

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Wednesday, February 15, 2017

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Siddoway, Vice Chairman Hagedorn, Senators Davis, Hill, Winder, Lodge, Lakey, Stennett, and Rohn(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 Siddoway** called the Senate State Affairs Committee (Committee) to order at 8:00 a.m. and welcomed the Committee and those in the audience as well as those listening in.

RS 25231C1 RELATING TO SCHOOL DISTRICTS to provide that the boundaries of school trustee zones shall be drawn along voting precinct boundaries.

Senator Mary Souza, District 4, explained that **RS 25231C1** is a rewrite of RS 25231 that was presented on February 13, 2017. **Senator Souza** referred to page 4, Lines 40-44 of the bill and read those lines which had been rewritten from the original RS.

MOTION: **Senator Davis** moved to send **RS 25231C1** to print to support the conversation although he wasn't sure he could support the legislation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

RS 25241 A SENATE CONCURRENT RESOLUTION stating the findings of the Legislature and making a formal application to call for a Convention with the sole purpose to require a balanced federal budget.

Vice Chairman Hagedorn stated that **RS 25241** is a resolution to petition Congress for a convention for a single balanced budget amendment. Versions of this particular draft has been approved in 28 other states. The language from all states is similar by design to ensure that if there are legal challenges about this petition to Congress, there will not be any confusion about whether or not it is Idaho's petition. **Vice Chairman Hagedorn** provided some history regarding Idaho's petitions to Congress for a balanced budget amendment. **Vice Chairman Hagedorn** said that four years ago, he started working with the Assembly of State Legislatures. The first meeting regarding this issue was held in 2013 at Mt. Vernon to begin to create a set of rules that could be used at a Constitutional Convention to consider a single issue petition. Representatives, Senators, and Assemblymen from 33 states, working together, completed that task in the fall of 2016. Those rules will continue to be modified for improvement. **RS 25241** simply states that Idaho is applying to Congress for a Constitutional Convention to create a balanced budget amendment to the U.S. Constitution.

MOTION: **Senator Hill** moved to print **RS 25241** and return it to the Committee for a public hearing. **Senator Lakey** seconded the motion.

Senator Davis stated that the Legislature ran a Concurrent Resolution to rescind all Article V calls. **Vice Chairman Hagedorn** responded that a Concurrent Resolution was passed in 1989 for all calls for an Article V Convention would be considered

null and void with the exception of a balanced budget amendment should there be a a single issue convention called. That exception is not reflected in the Congressional Record. **Senator Davis** said that if that was true, there would be no need for this concurrent resolution. However, the legislation Senator Davis was referring to occurred in the early 2000s.

Senator Winder remarked that each year, this subject is addressed. In prior years a former colleague, Senator McKenzie, presented the Committee with the challenge of this issue. **Senator Winder** agrees to printing **RS 25241**, but questions if there aren't better alternatives.

Chairman Siddoway called for the vote on the motion to print with instructions that the resolution would come back to the Committee for a full hearing. Motion carried by **voice vote**.

RS 25175

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM to revise provisions relating to computation of certain service retirement allowances.

Vice Chairman Hagedorn explained that **RS 25175** would affect everyone in the Legislature. This changes what the Legislature did in the 1990s when it allowed a Legislator to utilize a part time position as full time when it is time for retirement should they be appointed to a full time job with the State. **RS 25175** resets the calculations to reflect the Legislator's part time status in the calculation for retirement. This would be effective December 1, 2018, for the new legislative members or those who are reelected.

Senator Winder asked about those who served at the local level in part time positions, for instance, in his case, on the Ada County Highway District and then as Chairman of the State Transportation Board. He accumulated 22 years of service during that time. **Senator Winder** asked how someone in that type of situation, not just a Legislator, would be impacted. **Vice Chairman Hagedorn** stated that was his concern when he was first approached with this issue. That is addressed in the bill and they intend to talk about it should the bill be heard.

MOTION:

RS 25175 was held in Committee for lack of a motion.

