

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Friday, March 17, 2023

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Guthrie, Vice Chairman Bernt, Senators Winder, Anthon, Harris, Lee, Toews, Wintrow, and Ruchti

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 Guthrie** called the meeting of the Senate State Affairs Committee (Committee) to order at 8:00 a.m.

RS 30656 **Relating to Candidates - Amends Section 34-704, Idaho Code.**

RS 30658 **Relating to Elections - Amends Section 34-102, Idaho Code.**

RS 30659 **Relating to Minors - Amends Section 18-1515, Idaho Code.**

RS 30660 **Relating to Minors - Amends Section 18-1520, Idaho Code.**

MOTION: **Senator Harris** moved to send **RS 30656, RS 30658, RS 30659, and RS 30660** to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

RS 30661 **Stating Findings of the Legislature, Recognizing, Honoring, and Commending Glenn Harris for his Years of Service to the Idaho Legislature, its Employees, and the People of the State of Idaho, and Wishing Him Well in his Retirement.**

MOTION: **Senator Anthon** moved to send **RS 30661** to the **10th Order of Business** for consideration. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

S 1141 **Liquor - Amends existing law to revise a provision regarding licenses for waterfront resorts.** **Senator Nichols** presented this as an economic bill that would create a stretch from the Diversion Dam to the Middleton Bridge by amending the stream flow required to make the area eligible for waterfront liquor licenses. This created an incentive to build waterfront resorts along that area of 44.2 miles to attract hotels, restaurants, bars, and shops. It had a nontransferable license and the language was vetted by Idaho State Police and deemed enforceable. She referenced a letter from Mayor John Evans, of Garden City, who was supportive of this, and a map of the area of impact (Attachment 1). Public access to the river was not impeded and the high-value projects would generate revenue to offset taxes.

Brody Aston, Westerberg and Associates, characterized this as an economic development bill. The existing waterfront license existed in statute. He said the New York Canal and Barber Diversion Dam created the stretch down to the Middleton Bridge that was open for development. The waterfront license required either a hotel or a restaurant, and public access to the river. He asserted there were significant investments that went into this type development.

TESTIMONY:

John Evans, Mayor of Garden City, and Jim Addis, Transparent Policy Group, registered to testify in favor of **S 1141**. Emilie Jackson-Edney registered her opposition to **S 1141**.

Mayor Evans informed of about 5.5 miles of river frontage that ran through his town of 13,000 people and over 1,500 businesses. This bill would provide incentive for valuable developments along the river corridor, which would be a direct benefit to the residential property taxpayers in Garden City. **Mayor Evans** explained a significant percentage of the housing stock was aging mobile home parks, aging low-value rentals, and subsidized housing that consumed a disproportionate load on public safety. High-value development projects would put downward pressure on property taxes for homeowners.

Senator Lee shared there had been lots of proposals before the Committee for carve outs for liquor licenses. Philosophically, how was this not a pay to play situation? **Mayor Evans** said capitalism was the answer. Those who had the resources to develop waterfront property were in play. That was how the Riverside Hotel was revitalized. Garden City received nearly a million dollars a year in new permit applications. Revitalization also brought complimentary development to the area. He felt being able to take advantage of the Boise River benefited his entire population. Those who payed created value that helped him care for the people in the 1,700 trailers in his town.

Senator Wintrow asked about public access and easements that needed to be safeguarded. **Mayor Evans** responded, there was a systematic effort to continually upgrade the Greenbelt. He talked about different accesses and paths to the river. He hoped for another hotel at the west end of town that would mean another liquor license. If this bill passed, he believed it would be an economic boon to Garden City.

Jim Addis, Transparent Policy Group, said the benefit of this bill was private dollars coming in to develop land along the referenced corridor. Private money provided jobs for citizens, broaden tax bases, and provided services. He reported the land was currently going for a million dollars an acre. The increased value of commercial land put significant downward pressure on residential property taxes. The liquor licenses were not resold in the open market but transferred with the facility. He repeated it was private money.

Senator Nichols closed by saying the bottom line was capitalism. This created development and the businesses would benefit a larger area than residential development could generate.

