

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Wednesday, March 13, 2019

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairwoman Lodge, Vice Chairman Harris, Senators Hill, Winder, Vick, Anthon, Souza, 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: **Chairwoman Lodge** called the Senate State Affairs Committee (Committee) to order at 8:05 a.m.

GUBERNATORIAL APPOINTMENT: **THE GUBERNATORIAL APPOINTMENT** of Russell A. Ludlow to the Bingo-Raffle Advisory Board. (Phone interview)

Russell A. Ludlow stated he was honored to be appointed to the Bingo-Raffle Advisory Board (Board). **Mr. Ludlow** said he is an Army veteran who stepped into the role of Bingo manager at the Veterans of Foreign Wars (VFW) in Burley, Idaho and has run those Bingo games for the last three years. **Chairwoman Lodge** inquired about the number of people that participate in this activity. **Mr. Ludlow** replied that the average is about 40-50 people attending each weekly session.

Senator Stennett asked what Mr. Ludlow thought was most surprising about being on this Board. **Mr. Ludlow** answered that he was surprised at how some of Idaho's laws affect Bingo and how Idaho differs from every other state in the nation. For example, Idaho has to sell the papers in sequential order; other states can sell from any packet in any order as long as they have a tracking system.

Chairwoman Lodge stated her appreciation for Mr. Ludlow's service on the Board and with the VFW organization. She also thanked him for his service in the Army. She announced voting would be at the next meeting.

RS 27083 **UNANIMOUS CONSENT REQUEST** from the Senate Commerce and Human Resources Committee (Commerce Committee) related to collection agencies.

Senator Grant Burgoyne, District 16, said **RS 27083** makes changes with respect to legislation (**S 1007**) that was seen earlier in the Session. **Senator Burgoyne** referred to **RS 27083**, lines 24-34, page 1, adding language that attorney's fees shall be limited to a reasonable fee and litigation costs shall be as prescribed by court rule.

MOTION: **Senator Vick** moved to send **RS 27083** to print. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

RS 27116 **UNANIMOUS CONSENT REQUEST** from the Senate Education Committee related to the Public School Funding Formula.

Senator Lori Den Hartog, District 22, stated she is appearing on behalf of Chairman Mortimer. **Senator Den Hartog** explained that, after meeting with some of their stakeholder groups, a few adjustments have been made to the

earlier Public School Funding Formula bill the Committee heard on Monday, March 11, 2019. The changes will make the bill more palatable and will allow it to move forward to the Education Committee for further input.

MOTION: **Senator Winder** moved to send **RS 27116** to print. **Senator Buckner-Webb** seconded the motion. The motion carried by **voice vote**.

H 191 **RELATING TO THE SECRETARY OF STATE (SOS)** to amend surcharges on fees charged for business registrations and filings.

Chad Houck, Deputy SOS, said **H 191** pertains to expedited items and surcharges specifically in the business division of the SOS office. This bill makes some adjustments and amendments to Idaho Code § 30-21-214, and will have a fiscal impact estimated at an increase of \$150,000 to the General Fund. **Mr. Houck** explained each change in detail relating to an increase of the current next-day expedite surcharge; creation of a new same-day expedite option; and provision for an additional clarification on the existing manual entry surcharge.

Senator Anthon asked for clarification on subsection (e) and the reference to "submitted to the SOS before 1:00 p.m." It was his thought that this is not referring to "ask for evidence" but is for "filing of the entity." **Mr. Houck** agreed.

MOTION: **Senator Souza** moved to send **H 191** to the floor with a **do pass** recommendation. **Senator Buckner-Webb** seconded the motion. The motion carried by **voice vote**.

H 210 **RELATING TO THE ELECTION OF LEGISLATORS** to amend statute to match the Idaho Constitution.

Mr. Houck said **H 210** has a lot to do with the Constitution of the State of Idaho (Constitution). This bill removes one word and adds four words to bring Idaho Code into agreement with the Constitution. On line 15 of the bill, the word "resided" has been removed and replaced by "been a registered elector." Article III, Section 6 of the Constitution speaks to the qualifications of Senators and Representatives and clearly says they must be a qualified elector. **H 210** simply aligns statute with the Constitution.

MOTION: **Senator Vick** moved to send **H 210** to the floor with a **do pass** recommendation. **Senator Souza** seconded the motion. The motion carried by **voice vote**.

