

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Friday, March 04, 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 Senate State Affairs Committee (Committee) to order at 8:02 a.m. with a quorum present.

**RS 24582** UNANIMOUS CONSENT REQUEST from the Commerce and Human Resources Committee related to commerce travel insurance.

**Sarah Fuhrman**, representing the US Travel Insurance Association (UStiA), explained that the UStiA discussed the subject of the legislation with the Idaho Department of Insurance (Department) and moved forward with the legislation as currently drafted. Additional conversations revealed that the Department was not comfortable with the legislation, or the concept behind it. This RS is for the purpose of discussing the issue over the interim with the intent to come back next year with legislation that everyone can agree on.

**MOTION:** **Senator Davis** moved to send **RS 24582** to print. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

**RS 24537** UNANIMOUS CONSENT REQUEST from the Commerce and Human Resources Committee related to motor vehicles and financial responsibility.

**Bill Litster**, representing the Idaho Public Policy Institute, asked the Committee to print the RS that would raise the auto insurance limits from \$25,000 to \$50,000. **Mr. Litster** noted that the rates have not been increased since 1983. As a result, many people have medical treatment cut off prematurely. County funds, catastrophic health care funds, Idaho Medicaid, and the Crime Victims fund pay for many cases each year due to the auto insurance limit.

**Senator Davis** asked why this legislation is being brought so late in the session. He asked **Mr. Lister** if he had secured a commitment from Chairman Patrick to hear the bill if it is printed. **Mr. Litster** stated that a companion bill required review of the language by the insurance industry and he waited to address both bills at the same time. **Mr. Litster** added that he has not secured that commitment from Chairman Patrick.

**Senator Winder** asked whether **Chairman Patrick** would yield to a question. **Chairman Patrick** agreed. **Senator Winder** asked whether this issue would be given a hearing and inquired if there was sufficient time to see it through the legislative process. **Chairman Patrick** responded that the bill would receive priority and said he intends to give it a full hearing; the rates need to be updated.

**MOTION:** **Senator Davis** moved to send **RS 24537** to print. **Senator Buckner-Webb** seconded the motion. The motion carried by **voice vote**.

**RS 24660**

UNANIMOUS CONSENT REQUEST to print related to tax deeds.

**Chairman McKenzie** announced that because there is still work related to the language of this legislation, he will hold the RS in Committee at the request and consent of the sponsor.

**RS 24608**

RELATING TO ABORTION to create the Idaho Unborn Child Protection from Dismemberment Abortion Act.

**Representative Nate**, District 34, stated that the purpose of this bill is to ban a brutal abortion procedure. He explained that this legislation would ban the dilation and extraction (D&E) procedure performed on a living, fully formed, unborn baby. This is commonly known as a dismemberment abortion.

**Representative Nate** illustrated the nature of this type of abortion procedure, quoting U.S. Supreme Court Justice Anthony Kennedy in the Stenberg v Carhart decision, "The fetus, in many cases, dies just as a human adult or child would. It bleeds to death as it is torn limb from limb." He said that Justice Kennedy stated there is legal precedence for this found in the U.S. Supreme Court's 2007 ruling in the Gonzales v Carhart decision that upheld a ban on partial-birth abortion, also known as an "intact D&E" procedure. Because of the precedent established by the Court, the U.S. Supreme Court would likely uphold a ban on D&E dismemberment abortions performed on living, fully formed, unborn babies. He continued to quote the court cases that would uphold **RS 24608**.

**Representative Nate** stated that the RS would not create an undue burden, similar to the ban on partial-birth abortion, because there are at least five other methods that can be used and are considered safe and effective for the mother. In summing up the legislation, **Representative Nate** explained that this legislation seeks to remove one method of abortion, dismemberment abortion, a brutal and gruesome procedure. He stated that this bill demonstrates the respect for and value of the life of the unborn while still preserving the U.S. Supreme Court's direction to not create an undue burden.

