

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Friday, February 26, 2016
TIME: 8:00 A.M.
PLACE: Room WW55
MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Lodge, Senators Davis, Hill, Winder, Siddoway, Lakey, Stennett and 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: **Chairman McKenzie** called the meeting of the Senate State Affairs Committee (Committee) to order at 8:00 a.m. with a quorum present.
GUBERNATORIAL APPOINTMENT: The Gubernatorial appointment of Michael "Mike" Mark Mooney to the Idaho Energy Resources Authority (Authority).

Mr. Mooney provided a brief history of his professional experience, highlighting his 42 years in the banking industry and membership on several regional boards around the State.

Senator Winder thanked Mr. Mooney for coming before the Committee and asked about the work of the Authority and how his background will complement this work. **Mr. Mooney** explained that the Authority is a conduit to help fund rural transmission and generation projects, with specific emphasis on expanding and improving transmission lines.

Chairman McKenzie thanked Mr. Mooney and indicated that the confirmation vote will take place at the next Committee meeting.

S 1342 RELATING TO PUBLIC SCHOOL INSTRUCTION to provide for when the Bible can be used for reference.

Senator Nuxoll, District 7, presented **S 1342**, which allows the Bible to be used as a reference in public schools by codifying a practice already allowable under current law. She pointed out that this legislation is intended to alleviate any fear or confusion for teachers, students or parents who wish to use the Bible for reference purposes. **Senator Nuxoll** specified that the use of religious texts is not required nor is the teaching of doctrine permitted. She commented on the history of the Bible as it pertains to Western civilization and world history. **Senator Nuxoll** then referenced legal opinions that support the constitutionality of this legislation and listed other states that have enacted similar laws (see attachment 1).

Senator Stennett noted that there is no reference to religion in the United States Constitution and, when taking into consideration the intent of our Founding Fathers, questioned why there is a need for this legislation. **Senator Nuxoll** responded the Founding Fathers believed the Bible was not sectarian nor denominational but a universal book. **Senator Stennett** commented that in our nation's history, other religious texts have been utilized as teaching tools, but such function was never codified.

Senator Buckner-Webb questioned why other religious texts, such as the Quran or Torah, are not included in this discussion, and expressed concern about focusing solely on the Bible. **Senator Nuxoll** replied that other faiths typically utilize the Bible, which is considered a universal book. **Senator Buckner-Webb** noted that other religious texts may be just as significant and that placing a higher value relative to other texts is concerning. **Senator Nuxoll** stated that the legislation does not require the use of the Bible as a teaching tool.

TESTIMONY:

Representative Paul Shepherd, District 7, read a statement from Evalyn Bennett (see attachment 2) in support of **S 1342**. Ms. Bennett noted in her prepared statement that when used objectively by teachers as a reference tool, the Bible complements various areas of study such as mathematics, literature and government.

Bobbie Post spoke in support of **S 1342**, as a private citizen and school teacher at The Ambrose School. She stated that the Bible provides a framework for studying literature, and a well-rounded education should incorporate a variety of religious texts. **Senator Stennett** asked if her classroom demographics include only Christian students, to which **Ms. Post** answered that most students are Christian and some are agnostic. She also stated that incorporating a variety of religious texts as reference tools would benefit her students. In response to questions from Senator Hill, **Ms. Post** stated that during her teaching career, the ability to reference religious texts has always been unclear in the public school system and that teachers often fear referencing religion in the current framework; the proposed legislation will provide clarity for educators on this issue.

Dr. Steven Crane, Minister, Eagle Christian Church, spoke in support of **S 1342**. **Dr. Crane** emphasized that the Bible should be considered an inter-faith text; many other religions acknowledge and reference the Bible in their respective teachings. He suggested that the Bible permeates all aspects of life and is the most widely read and translated book in history. **Senator Stennett** asked why, if the Bible is so pervasive and accessible, does its reference and use in schools need to be outlined in statute. **Dr. Crane** responded that this legislation provides clarity for educators (see attachment 3).

Christ Troupis, Attorney, Troupis Law Office, spoke in support of **S 1342**. **Mr. Troupis** explained that he analyzed similar legislation in ten other states and any resulting litigation; he reported no instances of these statutes being challenged on constitutional grounds. **Mr. Troupis** stated that because Idaho has a constitutional prohibition pertaining to sectarian texts in the classroom, this legislation is necessary to provide legal clarity for educators. He also suggested that the Bible is distinct from other religious texts because it is widely considered non-sectarian. **Senator Stennett** asked why the Founding Fathers did not reference the Bible in the U.S. Constitution. **Mr. Troupis** remarked that because the Bible was implicit throughout American life at the time, there was no need to include it in the U.S. Constitution. **Senator Stennett** then asked if the term "Creator" was chosen to include many different faiths, to which **Mr. Troupis** replied there was no preference for a denomination, further noting that there was a concern at that time that no single denomination gain ascendancy over another.