S 1182 **RELATED TO THE RESIDENTIAL SOLAR ENERGY SYSTEM DISCLOSURE ACT** to provide that retailers of solar energy systems deliver certain written disclosures.

Senator Winder stated that **S 1182** is a bill to protect customers and constituents in our communities and districts. He told of his own experience and provided a brief history about sales representatives going door-to-door selling various systems, solar systems included. Complaints have been filed with the Idaho State Attorney General's (AG) office by a local utility company. In the past six months, there have been over 66 claims filed with the utility where salespeople have posed as representing the utility company. Legislators and stakeholders have been working on this bill throughout the session. **Senator Winder** described the new chapter in detail; **S 1182** adds Chapter 18, Residential Solar Energy System Disclosure Act, Title 48, Idaho Code.

Senator Winder explained that the provisions of **S 1182** gives the AG and the District Court the ability to make claims that are enforceable for violations through the Idaho Consumer Protection Act (ICPA).

DISCUSSION: **Senator Buckner-Webb** queried if this is not already covered by the ICPA. **Senator Winder** responded that it is not, as indicated by the number of claims being brought forward. A way is needed to enforce the ICPA's authority. There is also language in the bill that clarifies and updates the statutes.

Senator Stennett inquired if it was usual for an industry to put extra protections in statute if there is a consumer protection act or a Better Business Bureau in place. **Senator Winder** responded that the utility company attorney would testify to that question. He pointed out there has been a collaborative effort between utility companies, solar installers, and the AG to examine this issue and try to determine a way to deal with the number of claims and complaints that have come in related to the solar industry.

TESTIMONY: **Joshua Hill**, representing himself, testified both as an industry professional and also as a consultant for Idaho citizens with regard to solar photovoltaic investments. He said he has been raised with the view that any buyer should do their homework, so buyer beware. He also believes in education, especially regarding facts of the solar industry. **Mr. Hill** expressed his concern over some of the draft language of **S 1182**. He reviewed the final language and, while he would still like to see a few changes regarding a buyer's responsibility, he supports **S 1182**. This bill will not harm quality providers and will help the issues of customers being taken advantage of by providers lacking integrity.

DISCUSSION: **Senator Vick** asked what Mr. Hill thinks is unique about the solar industry that they need their own special section of laws to protect the customer. **Mr. Hill** responded that most people do not read the fine print or ask enough questions. The solar industry is complex enough that some of the language in this bill will be very helpful.

Senator Souza asked for an overall average of the cost of a residential solar system. **Mr. Hill** answered that it varies greatly but an average gross cost would be between \$15,000 and \$30,000. The net cost is 30 percent less because of tax incentives.

TESTIMONY: **Jen Visser**, Director of Government Affairs, Idaho Power Company, discussed their most recent claim filed with the AG's office and described the contents of the claim: 1.) misrepresentation; 2.) cost of the system; 3.) the benefits of the system; and 4.) long term payoff. This legislation is necessary because of the complexity of the solar industry. **S 1182** is modeled after Utah code but New Mexico and Arizona also have similar codes. **Ms. Visser** stated that additional disclosures help because it is complicated due to the number of tax incentives, complicated formulas, fluctuating energy from the utility companies, and the cost of energy. Also, Idaho Power has worked collaboratively with the Clean Energy Association to develop some amendments to the bill. **Ms. Visser** closed her testimony acknowledging that Idaho Power is there to protect its customers and to make sure that when people are making a decision, they are informed in that process.

Kevin King stated he is the Chairman of the Board of the Idaho Clean Energy Association (IDEA) and the owner of a local solar company. Solar is not a very mature industry and significant growth has only been in the last ten years. The ICPEA is a way to protect the industry from getting a poor reputation from the few irreputable groups that are outweighed by the many reputable companies. He said this is an administrative burden to legally shore up our businesses and adds an educational piece to take to the sales teams. However, members of this industry are willing to take on that burden and appreciate the opportunity because it will result in a more mature industry. **Mr. King** stated his support of this bill as does the majority of the solar installers in Idaho.

Senator Souza asked Senator Winder if the Committee was going to hear from the industry attorney. **Senator Winder** replied that **Ms. Visser** tried to address those questions. **Senator Souza** said she had some questions about

DISCUSSION: the current ICPA that is in place and how this bill interacts with the ICPA. **Ms. Visser** introduced Shelly Stewart, Senior Council, Idaho Power Company, to answer those questions.