**Senator Davis** asked if there is an opinion from the Attorney General (AG) on the current RS. **Representative Nate** replied that there is an opinion. He explained that he believes there has been some confusion with the AG's office on this issue due to the four separate D&E procedures. The opinion focuses on the partial-birth abortion ban and suggested language to make Idaho's law coincide with the Gonzales Decision, which has been done in this bill. However, it is unclear where the AG stands on the dismemberment procedure because it seems his opinion is based upon the partial-birth abortion ban.

**Senator Davis** asked if it is the intent of the presenter to speak with the AG about his concerns and get a different opinion on **RS 24608**. **Representative Nate** responded that he would indeed be happy to do that. In a full hearing legal expert testimony could be brought in to address that question as well. **Senator Davis** clarified that having another hearing will involve having the AG's office assure the Committee that they believe in the bill.

**MOTION:**

**Senator Davis** moved to send **RS 24608** to print. **Senator Lakey** seconded the motion.

**Senator Stennett** stated that the reason for her objection to the motion is based on her concerns that other states have had similar legislation only to have it deemed unconstitutional. She would like to pass legislation that she knows is going to meet constitutional muster. Furthermore, she was disturbed about some of the verbiage. She stated that it is appropriate, when discussing medical procedures, to use medical terms.

**SUBSTITUTE MOTION:**

**Senator Stennett** made a substitute motion to hold the bill in Committee. **Senator Buckner-Webb** seconded the motion.

**Senator Siddoway** stated that he shares the same concerns as Senator Davis. He doesn't want to put legislation out there that would go to court, lose in court and fortify the opposing side more than it fortifies pro-life proponents. Without a positive guarantee that this bill does that, he is reluctant to proceed; but he will support the original motion.

**Senator Buckner-Webb** spoke in favor of the substitute motion to hold the legislation in Committee. She addressed her issue with definitions in general and with the definition of "medical emergency" included in the RS. She then quoted from page 3, lines 3-6, stating that "No such condition may be determined to exist if it is based on a claim or diagnosis that the woman will engage in or conduct in which she intends to result in her death or in substantially irreversible physical impairment."

**Senator Buckner-Webb** then stated that she interpreted the passage to mean that if the woman is considering suicide, the preference would be for her to commit suicide rather than to terminate her pregnancy. **Senator Buckner-Webb** stated that she found some of this language problematic and asked if the sponsor understood the language as she had interpreted it. **Representative Nate** responded by quoting section 14: "Serious health risk to the unborn child's mother means that in reasonable medical judgement, she has a condition that so complicates her medical condition that this necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of major bodily function, not including psychological or emotional conditions. No such condition may be determined to exist if it is based on a claim of diagnosis. The woman will engage in conduct which she intends to result in her death or the substantial and irreversible and physical impairment of a major bodily function."

**Representative Nate** then summarized saying that the last four sentences did not qualify as a serious health risk to the unborn child's mother. **Representative Nate** acknowledged that he isn't a medical attorney; refinement of text is the value of a full hearing so those questions will be cleared up. **Senator Buckner-Webb** restated her question, is it the intention for a woman to kill herself rather than terminate her pregnancy? **Representative Nate** responded that would not be his determination.

**Senator Davis** spoke against the substitute motion stating that the section referenced by Senator Buckner-Webb was traditionally thought of as a self-defence mechanism; it includes an emotional component as a basis for allowing it, but additionally where a woman would have to choose between her life and the life of her unborn child. He emphasized that those are hard decisions. He stated that there is probably still value in printing the bill. This would allow the parties involved to know what the language is and then the State can collectively look at the language and determine whether there is a better way to survive judicial scrutiny; that would allow a meaningful public conversation.

**Senator Buckner-Webb** asked whether it would be the intent of the Committee to hear this bill during the legislative session. **Chairman McKenzie** replied that, assuming the bill would be assigned back to this Committee, it would be heard based on the same concerns Senator Davis had regarding an opinion from the Attorney General's Office.