H 57

RELATING TO THE STATE LOTTERY to revise the definition of "Major Procurement".

Representative Tom Loertscher, District 32, explained that **H 57** relates to a problem that exists when the Idaho State Lottery (Lottery) initiates a Request for Proposal (RFP). Vendors can include products in those requests that are not legal in the State of Idaho by Constitution or by statute. This bill makes it clear that when a RFP is sent out, it will include only those things that are constitutional in our State, and in compliance with State law. This does not change the ability for the Lottery to follow the same process now in place for acquisitions. The Department of Administration processes most purchases made by other agencies with the exception of the Lottery. This bill does not change that process.

TESTIMONY:

Jeff Anderson, Director, Idaho State Lottery, explained that major procurements undertaken by the Idaho Lottery Commission comply with Idaho Code and the Idaho State Constitution. The processes and procedures are lawful and proper; the Lottery operates with transparency and integrity. In the Lottery's view, **H 57** is unnecessary because it appears to restate language in I.C. § 67-7426 relating to compliance with applicable laws.

Senator Davis asked why requests for proposals for instant horse racing were included in recent RFPs. **Director Anderson** answered that there were a number of other game styles and play that were included in the RFP. Responses were not scored in neither the technical or the price component. Any changes to the games the Lottery offers would have to come through the Legislature.

Senator Hill restated Senator Davis' question, why were the various gambling machines that are clearly unconstitutional included in the bid? **Director Anderson** said that since its inception in 1989 through to this day, all RFPs and the resulting contracts have been in compliance with the law. The office of the Idaho Attorney General (AG) has assisted in writing RFPs and contracts for 28 years. This is a best practice in the industry and has been done since the beginning.

Director Anderson explained that the current lottery gaming system contract, which expires on September 30, 2017, was the result of an RFP that was issued in 2006. The 2006 RFP evaluation team included lottery professionals and experts at the agency, as well as the Idaho Transportation Department purchasing agent, Mark Little, who has subsequently been promoted to State Purchasing Manager. At no time in the last 28 years, has this issue been raised as something that is improper nor has the Lottery Commission requested the Legislature expand gaming to include unauthorized games.

Senator Davis stated he still hasn't heard an answer to his question. Instant horse racing is unlawful in the State of Idaho. It was never put in an RFP before. If it is unlawful, why, in 2016, did the Lottery put instant horse racing in the RFP? Was it a mistake or an intentional act? **Director Anderson** responded that it was intended that way. They also updated and included Daily Fantasy Sports and other phenomena that are occurring in the gaming space.

Senator Lakey referred to Mr. Anderson's initial statement that the process the Lottery goes through is transparent, legal, and complies with the Constitution and he tends to agree. The language could be considered redundant. But, Mr. Anderson's initial statement seems to conflict with the last answer he gave, that instant horse racing was included in a 2016 RFP. **Director Anderson** responded that, in his mind, it is not contrary. The other games that were included in 2006; Keno, Video Lottery, Terminals, were included, and in the last 10 years, issues like Daily Fantasy Sports and instant horse racing came into being. There is no way the Lottery Commission could authorize any of those games without Legislative approval. **Senator Lakey** pointed out that the Legislature repealed instant horse racing but it was included in the RFP. There was obviously an expression of legislative intent. There may not have been on fantasy football and other things. **Director Anderson** explained that information from the vendors and their capabilities is important to know. Whether or not there is any action, things that have been on the RFPs since 1989 are prohibited in the Constitution and it has passed muster through the AG's office and the Lottery Commission for 28 years. It really didn't occur to the Lottery that it would be brought up as such a tense issue. They have no intention of considering offering those but it is important to know what the capabilities of the vendors are.

