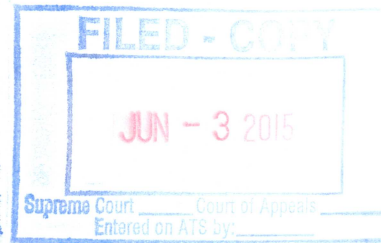


Deborah A. Ferguson, ISB No. 5333
Craig H. Durham, ISB No. 6428
FERGUSON DURHAM, PLLC
223 N. 6th Street, Suite 325
Boise, Idaho 83702
T: (208) 345-5183
F: (208) 906-8663
daf@fergusondurham.com
chd@fergusondurham.com



Attorneys for Petitioner

IN THE SUPREME COURT OF THE STATE OF IDAHO

COEUR D'ALENE TRIBE

Petitioner,

v.

LAWERENCE DENNEY, Secretary of
State of the State of Idaho, in his official
capacity,

Respondent.

No.

**VERIFIED PETITION FOR
WRIT OF MANDAMUS**

I.

INTRODUCTION

Petitioner Coeur d'Alene Tribe asks this Court to resolve a dispute that strikes at the heart of the constitutional balance between the Idaho Legislature's lawmaking power and the Governor's veto power. The Court should exercise its original jurisdiction and issue a writ of mandamus, compelling the Secretary of State to certify 2015 Senate Bill 1011 as law. Time is of the essence.

Specifically, during the First Regular Session of the Sixty-Third Idaho Legislature, a supermajority of both houses voted to repeal a two-year-old law that

allowed wagering on “instant” or “historical” horse racing. Based upon Idaho Code § 54-2512A, the Idaho Racing Commission authorized slot-like machines to be installed at Idaho racetracks. The bill – listed as Senate Bill 1011 (“S.B. 1011”) – was delivered to Governor C.L. “Butch” Otter on the afternoon of Monday, March 30. Under Idaho law, the Governor had five full days, until Saturday, April 4, to veto the bill by delivering his objections back to the Senate.

The Governor failed to return the bill with a veto message within five days. As a result, Senate Bill 1011 became law, and Secretary of State Lawrence Denney has non-discretionary duties to certify it as law, deposit it with the laws of his office, and assign it a chapter number in the Idaho Code. He has refused to do so. Accordingly, the Coeur d’Alene Tribe respectfully petitions the Court to issue a writ of mandamus to the Secretary ordering him to comply with his non-discretionary legal duties. A brief has been filed concurrently in support of this Verified Petition.

II.

JURISDICTION

1. The Court has original jurisdiction to consider a petition for a writ of mandamus under the Idaho Constitution, Article V § 9; Idaho Code § 1-203; Idaho Code § 7-302, and Idaho Appellate Rule 5(a).

III.

THIS IS THE PROPER FORUM AND THE PROPER REMEDY

2. This case presents important constitutional issues involving the balance of power and duties between the legislative branch and the executive branch of government, as well as the right of the people of Idaho to have duly enacted laws given effect. This is

an extraordinary case that demands an extraordinary remedy.

3. The Secretary has refused to comply with the ministerial and non-discretionary duties of his office.

4. No other speedy and adequate remedy exists at law for Petitioner and the people of Idaho. Senate Bill 1011 should become effective on July 1, 2015. An expeditious ruling is needed.

5. Only this Court can provide the appropriate plain, speedy, and adequate remedy allowed under the Idaho Constitution and Idaho Code § 7-303 by July 1, 2015.

IV.

PARTIES

6. Petitioner Coeur d'Alene Tribe is a federally recognized Indian Tribe. It has a tribal government operated pursuant to a revised Constitution and Bylaws adopted by the Tribe by referendum and approved by the United States Department of the Interior, Bureau of Indian Affairs, December 21, 1984. The Tribe has over 2,190 enrolled members, and maintains its governmental offices in Plummer, Idaho. The Tribe has a concrete and discrete interest in the outcome of this case. It was a lead proponent of S.B. 1011, and it has been injured by the Secretary's refusal to certify the bill as law, as explained more fully in the Brief of Petitioner filed with this Verified Petition.

7. Respondent Lawrence Denney is the duly elected Secretary of State for the State of Idaho whose duties and responsibilities are set forth in the statutes of the State of Idaho, including Idaho Code § 67-505 and §67-506.