**Senator Hill** stated that they don't hold bills at the desk and it would be assigned back to this Committee; it is up to the Chairman whether or not the bill would be heard. This is an extremely important issue and there are other criteria to determine whether or not it gets a regular public hearing. **Senator Hill** will not be supporting the substitute motion. The issue needs to be heard before the public even though it doesn't get advanced.

**Senator Lakey** spoke against the substitute motion, reiterating the importance of the abortion issue. He stated he is happy to support as many lawful restrictions on this practice as possible while making sure that if challenged in court, the State would win. He stated that printing this RS would facilitate additional discussion with the AG's office and enable the Committee to accept the language or make a modification to the language. He stated it is important to print this and then have those discussions.

**Senator Stennett** agreed that this is an important bill.

**Vice Chairman Lodge** expressed concern that this RS has come to the Committee so late and wasn't started on the other side of the rotunda; there are so many sponsors from the House. She shared her concern about times the Senate has passed bills and the resulting cost of litigation. She stated she would support the original motion if the sponsor would work to make sure the language is much more acceptable so the State will win in court.

**Senator Buckner-Webb** stated that should the legislation come back to the Committee for a full hearing, she would like it to come back in such a way that it gives both sides the opportunity to present a compelling argument and that the result would be what is best for the people of Idaho.

**Chairman McKenzie** stated that the substitute motion to hold **RS 24608** is before the Committee. The motion failed by **voice vote**.

**Chairman McKenzie** stated that the original motion to send **RS 24608** to print is before the Committee. The motion carried by **voice vote**. **Senators Stennett** and **Buckner-Webb** asked to be recorded as voting nay.

**H 436**

RELATING TO IDAHO DAY to clarify the date of Idaho Day.

**Representative Bateman**, District 33, explained that **H 436** improves the wording of current statute, which he read. **H 436** strikes the dates of March 3 and March 5, leaving March 4 as Idaho Day. President Abraham Lincoln signed an act creating Idaho Territory on that day in 1863. If Idaho Day were to fall on a Sunday or a Saturday, it may be celebrated on the preceding Friday or the following Monday.

**Representative Bateman** said 2015 was the first observance of Idaho Day with at least 100 schools and various historical societies celebrating throughout the State. He shared that in the House, the theme of the Idaho Day celebration is "Idaho Heroes, Past and Present," by recognizing Idaho's past and present Governors (see attachment 1). **Representative Bateman** then shared his story about a 14-year-old boy who attended his first rally 63 years ago; that 14-year-old kid had the audacity to go up on stage to talk to all those very important people. Some were irritated, but one, Robert E. Smiley, took time with him, showing him that he was just as important as anyone else on that stage. Forty years later Representative Bateman was elected to the House of Representatives for the first time, met Governor Smiley and told him the story.

**MOTION:**

**Senator Davis** moved to send **H 436** to the Senate Floor with a **do pass** recommendation. **Vice Chairman Lodge** seconded the motion.

**Chairman McKenzie** commented that we do have a rich heritage in Idaho, adding that on the previous day he had an opportunity to look at the original Idaho State Constitution and the names of the people who signed it. He commented on the small part that each of us play in the history of the State. It is amazing to watch that history unfold here at the Capitol.

**Senator Winder** commented that Representative Bateman has announced that he would not seek reelection and this may be the last time he will testify before the Committee. He expressed how much he enjoyed getting to meet

Representative Bateman and getting to know him. He always enjoys the beautiful notes and letters he sends, referring to his remarkable penmanship, which is a true art form that is disappearing in our country. He added his appreciation of Representative Bateman's passion for Idaho, commenting that he wore a blue tie and a blue jacket today just to say thank you.

**Senator Buckner-Webb** said she hoped Representative Bateman would return to visit.

The motion passed by **voice vote**.