Senator Souza asked Ms. Stewart if the ICPA was not adequate or could not be amended in a way that would provide coverage, not only to the solar industry, but other industries that might need additional coverage. **Ms. Stewart** responded that there are very specific disclosures that need to be made by the solar industry and, at this point, the ICPA is very general. One of the main things that confuses Idaho Power customers is the net metering program that is initiated when a solar system is installed and the owner gets credits for the energy generated on site. When an unauthorized door-to-door salesperson is talking with a potential customer, they are likely to misrepresent the process and leave the customer thinking they may have a \$5 bill or no bill. There are other misrepresentations that could be made as well. The solar industry is a very specific industry where there is a lot of information consumers need to understand that would not be disclosed under the ICPA.

Senator Anthon queried if Idaho Power had received complaints from their customers about other vendors selling products that would qualify for conservation credits. **Ms. Stewart** said no. Idaho Power has been receiving an influx of complaints and claims about solar that they typically do not receive about other industries.

Senator Vick asked for confirmation that it is Idaho Power's belief that the penalties are enough, along with the additional authority, to aid in stopping these activities. **Ms. Stewart** replied yes. The proposed solar act has essentially the same enforcement mechanism as the ICPA. The difference is that the ICPA does not have the specific disclosures that are required for the solar industry.

Senator Winder concluded his remarks and discussed the specific language needed to distinguish between a lease or a purchase. He drew attention to the start date of October 1, 2019 as an important factor because it allows time for the industry to train their employees and make adjustments in their paperwork. **Senator Winder** emphasized that the problem isn't the qualified solar industry companies that reside in Idaho, the problem is the ones from out of state that move in and out very quickly. **S 1182** provides specific protection for Idaho citizens and he urged the Committee's support.

MOTION: **Senator Anthon** moved to send **S 1182** to the floor with a **do pass** recommendation. **Senator Buckner-Webb** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairwoman Lodge passed the gavel to Vice Chairman Harris.

S 1177 **RELATED TO HORSE RACING** to revise provisions regarding license transfer and the distribution and use of certain funds.

Chairwoman Lodge said she is from District 11 serving mostly rural Canyon County and parts of Nampa and Caldwell. She explained that **S 1177** has been drafted by members of the Idaho horse racing industry. She stated a disclaimer that she has horses, but no interest in participating in racing or a race track. This bill is brought forward by members of the Idaho horse racing industry, a \$1 billion industry. The active horsemen in the racing arena were asked to find a solution for funding the Idaho State Racing Commission (Commission) within their industry. She stated that horse racing is recognized as an economic and recreational asset to the people of Idaho. The racing and breeding industries are a valuable sector of the State's economy and agribusiness. The purpose of this legislation is to fund the Commission which oversees the horse racing industry.

The mission of the Commission is to enhance and protect the live horse racing industry in Idaho. This is accomplished through licensing, regulation, and supervision of all live and simulcast race meets in the state under the terms of the Horse Racing Act, Idaho Code § 54-2507. **Chairwoman Lodge** described in detail the objectives of the Commission, how it is staffed, the number of racing sites, and the payment of purses.

Chairwoman Lodge outlined the changes in the bill: the proposed funding sources for the Commission begin on page 4, lines 30-45; technical corrections are on page 5 and 6 and on line 35; and corrections appear on page 7 and 8 that cover the percentage of races for each breed. There is a sunset clause of three years to allow the Commission to create opportunities for additional funding. She asked Clayton Russell to answer questions.

Clayton Russell, President, Idaho Quarter Horse Racing Association (IQHRA), explained how the bill came about and the people they contacted to get input. One common thread presented by the small tracks was that they could not provide any financial support. The IQHRA Committee then looked at where the money was going. They looked at the advance deposit wagering and determined that is where the funding should come from. Right now, 30 percent of that money is going to the simulcast sites, in the amount of approximately \$248,000, and the industry receives less than half back from those sites. Simulcast was instigated to enhance live racing; right now, it is not, it costs live racing money. **Mr. Russell** described the distribution of funds in detail. There are two other changes in this bill: 1.) the number of years would change from three years to five years for a location where simulcasting had previously existed; and 2.) will change how the breed money is calculated to how many races are run by each breed.

DISCUSSION:

Senator Stennett asked for a more detailed description about monies received by the Commission and how percentages are paid out to both the simulcast location and live racing and what percentage goes back to the Commission. **Mr. Russell** described the process in more detail outlining where each part of the money is spent, such as taxes, purse moneys, or the amount going to the small track fund.