Vice Chairman Lodge asked how many versions of the Bible exist, to which **Mr. Troupis** explained that there are many different versions, but the issue in question is not whether to read the Bible verbatim in the classroom, but to reference excerpts that have universal application. **Vice Chairman Lodge** pointed out that

because many versions exist, inconsistencies may arise regarding what students are being taught.

Senator Davis inquired if other states have similar constitutional language, to which **Mr. Troupis** replied that during his research, he did not find any state with similar language. **Senator Davis** commented on the history of Idaho's Constitutional Convention, highlighting the specific motion and respective debate pertaining to the use of the Bible in public schools for non-religious purposes; he also expressed disappointment in the nature of that debate. **Senator Davis** questioned whether examination of this issue should include contextual consideration of Idaho's constitutional restriction. **Mr. Troupis** remarked that he had similar considerations but came to the conclusion that debate on this issue during Idaho's Constitutional Convention was influenced by the fact that the Bible was used in schools in its entirety to teach many different subject areas, resulting in fear that the Bible would be used without restraint. He suggested a different outcome if similar debate were to occur today. **Senator Davis** inquired whether a joint resolution would be more appropriate to address this issue, to which **Mr. Troupis** replied he would support a constitutional amendment; however, there currently exists an opportunity to more clearly define "sectarian" and "denominational" in this regard. In response to a question from Senator Davis regarding the constitutionality of restricting free speech rights, **Mr. Troupis** stated that, to his knowledge, there has never been a legal challenge to Article IX, § 6, of the Idaho Constitution on free speech grounds. He noted that a narrow construction of this provision must be taken to be consistent with the First Amendment.

Senator Winder referenced same-sex marriage as an example of an issue where state and federal constitutional provisions differ and inquired whether the same circumstance would be applied to state restrictions on denominational texts. **Mr. Troupis** explained that the same-sex marriage ruling was a U. S. Supreme Court decision and the U.S. Constitution was not changed. He also indicated that there may be other instances where state provisions conflict with federal law that may face legal challenges in the future. **Senator Winder** inquired if there currently exist restrictions on the use of the Quran or other religious texts in public schools. **Mr. Troupis** responded that he is unaware of such restrictions but noted that other states do utilize religious texts in schools. He noted that the First Amendment prohibits religious indoctrination or training, and a narrow construction must be taken of Idaho's constitutional provision regarding religious texts used in schools. **Senator Winder** expressed disappointment in the nature of debate during Idaho's Constitutional Convention regarding this issue but recognized it as part of Idaho history. He then asked if this legislation simply clarifies for educators that religious texts may be used in school for literary or historical purposes, to which **Mr. Troupis** affirmed.

Scott Yenor, Professor, Boise State University, spoke in support of **S 1342**. **Mr. Yenor** remarked that after studying the Idaho Constitutional Convention, specifically the Blaine Amendment debate, a negative vote may be interpreted several different ways outside of explicit rejection of the provision. **Mr. Yenor** then explained how knowledge of or familiarity with the Bible enhances the teachings of literature, history, government and philosophy and provided examples. In response to questions from Senator Stennett, **Mr. Yenor** stated that he does not feel he is restricted from using religious texts in his teachings. **Senator Stennett** noted that the Old Testament is found in many religious texts and asked if reference can then be made to those texts. **Mr. Yenor** explained that he has given consideration to this issue and is unable to identify a book required by Idaho curriculum that is more decisively shaped by a religion other than Christianity.

Senator Winder sought clarification regarding supremacy in instances of constitutional conflict between state and federal government. **Mr. Yenor** explained that states often further restrict activity beyond the scope defined in the U.S. Constitution, and the pertinent issue in this case is if the Idaho Constitutional restriction conflicts with other constitutional values.

Senator Siddoway asked if a teacher found it necessary to provide students with basic knowledge of Biblical principles to further enhance their understanding, and if the Bible was referenced in class, would that action violate the law? **Mr. Yenor** explained that it is not always necessary for a student to have a broad understanding of Biblical doctrine to understand and gain significance of an excerpt, and he provided an example. However, he pointed out that some literary works, including those that criticize Christianity, do require deeper understanding of Christian doctrine.

Mr. Troupis was asked to return to the podium to answer additional questions. **Senator Lakey** sought clarification regarding reference to Astrology, Biology and Geology as topics of study where an understanding of the Bible may be useful or relevant, asking if striking these areas of study would prevent possible legal challenges in the future pertaining to teaching creationism in schools. **Mr. Troupis** responded that removing these areas of study would not necessarily prevent future legal challenges.