**Chairman McKenzie** stated that **HCR 29** is particularly timely considering that there are thousands of refugees at the border of Greece and Macedonia trying to get into Europe. In this country, there is some opposition to refugees fleeing war-torn parts of the world based on the country they are from or based on their religion. It is good for us as a nation to reflect upon our heritage and he thanked the sponsor for bringing this Resolution.

## **HCR 29**

STATING FINDINGS OF THE LEGISLATURE to commemorate the 130th anniversary of the Statue of Liberty.

**Representative Hy Kloc** thanked the Committee for the opportunity to present **HCR 29**. There are no more recognizable symbols of America than the Flag and the Statue of Liberty and **HCR 29** is an opportunity for Idahoans to recognize the Statue of Liberty on her 130th anniversary. **Representative Kloc** referred to a handout of a manifest page from the ship; the USS *General R. L. Howze* dated October 18, 1949 (see attachment 2a). The first name on the manifest is Szlomo Kloc. Szlomo later became "Sam," and Luba became "Libby." Sam and Libby Kloc were the parents of Hy Kloc. Hy's brother Jakob became Jack, and Chaim later became Hy, who was born in a displaced person's camp in Essen, Germany, at the end of World War II. **Representative Kloc's** parents and brother were survivors of the Holocaust; the rest of the family, uncles and grandparents, and his older sister were not so fortunate. His family waited in the camp for four years to come to America. When **Representative Kloc** was two years old, his family found themselves sailing into New York Harbor under the watchful eyes of the Statue of Liberty. His mother picked him up so he could see and as she was pointing to the Statue, she said, "Look, America!" (see attachment 2b).

**Representative Kloc** remarked that, to him, the Statue of Liberty was always America. He said he now finds himself in a position to be able to say "thank you" to America for giving him and his family a home and for the opportunity to live in a free country. His parents would be very proud of their youngest son, Chaim, today, as he presents this resolution to this legislative body. On behalf of his family and on behalf of those people who have families who came through Ellis Island and saw the Statue of Liberty, this is a reminder to all Americans that we live in the greatest country in the world. **Representative Kloc** read from the proclamation, "To all Americans, the Statue of Liberty stands eternal as a symbol of the freedom which has been made a living reality in the United States for men and women of all races, creeds and national origins who have united in allegiance to the Constitution of the United States and to the imperishable ideals of our free society."

**Representative Buckner-Webb** stated she appreciated that the resolution not only reminds us to take time to appreciate where we have been, but to reexamine where we are going and to remember what this beacon of light – the United States – means to so many people in the world. We should keep that in our hearts as we make decisions about what we should do in the future. She thanked the sponsor for bringing HCR 29 to the Committee.

**Senator Hill** thanked **Representative Kloc** for this legislation, commenting that for the many people who have been to the Statue of Liberty, it truly is a reverent, holy

experience to remember those who saw the statute as a beacon of hope as they entered this Country. He commented that he keeps a picture of the Statue of Liberty he took from the Staten Island Ferry two years ago. It reminds him daily of the freedoms we enjoy.

**Senator Winder** thanked **Representative Kloc** for sharing his personal story and for making those present realize the importance that immigrants and refugees have in our country and our history. Looking around the room, he didn't see anyone that would be considered a Native American, so everyone in the room would be considered immigrants; people that have come from different places in the world to share this great country and to share the ideals that the Statue of Liberty represents.

**Vice Chairman Lodge** emphasized that America is a fabulous place. It brought back a memory of when she and Senator Davis were at a conference at the World Trade Center two weeks prior to September 11, 2001. He said "Let me show you something" They walked into another room and looked down at the Statue of Liberty. It was a moving experience that left footprints on her heart. Two weeks later the building they stood in was gone.