Senator Lee appreciated capitalism but wondered why Senator Nichols supported this carve out bill and not others that had been on the floor. **Senator Nichols** said this one impacted a larger area, where some others were one-off types of things. She believed this did more for more people. **Senator Lee** wanted to quit doing one-off projects. **Senator Nichols** stated if someone had a project and the state was in the way of them being able to develop it, the state should take a look at it.

Senator Bernt commented the liquor laws needed to be fixed. He felt it important to pass sound liquor license laws. He speculated this would create a positive impact to Garden City and other areas along the river. He was in support of the bill.

Senator Winder pointed out lines 19-24 of the bill talked about the flow of the river. He said during the irrigation season, water was drawn from the Diversion Dam. He wondered where the measurement took place. **Brody Aston** responded

several measurements were done along the river. **Senator Winder** asked if it was measured at the Diversion Dam. **Mr. Aston** said the last 10 years of flow rates were considered looking at records from the Barber Bridge down to the Middleton Bridge. Beyond there, the river did get lower.

MOTION: **Senator Toews** moved to send **S 1141** to the floor with a **do pass** recommendation. **Senator Bernt** seconded the motion.

DISCUSSION: **Senator Anthon** commented much was said about liquor laws over the years and he generally supported the carve outs. He stated the liquor laws were archaic and often dealt with through carve outs. He recalled when he voted for carve outs, he was told he did not like freedom, was illogical, or was discriminating in the market place. He stated he would support this motion.

Senator Lee characterized this as a good piece of legislation, but she cautioned about carve outs and encouraged the Committee to stay steady and push something through that would be fair for everyone. Large carve outs did not provide a path forward. Therefore, she would not support this bill.

VOICE VOTE: The motion carried by **voice vote**. **Senator Lee** requested to be recorded as voting no.

H 239 **VOTING - Amends existing law regarding the unlawfulness of an alien voting in Idaho.** **Rep. Hawkins** declared this bill cleaned up of some election laws. It would prohibit non-citizens of the United States from participating in elections at every level in the state. In 1996 the legislature adopted the same laws as the federal government put in statute so no one could vote in a federal election if they were not a United States citizen. He continued that states did different things down through the municipalities. This bill cleaned up laws to prevent non-citizens of the United States from voting in any elections.

MOTION: **Senator Winder** moved to send **H 239** to the floor with a **do pass** recommendation. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

S 1145 **National Guard - Adds to existing law to establish the Defend the Guard Act. INFORMATIONAL HEARING - NO VOTE.** **Senator Adams** provided a booklet (Attachment 2) and shared this bill declared the Idaho National Guard (ING) could only be deployed into combat situations if the Congress of the United States (Congress) formally declared war. He shared some of his and his family's military history, including his two Marine combat tours to Afghanistan. He acknowledged many people considered some of these to be anti-war legislation. He expressed his belief in just war and said this legislation pointed in that direction. He wanted this informational hearing to spur action to only send ING soldiers into combat after Congress officially declared war.

TESTIMONY: Daniel Bobinski, Kent Burns, Nicolas Gatejen, James Kroenke, Dan McKnight, and Ryan Spoon testified in support of **S 1145**.

Dan McKnight, a 13-year veteran of the United States Marine Corps, the United States Army, and the Idaho Army National Guard, started Bring our Troops Home in 2019 to advocate for an end to undeclared wars for America. Bring our Troops Home communicated with over 100,000 veterans every week on the issue of undeclared war and had bill sponsors in 40 states. **Mr. McKnight** reported that for 80 years Congress abdicated its responsibility to Article I, Section 8, Clause 11, and since World War II let the President take the nation into endless, undeclared wars like Korea, Viet Nam, Iraq, Afghanistan, Yemen, Syria, Djibouti, Chad, Congo, etc. **Mr. McKnight** said the only way to restrain that was for the states to interpose. He claimed, at the height of the war in Afghanistan and Iraq, 45 percent of all boots on the ground were from the militias of the states, with 20

percent of the casualties to National Guard servicemen. He believed the National Guard should fight America's wars, but Article I, Section 8, Clause 15 of the Constitution, the Militia Clause, stated the militia could only be called into federal service for three purposes: 1) To repel an invasion; 2) to put down insurrection; and 3) to enforce the laws of the union. When Congress debated and found an issue so important to declare war, the resolution went to the President's desk. When the President signed a Declaration of War, it became the law of the union. Then the National Guard could be federalized under Title 10 and sent to fight America's wars with a clear purpose and definition of victory with oversight from Congress. **Mr. McKnight** claimed the last 80 years there had been no oversight from Congress, no sidebars, no restrictions, and no budget limitations. Defend the Guard would protect the state's authority over its militia and interpose between citizens and an arbitrary power in the federal government. He concluded with a comment from the American Legion, "Our nation's founders made clear that a Declaration of War is the solemn and sole responsibility of the U. S. Congress. A strong national defense is an original pillar of the American Legion. Forever war is not. The American Legion calls on Congress to once again follow the text of Article I, Section 8, Clause 11 of the Constitution."