Senator Hagedorn asked for clarification on the meaning of an RFP and what is its purpose. **Director Anderson** answered that it is a Request for a Proposal. The one that is at issue here is for the Lottery Gaming System. The Lottery has been under its current contract for 10 years and they went out to bid for another 10 years. **Senator Hagedorn** stated that **H 57** is defining a procurement, not an RFP. **Director Anderson** agreed that it speaks to definitions. **Senator Hagedorn** stated his confusion as to why the Committee is getting off track from **H 57** on an RFP when a procurement is being defined. If the Lottery Commission purchased machines that were not constitutional within current law, who would be held accountable for that purchase? **Director Anderson** said he thought it would be the Lottery Commission but they would never contract for, nor commit funds, to anything that was illegal.

Senator Stennett asked Representative Loertscher who else wasn't following the Constitution that makes this legislation necessary. **Representative Loertscher** said that this is in the Lottery statute. The Lottery is different that any other agency that does procurement. All procurements go through the Department of Administration

except the Lottery. As it pertains to this, the RFP process is the beginning of the procurement process and that is why **H 57** is written the way it is. This is a statement that says the Legislature meant it when we said we were going to follow the Constitution and to send out an RFP that includes anything not in compliance with the Constitution or the law certainly is not appropriate. **Senator Stennett** asked for confirmation that **H 57** only pertains to the State Lottery, nobody else. **Chairman Loertscher** concurred.

Senator Winder asked if the Lottery would be required to revise its RFP that has been in use for the past 28 years that includes gaming descriptions that would be considered unlawful but are part of the RFPs. **Representative Loertscher** stated that it pertains to anything they do in the future.

MOTION:

Senator Hill moved to send **H 57** to the Senate floor with a do pass recommendation. **Senator Davis** seconded the motion.

Senator Lakey stated that, initially, he viewed this is redundant. He didn't think a statement was needed, that all State agencies would comply with the Constitution and the law in all of our statutes. In reviewing the statements made by Mr. Anderson, the Lottery is taking information about things that are illegal under current Idaho Code and/or may be unconstitutional. That changed his position. The Legislature does need to put that in this code section so no State agency will be asking for things that are unlawful or unconstitutional in Idaho. If something becomes lawful or constitutional, then the process can be changed. It seems counterintuitive to ask for things that are illegal or unconstitutional. He will be supporting the motion.

Senator Davis said this bill addresses the procurement process, not just the procurement. Line 42 describes how that procurement process includes the submitting of the bid, the proposal, or the offer as part of a major procurement so it is intended to apply across the board. **Senator Davis** stated that Representative Loertscher properly highlights one of the challenges that underlined the necessity of bringing **H 57**. The Lottery Commission historically has not been bound by the same procurement standards that other departments and agencies have; as a result, its process is currently siloed and that is why the Legislature needs to consider the policy question of why there may be something here that may not be in another statute or another department agency or commission just because this instance is siloed. **Senator Davis** stated his belief that Mr. Anderson's statement about "wasn't scored" was true. Merely because there have been prior RFP practices that were incongruent with Idaho law, it is not a basis for expanding the list of incongruent lawful inclusions in the RFP process. That is the reason for the question "why". The answer is that the Lottery Commission wants to see what their offerings can be. Why is that relevant? There is still not a sensible answer that is satisfactory. This legislation is appropriate and it created some questions in the market. This gives the Lottery Commission an opportunity to invite more bidders into the process if they know they don't need to provide a reply to an RFP for an option they don't include.

Senator Hagedorn said "we don't know what we don't know." Procurement is being defined by limiting what can be requested for a proposal. This legislation may be hamstringing the Lottery Commission with language by limiting the ability to look at potential gaming systems that could be constitutional. The expectation is that all of the venders that are sent a RFP are going to look at Idaho's Constitution and laws to see if their machines would be considered constitutional and legal in our State before they answer the proposal. That will limit the number of venders that would be able to answer that RFP. As Legislators, we know our laws and constitution. But, someday there may be a version of those games that may be constitutional or legal. Technology is creating new items and until those initiating the RFP ask, they will not get an answer. Those RFPs will not be sifted through

to determine whether or not they are unconstitutional, and then sent to the AG for review. That option will not be available

because we include "proposal" in the language. **Senator Hagedorn** understands the reason for **H 57**, as a State, we don't want to buy things that are unconstitutional or illegal in Idaho. There is not a chance to bring in competitive vendors to propose machines that could be constitutional and could be legal for one of the few profit centers that exists in this State because of the limitations set by the word "proposal", **Senator Hagedorn** said he cannot support **H 57**.