Senator Souza ask Mr. Russell if there was collaboration between all parties, such as those running a simulcast operation, horse racing groups, and racing sites representatives and if there was agreement on this bill. **Mr. Russell** stated they had meetings with all the horsemen groups. **Senator Souza** asked how many simulcast sites there are in Idaho. **Mr. Russell** replied that there are two, one in Post Falls and one at Idaho Falls. **Senator Souza** stated that the simulcast group was not consulted although their income will be key to this equation. **Mr. Russell** explained that they were asked to do this as the horsemen group. **Senator Souza** asked for further elaboration. **Mr. Russell** answered that they were asked by the Governor's office to write a proposal and this bill is that proposal. He said he did talk with Jim Minard from the race track in Idaho Falls and since the bill has been out, they have talked to the Greene Group who has the Greyhound track in Post Falls. However, they could not come to an agreement.

Senator Buckner-Webb inquired about a fee the simulcast entities were to pay to the Commission. **Mr. Russell** responded that fee is set out in statute. **Senator Buckner-Webb** asked for clarity about this bill changing those amounts. **Mr. Russell** said they are trying to change the way the simulcast money is distributed but not the percentage in statute. The only meeting they have had was with the Greene Group the day before.

Senator Vick asked when the distribution bands were initiated and when the percentages of 60 percent to live horseracing, 30 percent to simulcast, 5 percent to the Commission, and 5 percent to schools were put in place. **Mr. Russell**

stated he could not answer that question. **Senator Vick** inquired about how they determined the \$30,000 and how that amount was fair. **Mr. Russell** responded that they tried to be fair and put it at the original amount. They used the previous amounts to determine fairness.

Vice Chairman Harris recalled that hair testing is part of this bill. He inquired if blood and urine testing is still being performed on the horses and if so, who pays for those tests. **Mr. Russell** stated that currently, they are only doing blood testing, which the Commission pays for.

Senator Stennett asked if fraudulent behavior related to drugs was a big issue, and what the cost of hair testing was. **Mr. Russell** responded that drugs are prevalent all over the country and that is the reason hair testing has been introduced. Drugs pass through a horse's system quicker than they can be recognized with drug testing; drugs stay in the hair much longer. The cost depends on who does the testing. He was quoted \$120 from a Texas firm.

TESTIMONY:

The following people testified in support of **S 1177**:

- **Brian Goody**, Small Quarter Horse rancher, Pocatello, Idaho, and Representing East Idaho Quarter Horse Association
- **Ed McNelis**, Nampa, Idaho, Idaho Horse Council
- **Marta Loveland**, Board member, Idaho Quarter Horse Racing Association
- **John Erickson**, Rigby, ID

The reasons they supported the bill included: horsemen are already putting in their share with licensing and other fees that go the Commission; the \$30,000 matches the averages between the years 2,000, 2014, and 2017; the average received was \$24,000-\$28,000; the horsemen would like to support the schools, but the Commission needs these funds right now; hair testing is essential to Idaho racing; the advanced-deposit wagering (ADW) funds were designed to build/boost the agriculture industry and economy in Idaho; racing supports fairs and youth programs; the horse industry is a nearly \$2 billion agricultural industry, besides the number one industry in the state; and saving small tracks and the Commission must be a top priority.

The following people testified in opposition of **S 1177**:

- **Doug Okuniewilz**, General Manager, Coeur d'Alene Racing (CDA)
- **Russ Westerberg** on behalf of CDA

The reasons for opposition to the bill included: CDA has been a stakeholder in the Idaho racing industry and was excluded from this process; **S 1177** exclusively taps simulcast operators' portion of the ADW source market fee share; it eliminates payments to the public school fund; they disagree with the way this bill attempts to draw funding to keep the Commission afloat; simulcast has lost market share because of the competition with the Internet; and they have an alternate draft of a bill.

DISCUSSION:

Senator Stennett asked Mr. Okuniewilz to confirm that if racing dies in Idaho, simulcast locations will continue to operate and make money elsewhere at about \$200,000 per day. **Mr. Okuniewilz** stated that he thought if the Commission goes away, no one would be licensed and everything goes away. **Senator Stennett** asked for more information on the 25 percent. **Mr. Okuniewilz** explained how the Commission's income varies from year to year. The amount up to 25 percent provides them the ability to adjust based on the need.

Senator Souza stated she is uncomfortable mediating an industry dispute. She explained the reason for her concern. **Mr. Okuniewilz** stated he is not sure they can't come to an agreement, they just haven't been given the opportunity.