Ryan Spoon graduated from the United States Military Academy at Westpoint in 1998 and served five years as an active duty Army officer. After training, his duty stations were at overseas military bases. He recalled 16 classmates died since their graduation in 1998. Most died during military deployments and two died of suicides. The class of 1999 lost 25 members. He reminded the Committee of many warnings by the founding fathers about the folly of becoming entangled in endless foreign wars. Because of their concerns, the Constitution required funding for the Army be reapproved by Congress every two years. It was hoped the precaution would prevent formation of a permanent, standing professional Army to prevent engaging in the empire building they threw off from Great Britain. **Mr. Spoon** quoted from George Washington's address to the nation in 1796, which he wrote with the help of Alexander Hamilton and James Madison. He urged the nation to steer clear of permanent alliances with any portion of the foreign world. Five years later, Thomas Jefferson expounded on the theme saying America should have peace, commerce, and honest friendship with all nations, entangling alliances with none. **Mr. Spoon** noted Washington and Jefferson were not political allies, but when it came to foreign alliances and foreign wars, they stood together. He continued, our ancestors did not bleed and die for freedom so we could keep their descendants bound in an endless cycle of foreign warfare. He closed with a warning that foreign wars did not protect America, or that it was our patriotic duty to fight them. He said patriotism was assuring American blood was only spilled when absolutely necessary to ensure national survival. He asked that the ING only be used to defend the American homeland and urged the Committee to vote yes on **S 1145**.

Senator Winder asked Mr. Spoon the motto of Westpoint. **Mr. Spoon** replied it was duty, honor, country. For him it meant duty to his oath, honor in the cadet code (not to lie, cheat, or steal, nor tolerate those who do), and country, which was the Constitution, the principles on which the country was founded.

Dr. Daniel Bobinski said he was a six-year, active duty veteran of three deployments, and he had a 20 percent, service-connected disability. He shared he swore an oath to give his life for this country, and would do so again for the right reasons. After studying the Constitution, he realized much of what occurred in the halls of government did not necessarily align with the Constitution. He spoke about the Articles of Confederation and historical writings that recognized the sinful nature of man's heart and a desire to acquire power. He said the

founders recognized a need to separate power and the Constitution became the law of the land. **Dr. Bobinski** asked the Committee to help keep the Republic. He said Article I, Section 8, Clauses 11 and 15 were ignored by Presidents on both sides of the aisle when sending our men and women overseas to fight and die in undeclared wars. He cited the powers listed in Article I that were granted to Congress only, not the President, to declare war. He quoted Clause 15, which authorized Congress, not the President, to "...call forth the militia to execute the laws of the union, suppress insurrections, and repel invasions." Today's militia was represented by the National Guard and Reserve forces, with the Governor as commander in chief. **Dr. Bobinski** repeated, the President did not have Constitutional authority to send our citizens to fight undeclared wars overseas.

James Kroenke retired after 21 years in the ING. He was deployed to Bosnia in 2002, Afghanistan in 2006 and 2012. In 2005 he went to Iraq as a Department of Defense (DOD) contractor. He said he joined the ING to support Idaho. His deployment to Bosnia was extended as a ramp up to Iraq. He was surprised how many times ING was called out to Iraq and Afghanistan. As a soldier, he was trained to take the battle to the enemy so they did not attack us on our soil. The human cost of war was never accounted for. Soldiers returned with physical wounds that healed, but the emotional and mental wounds never healed. Soldiers paid the price of war. With each deployment, he wondered why he was there, why taxpayer money was being wasted, and why it was okay to end American lives fighting endless wars. Questions about deployment were met with the comment to write the Congressmen. Congress wrote a blank check to the President in Desert Storm recruiting the use of military force in a conflict whenever and wherever. Congress was voted in to represent Idaho but it passed its responsibility on to the President. Mr. Kroenke simply wanted the Constitution he agreed to defend with his life to be honored by Congress, who were elected to uphold and protect it. He felt this bill would stop Congress from passing the buck and protect Idaho's service members.