Senator Hill suggested that the Committee read the RFP prior to the bill being heard. This does not limit the competition or those that might perform. This doesn't put any liability or restrictions on those who are responding to the proposals. This has to do with how the proposals itself is written. It is not requiring any higher standard than what is required of other agencies.

VOTE: The motion carried by **voice vote**. **Senators Hagedorn** and **Lodge** asked to be recorded as voting nay.

S 1061 **RELATING TO PERSONNEL to amend Idaho Code §§ 59-1607, 67-5303, and 67-5328 regarding eligibility for overtime.**

Susan Buxton, Administrator, Division of Human Resources (H.R.), stated that **S 1061** is a clarification bill. There are no provisions in the bill addressing overtime except some clean up language at the end of the bill. **Ms. Buxton** described the purpose of the bill as clarifying the application of the State Personnel System for certain classified and nonclassified positions that are under the State Board of Education (Board) only. The Board approved a legislative idea to amend I.C. § 67-5303(J). In working with the Governor's office and finalizing this draft, it was decided the H.R. should carry the bill. However both the H.R. and the Board are working together. **Ms. Buxton** referred to page 1, lines 30-34, and said it was a clean up of I.C. § 67-1607(3) which clarifies that it will not affect elected officials when removing the reference to I.C. § 67-5303.

Senator Hill suggested that this bill might be better served to refer it back to the Senate to be referred to another Committee.

UNANIMOUS CONSENT REQUEST: **Senator Davis** asked for unanimous consent to send **S 1061** back to the Senate floor for possible re-referral to another committee. There were no objections.

MOTION: **Vice Chairman Hagedorn** moved for reconsideration of **RS 25175**. **Senator Lodge** seconded the motion.

Vice Chairman Hagedorn has obtained a letter from the Legislative Compensation Commission (LCC) requesting that the Legislature do something with the retirement system. The letter was referring to a House bill that was on the floor two years ago. The language in **RS 25175** is very similar to that House bill.

Senator Hill asked what the consequences of an aye or nay vote would be. **Vice Chairman Hagedorn** responded that the RS would be reconsidered for a potential motion to print.

Chairman Siddoway called for a roll call vote. **Vice Chairman Hagedorn** and **Senators Hill, Lodge, Stennett, Rohn(Buckner-Webb)**, and **Chairman Siddoway** voted aye. **Senators Davis, Winder, and Lakey** voted nay. Motion carried 6-3.

RS 25175 **Vice Chairman Hagedorn** stated that in 1990, the Legislature passed the current law giving special treatment to legislators with respect to accumulated service time for the Public Employee Retiree System of Idaho (PERSI) benefits. The LCC actively supports what is written in **RS 25175**.

MOTION: **Vice Chairman Hagedorn** moved to send **RS 25175** to print. **Senator Lodge** seconded the motion.

Senator Winder asked to get copies of the letter from the LCC. **Vice Chairman Hagedorn** stated he didn't have the letter with him but he could provide a copy to each member of the Committee. That was his intention during the hearing.

Chairman Siddoway stated there was a motion to print **RS 25175** and called for a roll call vote.

Vice Chairman Hagedorn, and **Senators Lodge, Rohn(Buckner-Webb)**, and **Chairman Siddoway** voted aye. **Senators Davis, Hill, Winder, Lakey** and **Stennett** voted nay. Motion failed 4-5

ADJOURNED: There being no further business at this time, **Chairman Siddoway** adjourned the meeting at 9:05 a.m.

Senator Siddoway
Chair

Twyla Melton
Secretary