01.10, Rules of the Idaho Department of Parks and Recreation, Rules Governing the Administration of Temporary Permits on Lands owned by the Idaho Department of Parks and Recreation, adopted as pending fee rules under **Docket Number 26-0110-1701**, the entire rulemaking docket.

MOTION:

Senator Souza moved to print **RS 27126** and **RS 27127**. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL:

Chairwoman Lodge passed the gavel to Vice Chairman Harris.

RS 27144

RELATING TO CAMPAIGN FINANCE to appoint a committee to study issues related to campaign finance reform.

Chairwoman Lodge reported this legislation would authorize the Legislative Council to appoint members of the Senate and House to the Campaign Finance Interim Committee (CFIC) to continue to study issues relating to campaign finance reform in Idaho. The goal of the CFIC will be to bring "sunshine" and confidence into political activities by candidates, lobbyists, political action committees, political committees, and political parties. She noted the CFIC cost is not expected to exceed \$10,000 and will be paid out of the Legislative account.

MOTION:

Senator Anthon moved to send **RS 27144** to print. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL:

Vice Chairman Harris passed the gavel back to Chairwoman Lodge.

H 169

RELATING TO FEDERALISM to add a new chapter, create a committee, and to provide a sunset date.

Representative Monks indicated the purpose of this legislation is to create a committee on federalism. The committee will monitor and review federal acts, laws, and regulations that may potentially impact the jurisdiction, governance, and sovereignty of the State of Idaho. **Representative Monks**

reported similar committees typically cost the General Fund between \$10,000 and \$15,000.

Representative Monks noted that oftentimes federal government programs require the State to participate financially. This committee will look for ways that Idaho may maintain control. He explained the reason there is a sunset clause is for the committee to find out if the time spent is worthwhile and serves a good purpose. He referred to some pending legislation and stated it is essential the Legislature look at ways to implement what the state does as opposed to only doing what the federal government mandates. He cited a few court cases and pointed out the U.S. Supreme Court has recognized the relationship between the states and federal government. States cannot be forced to inappropriately implement a federal program. The relationship between the states and the federal government will continue to be an important issue.

DISCUSSION:

Vice Chairman Harris and **Representative Monks** discussed the makeup of the committee and whether eight members were enough.

Senator Stennett inquired if the level of authority of the committee would dominate over the Legislature and other government entities.

Representative Monks stated the role of the committee is only advisory. They discussed the cost of travel expenditures for the committee and the hiring of outside legal counsel as opposed to using available resources within the state.

Senator Mathias commented this is a very interesting proposal and it is important that states do a better job of monitoring the nature and extent of the power given to the federal government and the repercussions that the federal government has on the states. He queried how one determines whether someone is knowledgeable about the U.S. Constitution.

Representative Monks stated he thought legislators are knowledgeable because of their jobs at the Capitol. They are constantly re-reading both the U.S. Constitution and the Idaho State Constitution. The determination is left up to the President Pro-Tempore of the Senate and the Speaker of the House to choose members of the committee with experience and knowledge. **Senator Mathias** stated he would like to see other components included in choosing the committee members. **Representative Monks** mentioned others are invited to testify and may be of value.

Senator Winder queried if there was a way to combine the committee of federalism and the oversight committee of the Federal Lands Council and others and identifying an overall oversight committee so this becomes one of a set of subcommittees that would deal with transportation, education, and so on. This may downgrade the federal lands issue and put it more on a par with other ongoing issues. **Representative Monks** indicated he would be open to ideas and suggestions.

TESTIMONY:

Bryon Brooks, Idaho Wildlife Federation, spoke in opposition to this bill. He stated this bill creates a committee that has no power. The fiscal note is grossly understated.

DISCUSSION:

Senator Vick and **Mr. Brooks** discussed the purpose of interim committees, saving millions of dollars, and setting parameters for the committee.

Senator Mathias stated the courts have ruled on issues dealing with federalism and this committee could prevent costly litigation. **Mr. Brooks** stated this committee would be duplicating services already in place.

TESTIMONY: **Jonathan Oppenheimer**, Government Relations Director, Idaho Conservation League, testified in opposition to the bill. He stated this bill is redundant. The fiscal note does not provide for the costs the committee would incur.

DISCUSSION: **Representative Monks** stated every fiscal note is an estimate. Additional moneys would have to be approved. The purpose of the committee is to look at the federal government and not allow the courts to determine what Idaho can and cannot do.

MOTION: **Senator Winder** moved to send **H 169** to the 14th Order of business for possible amendment. **Senator Vick** seconded the motion.

DISCUSSION: **Senator Winder** made a comment about federal and state lands issues. He stated legislators should be self-educated as they work with public policy. He reported the fiscal note has controls in place when outside counsel is necessary. Legislators have a constitutional obligation to work with the federal government on all issues. He encouraged the supporters to come up with an amendment.

Senator Hill referred to a letter he received from Speaker Robin Voss of the Wisconsin Assembly on the issue of federalism. He quoted a few sentences where Speaker Voss encouraged Senator Hill to consider creating a task force, working group, or a standing committee to explore exercising the authority granted to states through federalism. Speaker Voss indicated in his letter this is an important step in pushing for states to be the principal policy makers in the relationship with the federal government. This has to do with the relationship at the legislative level with the government as well as the executive level and there are many agencies that are dealing with this. He urged agencies to negotiate the relationship they have with their federal counterparts. This could save money and add to the whole relationship of federalism that is very important. **Senator Hill** stated he was in support of the motion.

VOTE: The motion to send **H 169** to the 14th Order of Business for possible amendment, carried by **voice vote**. **Senators Stennett** and **Mathias** asked to be recorded as voting nay.

MINUTES APPROVAL: **Vice Chairman Harris** moved to approve the Minutes of January 30, 2019. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

Senator Winder moved to approve the Minutes of February 1, 2019. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairwoman Lodge** adjourned the meeting at 9:58 a.m.

Senator Lodge
Chair

Twyla Melton
Secretary

Assisted by Linda Kambeitz