Kent Burns served eight years in the U. S. Army and 14 years with ING. He deployed to Bosnia in 2002-2003, Afghanistan in 2005-2007, and back to Afghanistan from 2009-2010 as a member of Task Force ODIN, which was observe, detect, identify, and neutralize. As a retired, disabled veteran he came to offer support for Defend the Guard. The last time Congress declared war was World War II, after Japan bombed Pearl Harbor. Congress declared war within 72 hours of the bombing. The declaration was immediately signed by the President. Between the Pearl Harbor attack and the signing of the Declaration of War, Congress convened, discussed, debated, and represented the will of their constituents before making the solemn declaration. **Mr. Burns** stated America was 11-0 in wars declared by Congress. Over the next 80 year, America was repeatedly cast into wars without Congressional declarations. What was America's win/loss record in the 80 years after the last Declaration of War? Congress had the sole power to declare war according to the Constitution. **Mr. Burns** felt betrayed by the government and left with physical, mental, and emotional scars as the visual cost of war. He was not relieved of his duty or oath. He encouraged the Committee to learn more about Defend the Guard.

Nicholas Gatchen said war was an uncomfortable but vital topic to discuss. When he was 17 years old he joined the U. S. Army and ING and was deployed. He reminded that war powers resided in Congress, not the executive branch. In order to go to war, Congress must declare it with a declaration. He repeated the last Declaration of War by the Congress was World War II. He stated ING was different than the active and reserve components of the armed forces. He noted the undeclared wars in Afghanistan and Iraq were where ING were deployed. **Mr. Gatchen** stated war was hell and did not just impact those on the battlefields, but

for generations to come. When there was another war, how would Idaho respond. If Idaho's blood was to be spilled, the least Idaho could do was require Congress to declare war before deploying the ING. If Congress was not serious enough to declare war, keep ING home until they do.

Senator Adams closed by sharing this topic was close to his heart. He recalled people telling him that they joined the military or ING to serve their country. But he noted the military did not run the military, it was a civilian run military. The channel for waging war was through Congress and this should concern everyone.

S 1110

Elections - Amends existing law to provide for open-source software, to provide a requirement for a vote tally system, to provide that the county clerk post a sample ballot and the open-source software used, and to provide legislative intent regarding certain duties of the Secretary of State. INFORMATIONAL HEARING - NO VOTE. **Senator Hart** explained this bill was about voting machines technology. It required two things: 1) Software used in association with a voting machine used to count votes, be open source software; and 2) when the paper ballot ran through the machine, that they be time stamped so forensic sampling ballots could be reassembled. Software used to count votes was intellectually protected property. In other words, a black box that we did not know the content. This bill required software to be open source software, where the source code was published and experts could examine the software for legitimacy.

TESTIMONY:

David Clements, Joseph Gish, Tim O'Donnell, and Matt Roe spoke in support of **S 1110**. Alicia Abbott registered her opposition to **S 1110**.

Tim O'Donnell was a senior administrator of Election Integrity Idaho, a grassroots, volunteer group of 500 members throughout the state. His education included a Master's degree in computer science, and he spent the past 30 years developing software, managing databases, and working with streamlining technology for companies. The last two years he learned all about elections. Research revealed an election crisis in the late 1800s. Back then secret ballots were not widespread and vote buying and coercion compromised the integrity of elections. With the secret ballot, vote buying became ineffective because the person you bribed might not have voted the way you bribed him to vote. Secret ballots spread rapidly and was eventually guaranteed in the state constitution. If people failed to vote for not trusting elections, that was a form of disenfranchisement. The legislature should solve the problem. He read from the Carter Center, "We know that public information and transparency, the ability of citizens to see into and understand the legal and administrative mechanics of the election were key to bolstering trust."

Mr. O'Donnell's group identified 13 areas for improvement. One area was the fundamental issue addressed by this bill. The two voting system vendors in Idaho used proprietary technology, which was not transparent. There was no access to source codes, databases, audit logs, or file systems before, during, or after an election. That meant neither the citizens, nor the clerks had access to the technology. Moving to open source software would de-mystify what went on inside the black boxes. The era of running elections on proprietary technology had to end and this bill was a step in that direction.