V.

BACKGROUND

8. Article III, § 20 of the Idaho Constitution prohibits most forms of gambling in Idaho.

9. In 1988, Congress enacted the Indian Gaming Regulatory Act (“IGRA”) which permitted Indian tribes to negotiate gaming compacts with the states, subject to approval by the United States Secretary of the Interior.

10. The Coeur d’Alene Tribe negotiated with the State of Idaho, and a Compact was approved under the IGRA allowing certain gaming on tribal land in 1993.

11. Despite negotiations, the Tribe and the State could not resolve disputes about the Compact.

12. In 2002, the Tribe and others sponsored a ballot initiative, Proposition 1, to authorize the use of tribal gaming machines on tribal lands and to provide an automatic ratification process to change state-tribal gaming compacts.

13. Proposition 1 was intended to address the disproportionately high unemployment, severe poverty, and a lack of basic social services, such as education and health care, on Indian reservations in Idaho.

14. Proposition 1 was passed by a large majority of Idaho’s citizens.

15. In 2013, the Legislature passed a law, Idaho Code § 54-2512A, that authorized “wagering” on “historical” horse races. These machines, as authorized by the Idaho Racing Commission, are intended to look like and imitate slot machines.

16. In 2015, amid concerns that the Legislature had not been informed of the true purpose and effect of Idaho Code §54-2512A, proponents of a repeal, which

included the Tribe, introduced Senate Bill 1011 in the Idaho Legislature.

17. The Court must refer only to the Senate Journal for the First Regular Session of the Sixty-Third Legislature of the State of Idaho for the relevant and necessary facts of the official government acts regarding the passage of S.B. 1011 into law. Copies of the relevant excerpts of the Senate Journal are attached as Appendix A, for Senate Sessions on March 30, April 2, and April 6, 2015.

18. Senate Bill 1011 was introduced in the Senate on January 23, 2015. In a single sentence, the bill repeals Idaho Code § 54-2512A, passed just two years earlier. Under Senate Bill 1011, the Idaho Racing Commission no longer has the authority to allow wagering on historical horse races, effective July 1, 2015.

19. The repeal gathered momentum, had overwhelming support in the Legislature, and passed by a supermajority in both houses.

20. The bill was presented to the Governor on Monday, March 30. (Appendix A, at 2.)

21. The Governor's veto power is defined by Article IV, § 10 of the Idaho Constitution. Three options were available to the Governor under Idaho Constitution. He could (1) sign the bill into law; (2) veto it; or (3) fail to act and the bill would become law.

22. A "pocket veto," or a veto through the Governor's inaction, does not exist under Idaho law.

23. The Governor attempted to veto S.B. 1011. The veto was invalid.

24. Under Article IV, § 10 of the Idaho Constitution, if the Governor wishes to veto a bill while the Legislature is in session, he must return the bill to the legislative

house in which it originated, with his objections, within five days (excluding Sundays) of when it was presented to him.

25. Here, because the Legislature had not adjourned sine die when S.B. 1011 was presented to the Governor on March 30, he had five consecutive days, until April 4, to return the bill to the Senate with his objections.

26. On Thursday, April 2, the Legislature adjourned temporarily for the Easter holiday weekend, resuming official business on Monday, April 6. (Appendix A, at 4.)

27. The Legislature's temporary adjournment for the holiday did not toll or suspend the Governor's obligation to return the bill within five days, if he wished to veto it. To the contrary, Idaho Code § 67 – 504 speaks to this precise situation.

28. Under that statutory provision, if the Governor wishes to veto a bill during an in-session adjournment, the Governor must “deliver the bill with his message to the presiding officer, clerk, or any member of such house, and such delivery is as effectual as though returned in open session, if the governor, on the first day the house is again in session, by message notifies it of such delivery, and of the time when, and the person to whom, such delivery was made.”

29. In this way, Idaho Code § 67 – 504 gives the Governor the authority to veto bills during temporary legislative adjournments.

30. As applied to the facts at hand, if the Governor wished to veto S.B. 1011 during the temporary adjournment, he was required to do two simple things: (1) “deliver the bill with his message” to one of the Senate officials listed in the statutory provision before the deadline, and (2) notify the Senate on the first day it was again in session “of the time when, and the person to whom, such delivery was made.”