Senator Buckner-Webb stated that everyone is focused on keeping the industry alive and well. There is a lot of expertise among all the stakeholders that could be used to address this issue competently.

Chairwoman Lodge explained that the Commission is in dire need and the horsemen came forward to try and solve the situation. She said there was a meeting the day prior and it was unproductive. If the industry does not come forward with a solution to the funding problem, the Commission will die on January 1, 2020 because they will run out of money. If that happens, there will be no horse racing, no simulcasts, and no ADW. Horse racing affects the small fairs in Southeast Idaho, and it affects a lot of kids because of 4-H activities. The Committee needs to come to a decision to help so this industry can be saved.

MOTION:

Senator Hill moved to send **S 1177** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion.

DISCUSSION:

Senator Vick stated his disappointment in being involved in an industry dispute. He discussed the lack of all the stakeholders involvement in developing this bill. He can't support the motion.

Senator Souza agreed with Senator Vick and restated her earlier concerns, including her concern with the lack of collaboration. She honors the horse racing industry and it is important to have agreements between all parties in any industry. She will not be supporting this bill.

At the request of **Senator Winder**, **Ardie Noyes** introduced herself as the Business Operations Manager for the Commission. **Senator Winder** inquired if funds were available to stay in operation until the end of the 2020 session if this bill is not passed. If that is possible, he asked if there would be an opportunity to resolve some of the issues and concerns. **Ms. Noyes** stated that if she continues to "pinch pennies" and cut hours, there may be enough to get into 2020. Each month, she gets ADW money and that will be dispersed next year about this time.

Adam Jarvis, Division of Financial Management (DFM), stated that, from a DFM perspective, he agreed with Ms. Noyes that they would have to take drastic measures. Even with this bill, the disbursement of the funds from the current calendar year will not happen until March, 2020. There are concerns about bridging that gap between January and March. They have discussed "pinching pennies" to make it to mid-March.

Senator Winder stated that most have supported horse racing and ways to keep it operating. It is a historical part of the agricultural community. He will support the motion; however, there is a better solution. This would be for one year and the industry would come back to the Legislature. **Senator Winder** did not like the idea of picking winners and losers between friends. He will support the motion but wants action to allow both sides of the equation to be fairly treated.

Senator Anthon, echoed what has been discussed on both sides of the motion. The word should go out that we do not like to settle industry fights in the State Senate. He seconded the motion because he must err on siding with the horse industry. He doesn't discount any of the opposing arguments on this matter. He is supporting the motion because otherwise, the horse industry will be harmed.

Chairwoman Lodge commented that there is a three year sunset on this legislation. There is a need for about \$250,000. She stated that her hope is, during this three-year period of time, that all parties will assemble to make

some decisions on how to work out the funding. Circumstances leading to the agreements that were made in 2003 have changed drastically. It is time that all parties come together and decide what they are going to do.

Senator Stennett stated that being involved in industry disputes in the Committee made her incredibly unhappy. Live horse racing has all the responsibility of taking care of the horses, testing, cleanliness, and facilities while the other side reaps the benefit of doing simulcasts without equal responsibilities. There should have been consensus.

SUBSTITUTE MOTION:

Senator Stennett made a substitute motion to send **S 1177** to the 14th Order of business for possible amendment. **Senator Souza** seconded the motion.

DISCUSSION:

Senator Winder commented that trying to get an amendment at this late date will probably kill the bill because of the time left to process an amended bill. He will support the motion to send it to floor with a do pass recommendation only on the basis of an understanding of both simulcast and live horse racing that they will be back at the very beginning of next session with a way to resolve this issue on a long term basis that will be agreeable to both sides.

Senator Stennett stated that the reason for going to the amending order was to restrict it to one year.

ROLL CALL VOTE ON SUBSTITUTE MOTION:

Vice Chairman Harris called for a roll call vote. **Vice Chairman Harris** and **Senators Vick, Souza,** and **Stennett** voted aye. **Senators Hill, Winder, Anthon, Buckner-Webb** and **Chairman Lodge** voted nay.

VOTE ON ORIGINAL MOTION:

The motion carried by **voice vote**. **Vice Chairman Harris** and **Senators Souza** and **Vick** requested to be recorded as voting nay.

ADJOURNED:

There being no further business, **Vice Chairman Harris** adjourned the meeting at 10:20 a.m.

Senator Lodge
Chair

Twyla Melton
Secretary