Julie Lynde, Executive Director, Cornerstone Family Council, spoke in support of **S 1342**. **Ms. Lynde** emphasized the importance of having clarity on this issue for teachers, students and parents.

Kathy Griesmyer, American Civil Liberties Union (ACLU) of Idaho, spoke in opposition to **S 1342**. She asserted that this legislation opens the door to creationism being taught in public school science classes. **Ms. Griesmyer** remarked that the use of the Bible should be restricted to courses in which teachers present the Bible in context with similar texts, and that these teachers should receive specialized training. **Senator Winder** noted that scientific beliefs are routinely refuted, thus there is value in providing many different pathways to explore scientific theories of origin, to which **Ms. Griesmyer** agreed but stated these discussions must take place outside the classroom. **Senator Winder** asked if the ACLU supports reference to religious texts in other areas of study, such as literature and history. **Ms. Griesmyer** stated that the ACLU does support the Bible being cited in certain public school courses, such as comparative religion and literature classes, keeping in mind constitutional requirements and ensuring religious texts are appropriately incorporated into established curriculum.

Mr. Troupis was asked to return to the podium. **Senator Davis** referenced the Idaho Attorney General's letter regarding repeal and replacement of § 33-1604, Idaho Code, and its conclusion that proposed language would invite constitutional challenges as applied under Article IX, § 6, of the Idaho Constitution because it selects one specific religious text over others (see attachment 4). **Senator Davis** noted that the Attorney General's opinion references previous draft language. **Mr. Troupis** stated that new language was added that prohibits religious indoctrination to satisfy constitutionality issues. He suggested that the Attorney General's opinion emphasized that if the Bible were considered a sectarian or denominational text, it would violate Article IX, § 6, of the Idaho Constitution. **Mr. Troupis** specified that a narrow construction of the Idaho Constitution, specifically what constitutes sectarian or denominational texts, is necessary to satisfy First Amendment protections. If narrowly construed, then it is clear that the Bible is not a sectarian text. **Senator Davis** referenced Article IX, § 6, of the Idaho Constitution, suggesting that sectarian tenets or doctrine are prohibited from

being taught in public schools, regardless of the manner or context in which they are presented. **Mr. Troupis** agreed with that interpretation. **Senator Davis** then observed that it is not the intention of this legislation to teach religious tenets or doctrine, to which **Mr. Troupis** also agreed. **Senator Davis** asked how any references to the Bible can be free from expression of religious doctrine, and **Mr. Troupis** stated an argument can be made that in cases of non-hard science courses, the Bible may be utilized for reference purposes without suggestion of religious tenets or doctrine. He noted that removing the hard sciences from proposed language would align this legislation within parameters of the U.S. and Idaho Constitutions.

Letter of Comment from Derek Voorhees, D.Min, Professor of Bible, Theology, and Biblical Interpretation, Boise Bible College (attachment 5).

Ms. Post returned to the podium to provide clarifying remarks. She noted that Western thought has been influenced by a Christian world view, and the Bible is significant in this regard because it provides, as a primary document, a framework for understanding; she also emphasized the Bible's influence on scientific thought. **Ms. Post** noted the significance of the Bible over other religious texts as foundational to Western thought.

Senator Nuxoll returned to the podium to provide closing remarks. She emphasized that this legislation does not mandate the use of the Bible or other religious texts in schools and prohibits religious indoctrination; the legislation provides clarity for educators on how to utilize religious texts in school.

Senator Lakey asked if Senator Nuxoll would support the removal of "Astrology, Biology and Geology" from the legislation, to which **Senator Nuxoll** replied in the affirmative.

Senator Hill sought clarification on the significance of removing "Astrology, Biology, and Geology" from the legislation, and **Senator Lakey** explained that striking these courses addresses legal concerns regarding the teaching of creationism in public schools.

Senator Davis noted that removing "Astrology, Biology and Geology" addresses some of the problematic elements of the legislation. He additionally suggested that "religious texts" replace "Bible" as expressly permitted to lessen the confusion about what types of religious texts may be referenced in the classroom. **Senator Nuxoll** replied that she would not support such change.

Senator Winder asked if Senator Nuxoll would support striking "Astrology, Biology and Geology" from current language but also adding language that incorporates other religious texts for comparative purposes. **Senator Nuxoll** responded that the use of other religious texts is already suggested in the legislation but would be open to discussion. **Senator Winder** commented that he would like to find a way to proceed by maintaining the integrity of the legislation but also limiting potential legal challenges. He reiterated that additional language in a separate section may help eliminate confusion pertaining to other religious texts. **Senator Winder** recommended adding "Religious texts, including the Bible, are expressly permitted..." to line 13, replacing "The Bible is expressly permitted..."; similar changes were suggested to line 19. **Senator Nuxoll** replied that she would support these changes.