**MOTION:**

**Senator Buckner-Webb** moved to send **HCR 29** to the floor with a **do-pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

**H 426**

RELATING TO THE STATE'S GUARANTY AND BONDHOLDERS to provide that guaranteed bonds that are advance refunded and bond proceeds held in escrow no longer have the benefit of the guaranty.

**Jace Perry** from the State Treasurer's Office, introduced this "clean-up bill" and provided background on bond financing and the purpose of the bill. There are two types of refunding: the first is called a current refunding, where bond proceeds are used to pay off the old bond then the investors are paid in full. The second type of refunding is an advanced refunding; when the bonds are issued there are call dates that provide protection for investors. There is a future date and that bond cannot be paid before that date. Advance refunding happens before the call date and the proceeds of the new bond are placed in an irrevocable escrow that secures the refunding of that bond. When the call date occurs, the escrow funds are used to pay the investors on that bond. The current code has the same intent as the revised language but is confusing.

**Mr. Perry** explained that the Treasurer's office worked with the bond counsel, financial advisors, and underwriters that work specifically with the school bond guaranty program, to craft language that would remove the state guaranty when the bonds were being considered for refunding. The new wording clearly states that the guaranty will be removed once the bonds have been refunded and the irrevocable escrow is in place. A reference to section 57-504 has been inserted that clearly states that the guaranty will be removed once the bonds have been refunded and the irrevocable escrow has been put in place. From the market and investment perspective, this revision is deemed to be more secure than with the state guaranty.

**Senator Siddoway** asked how those funds can become more secure after they have been refunded. **Mr. Perry** replied that when the funds are placed in escrow, U.S. Treasuries or government-backed securities are purchased with the same maturity date as the call date. The funds from those securities pay off those bonds instead of a pledge against future revenue streams. The security funds are considered more secure.

**MOTION:**

**Senator Winder** moved to send **H 426** to the floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

**H 427**

RELATING TO THE IDAHO BOND BANK ADMINISTRATIVE FUND to appropriate funds to the Idaho Bond Bank Authority (IBBA) and to authorize reimbursement of costs.

**Mr. Perry** stated that in his capacity with the Idaho State Treasurer's Office, he also serves as the Executive Director for the IBBA. The IBBA Board is made up of five members, with the State Treasurer as the Chairman. Board membership includes a member of the Senate, a member of the House of Representatives and two Governor appointees. The Treasurer's office provides the administrative staff to facilitate the transactions that take place for the IBBA and has been absorbing those costs. Discussions between the Board and the State Treasurer's office resulted a decision to make a change. Instead of the Treasurer's office absorbing the costs of administration, they would submit those costs to the IBBA for reimbursement. That is what **H 427** does.

**Mr. Perry** said that current statute allows a cap of 0,5 percent of the IBBA's revenue to cover administration costs. During the last fiscal year, the IBBA's revenue was \$50,000; 0.5 percent was \$253. The revenue was not enough to cover the costs. The Treasurer's office absorbed those costs. He stated it is the intent of the Treasurer's office, if there are funds available, to deduct that amount from the General Fund appropriation. He clarified that the Treasurer's office was not seeking to increase its revenue stream, but to shift the cost from the General Fund to the IBBA.

**Senator Davis** shared the history of the IBBA; the purpose of the IBBA was to provide local political subdivisions with a method of funding at competitive rates that they could not obtain on their own.

**Senator Davis** stated that from its inception until about a year ago, he served on the IBBA. They found it was necessary to develop legal standards, general policies and loan policies. It matured over the years and is far more robust than before. As a result, the State of Idaho does have some risk. One of the factors the IBBA looks at is whether they have an intercept mechanism to the political subdivisions fund so that in the event that there is a default, the State has a way to intercept that revenue that would go from the State to that entity.