Matt Roe, head of products at Voting Works, a nonpartisan, nonprofit organization that built open source election technology. He testified to what open source software was, how it applied to election administration, and how it increased public confidence in elections. The word source referred to source code, the set of instructions written by programmers that a computer followed to achieve the software behavior. The source code was usually secret, available only to the original programmers. In contrast, open source software was one where the

source code was universally available to anyone wanting to see it. Much of the software used today was open source, including web browsers and most of the software that powered the internet. The benefit was transparency for review of the software. **Mr. Roe** explained that in election processes, open source transparency provided a common ground of facts everyone could trust because it could be verified. Allegations of internet connected voter systems or malicious code that changed votes could be dispelled by a publicly available source code. All open source software was open and any computer expert could conduct a technical review. The Little Hoover Commission, an independent, bipartisan state oversight agency, concluded the open source voting system was the most important improvement to make the California election infrastructure. Similarly, the Special Committee on Voter Confidence in New Hampshire also included open source voting machines as a key recommendation to instill trust in the state elections. **Mr. Roe** said **S 1110** increased the transparency and security of elections in Idaho by requiring open source software. He cautioned it was only one layer in trust building.

Professor David Clemens was a former law professor of intellectual property. He reported some of the proprietary software companies did not have to submit their source code to hearings. He noted 74 percent of Republicans had no faith in elections. He urged restoring confidence in elections through an audible trail with tabulators. He claimed there were alarming issues with the voting machine black boxes. For instance, in Arizona there was a 50 percent tabulator malfunction rate in the governor race. He cited three things necessary to move forward: 1) Examine the source code; 2) cast vote records (replay of elections) and note the anomalies; and 3) certify the tabulators. Clerks were required to certify the black boxes days before elections, but clerks had no clue how the box operated (other than what the vendor said.) He encouraged audit trails to restore confidence in elections.

Joseph Gish presented a bill last year to release vital statistic information on deceased voter lists. That information removed 1,200 deceased voters from the voter roll. He viewed this as a similar effort to clean up and secure the voter system. Mr. Gish had a Bachelor's degree in computer science from Texas A & M University and worked at Boeing for decades dealing with software. He reviewed this bill and said he echoed what other speakers talked about. He said transparency was a right of voters to observe elections. Now with the black boxes, counting was completed within the box and at the very least we should see the source code that was counting the ballots. Technically, open software gave a million eyes finding the vulnerabilities, which could then be fixed. He stated the need for open source software in voting systems, which extended to configuration control. In Mesa County Colorado there was a sequel database made in the Dominion machines. Nefarious sequel software called Sequel Management Studio that duplicated databases and then allegedly manipulated votes after the count was done. Any open source solution for Idaho needed to look into the configuration control of the machine, which should also be open source. Open source software allowed multiple ways for auditing. He was very supportive of the bill

Senator Winder recalled a problem in the last election was the idea anybody could make any charge they wanted in the public square without verification. He asked if there were independent, third party certification processes that could be done and did each box have to be checked. **Mr. Gish** presumed tabulating machines differed throughout counties. He questioned if all of them had the same software. He cautioned that anyone wanting to attack the voting system would look for a central point to attack that would affect the entire election. He liked having different vote counting machines so they did not all have the same version

of software, which eliminated a single point of failure. With open source software, the state could hire a consultant to compile the open source and audit the images.

Senator Hart concluded that the bill had an effective date of January 1, 2027. He anticipated it would be a difficult issue to get correct so he allowed time to get it done. **Senator Winder** asked Senator Hart to be part of a working group.

GUBERNATORIAL APPOINTMENT VOTE: **Senator Winder** moved to approve the gubernatorial appointment of Gabriel Iacoboni to the Bingo-Raffle Advisory Board to serve a term commencing March 1, 2023 and expiring January 7, 2025. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT VOTE: **Senator Winder** moved to approve the gubernatorial reappointment of Shelly Enderud to the State Building Authority for a term commencing January 1, 2012 and to expire January 1, 2026. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Guthrie** adjourned the meeting at 9:29 A.M.

Senator Guthrie
Chair

Joyce Brewer
Secretary