MOTION:

Senator Lakey moved that **S 1342** be sent to the 14th Order for amendment. **Senator Buckner-Webb** seconded the motion.

Senator Lakey stated that this legislation with proposed amended language is an improvement to current statute and provides clarity regarding the use of religious texts in public schools.

Senator Buckner-Webb appreciated the opportunity to revise this language and recognized the relevance and importance of other religious texts in the evolving cultural landscape of modern society.

Senator Stennett noted that Idaho has more than 100 languages spoken and cultures represented in Idaho public schools, and the incorporation of more than one belief system will only benefit Idaho's student body.

The motion carried by **voice vote**.

S 1272

RELATING TO THE SCHOOL DISTRICT BOND CREDIT ENHANCEMENT PROGRAM to raise the aggregate limit for school district bond.

Larry Johnson, Manager of Investments, Endowment Fund Investment Board (EFIB), presented **H 1272**. **Mr. Johnson** stated the purpose of this legislation is to increase the capacity of the School Bond Credit Enhancement Program, resulting in a reduction in the interest rate on general obligation schools bonds for Idaho schools. He pointed out two substantive changes which include an increase in the maximum amount the bond principal can be guaranteed from \$800 million to \$1.2 billion, and an increase in the maximum amount available to any one district from \$20 to \$40 million. **Mr. Johnson** emphasized the proposed legislation will save school districts money and increase the fund's fee revenue.

MOTION:

Senator Siddoway moved to send **S 1272** to the floor with a **do pass** recommendation. **Vice Chairman Lodge** seconded the motion.

Senator Winder stated that he is a member of the EFIB and expressed support for the motion.

The motion carried by **voice vote**.

S 1269

RELATING TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY to provide that certain moneys shall be held in the Environmental Protection Trust Fund.

Orville Green, Waste Management and Remediation Division Administrator, Idaho Department of Environmental Quality (DEQ), presented **S 1269**. **Mr. Green** stated that **S 1269** provides DEQ the option to invest moneys obtained through settlements with EFIB to fund long-term projects. Current statute requires DEQ to invest all moneys received by the agency with the Idaho State Treasurer's Office. This legislation amends § 39-107C, Idaho Code, to allow DEQ to invest portions of non-General Fund moneys received for long-term projects with the EFIB. **Mr. Green** pointed out that the legislation requires concurrence of the DEQ Director, the Idaho State Treasurer's Office, and the EFIB, and he outlined the planning and implementation process.

Senator Siddoway sought clarification regarding the determination of how these funds may be used and for what projects. **Mr. Orville** explained that most settlement funds are dedicated to specific projects, such as the Coeur d'Alene basin.

MOTION:

Senator Siddoway moved to send **S 1269** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

RS 24588

A JOINT MEMORIAL to ask the United States Congress to restructure the United States Postal Service in a way to provide acceptable delivery times.

Dan Blocksom, Policy Analyst, Idaho Association of Counties (IAC), introduced **RS 24588**. **Mr. Blocksom** explained that in April 2015, the mail processing plant in Pocatello, Idaho, was closed and mail sorting services were moved to Salt Lake City, Utah. As a result, delays have impacted the citizens in Eastern Idaho and their ability to send and receive mail in a timely manner. This legislation asks the United States Congress to reopen not only the Pocatello plant but other shuttered mail processing plants around the country.

Senator Davis asked if the Idaho Falls mail processing plant that was closed decades earlier would be included in this legislation, to which **Mr. Blocksom** replied that he was not aware of the Idaho Falls facility but did receive similar requests regarding the Twin Falls mail processing plant that was shut down. **Senator Davis** commented that the legislation may be too encompassing in that not all shuttered mail processing plants need to be reopened; however, he did note the geographical importance of the Pocatello mail processing plant.

Senator Hill made a similar observation that in some cases, it may have been fiscally responsible to shutter certain mail processing plants. He then sought clarification on how the United States Postal Service (USPS) will cut costs by restructuring pre-funding for retirement benefits. **Mr. Blocksom** explained that the pre-funding requirement is unique to the USPS and costs approximately \$5 billion per year; this reform effort may help reduce costs and allow at-risk mail processing plants to remain open.

MOTION:

Senator Winder moved to send **RS 24588** to print. **Vice Chairman Lodge** seconded the motion. The motion carried by **voice vote**.

**MINUTES
APPROVAL:**

Senator Stennett moved to approve the Minutes of February 10, 2016. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

Senator Siddoway moved to approve the Minutes of February 8, 2016. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

Senator Hill moved to approve the Minutes of February 15, 2016. **Vice Chairman Lodge** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business, **Chairman McKenzie** adjourned the meeting at 10:03 a.m.

Senator McKenzie
Chair

Twyla Melton, Secretary

Assisted by Jennifer Carr