**Senator Davis** stated he is pleased with the work the IBBA has done, however, he has seen how much time the Treasurer's Office has been required to spend administering it. The IBBA is providing a great benefit to the schools and cities, but the State shouldn't have to pay the costs associated with that. The cap is inadequate. The updated language would fix this inadequacy. **Senator Davis** then suggested that perhaps in the future, the State should not only recover its actual costs, but a nominal risk benefit as well. He stated that for the purposes of today, **H 427** appears to be the right next step.

**MOTION:**

**Senator Davis** moved to send **H 427** to the Floor with a **do pass** recommendation. **Senator Winder** seconded the motion. The motion passed by **voice vote**.

**H 464**

RELATING TO DUTIES OF THE STATE TREASURER (Treasurer) to address a gap in code concerning the investment of funds.

**Mr. Perry** presented a brief history of the issue and stated that in 2015, the Treasurer's office became aware that there is a contradiction in statute in which the Treasurer's office was specifically prohibited from investing public endowment funds and other funds held in trust by the State.

The Treasurer's office, with the assistance of the AG's office, investigated the history involving that language to determine the reason for that language. They went as far back as 1958 and were unable to determine a specific reason for the language but concluded that the likely reason was to honor the constitutional

designation of the State Board of Land Commissioners (Land Board) as the trustee of the land grant endowment funds. Subsequently, in 1969 the Endowment Fund Investment Board (EFIB) was legislatively created. There were two Idaho Supreme Court decisions in 1976 and 1986, which helped to define those roles and responsibilities. The Treasurer's office has worked with the Land Board to craft this language and incorporate the understandings from those decisions into the language presented in **H 464**.

**Mr. Perry** described the process when an agency receives money, deposits funds into an account and then those funds are sent to the Treasurer's office. The Treasurer's office does not segregate those fund and separate them in the process of investing them; they all go into one pool. At the discretion of the EFIB, those funds are then withdrawn from the Treasurer's accounts and invested as they see fit within the guidelines and different endowment pools.

The terminology referring to investing from the perspective of the Treasurer's office isn't necessarily a long-term investment on the endowment funds; it is the short term cash management of the funds as they flow in through the normal operations and then out to the end investment through the EFIB. There are some other trusts in the State and it is unclear as to whether the Treasurer's office had the authority to receive those. This updated language clarifies that the Treasurer's office has the authority to invest any funds that they deposit. This bill doesn't take any authority away from anybody, rather it authorizes the Treasurer's office to receive those funds in its normal operations and then turn around and, at the discretion of those bodies, invest those funds long term.

**Senator Davis** referred to the audit that took place two years ago, and related it to the attribution of risk and loss. He asked whether this would impact how risk attribution would affect subsequent transaction. **Mr. Perry** responded that the Treasurer's office would continue to operate the way they had in the past. It wouldn't change the processes or operation, and he didn't believe it would change any of the risks associated with past operations. **Senator Davis** asked if this bill only speaks in terms of the Treasurer having the statutory authority to invest idle funds. **Mr. Perry** replied affirmatively.

**Senator Winder** declared a possible conflict of interest as a current member of the EFIB. He stated that this issue came to the attention of the EFIB about one-and-a-half years ago. Within that time period, it was discovered that a small amount of liquid funds were invested for a short period of time with the Treasurer's office, although there was not any specific authority to allow them to make those types of investments despite the traditional practice. **H 464** is an effort to clean that up by authorizing that practice. This would be protection against a misuse or unauthorized use of those funds. **Senator Winder** then clarified that the bonds and cash that the EFIB manages are separate and are not considered part of this issue. This only addresses short-term use of excess funds.

**MOTION:** **Senator Siddoway** moved to send **H 464** to the floor with a **do pass** recommendation. **Vice Chairman Lodge** seconded the motion. The motion passed by **voice vote**.

**ADJOURNED:** There being no further business, **Chairman McKenzie** adjourned the meeting at 9:17 a.m.

---

Senator McKenzie  
Chair

---

Twyla Melton, Secretary

---

Assisted by Lizzie Kukla