31. The Governor did not deliver the bill with his veto message to one of the officials listed in Idaho Code § 67-504 when the Senate was temporarily adjourned on April 3 or 4.

32. Instead, the Senate Journal reflects that the Governor first attempted to return the bill on Monday morning, April 6. (Appendix A, at 5-7.) On that date, the Governor returned the bill with his veto message to the office of Senate President Pro Tempore Brent Hill, addressed to President of the Senate Brad Little.

33. Because the return of the bill was late and delivered past the veto deadline of April 4, President Pro Tempore Hill filed an official communication in the Senate Journal, which reads, “such deadline having passed, the provision of Article IV, § 10 of the Idaho Constitution and Idaho Code § 67-504 and 505 appear to apply.” (Appendix A, at 5.) This correspondence was ordered filed in the office of the Secretary of the Senate.

34. A second communication from Jennifer L. Novak, Secretary of the Senate, was also ordered filed in the Senate Journal. It also shows that Senate Bill 1011 was not returned to the Office of the Secretary of the Senate by April 4. (Appendix A, at 5.)

35. Notably, Secretary Novak indicated that she had received other communication from the Governor’s office over the weekend, but not communication related to Senate Bill 1011: “[o]ther correspondence of legislation were slipped under my door and returned in accordance with Article IV §10 and Idaho Code §§ 67-504 & 505. Correspondence of legislation is routinely returned to me in this fashion.” (Appendix A, at 5.) She further states that no earlier return was attempted on her office, nor was she asked to receive a return at an earlier date. (*Id.*)

36. A third communication from Minority Leader Michelle Stennett was also

filed in the Senate Journal, corroborating a late return of the bill to the Senate Pro Tempore's office on Monday April 6. (Appendix A, at 5.)

37. Minority Leader Stennett further wrote, “[t]o the best of my knowledge no earlier return was attempted or effectuated to the senate, nor was anyone asked to receive such a return at an earlier time. The return of S1011, being due at 4:54 pm on April 4, 2015, and such deadline having passed, S1011 is law pursuant to the provisions of Article IV, Section 10 of the Idaho Constitution and Idaho Code Sections 67-504 and 505.” (Appendix A, at 5.)

38. All three letters were ordered filed in the office of the Secretary of the Senate and are contained in the Senate Journal, the official record of all Senate proceedings. (Appendix A, at 5.)

39. The Governor's veto letter addressed to Lieutenant Governor Brad Little in his capacity as President of the Senate also appears in the Senate Journal. (Appendix A, at 6-7.) Despite bearing a date of April 3, there is no indication in the record that it was delivered to President Little or any other Senate official at any time before April 6. (*Id.*)

40. President Little presided over the entire Senate session on April 6. The Senate Journal contains no statement from President Little (or any other Senator) that the bill and veto message had been delivered in a timely manner. (Appendix A, at 5-7.)

41. Notably, President Little also did not rebut or refute that the President Pro Tempore and the two other Senate officials who each individually noted, for the official record in the Senate Journal, that the veto return was not timely, and therefore not effective.

42. In addition, the Governor did not notify the Senate that he had made “such [previous] delivery, and of the time when, and the person to whom, such delivery was made ...,” as required by Idaho Code § 67-504.

43. Because the Governor did not comply with his constitutionally and statutorily mandated duty to return the bill with his objections in a proper manner before the expiration of the five-day deadline, his veto was invalid.

44. Under the Idaho Constitution, in the absence of a proper and timely veto, Senate Bill 1011 became law on April 4.

45. On April 6, despite the invalid veto attempt, President Little treated the veto as if it were effective. Although Senate officers had explicitly informed the Senate that the veto was invalid, President Little proceeded to call for a vote on April 6 on the question: “Shall S 1011 become law, the Governor’s veto notwithstanding?” When a majority, but less than two-thirds, voted in the affirmative on this question, the President of the Senate declared that Senate Bill 1011 failed to become law and that “the Governor’s veto [is] sustained.” (Appendix A, at 7.)

46. These acts of the Senate pertaining to S.B. 1011 after it became a law are a nullity and have no legal effect.

47. The Secretary of State has a mandatory duty under Idaho Code § 67-505 to certify a bill that has become law due to the Governor’s failure to return the bill with a veto to the Legislature. This duty is not subject to the exercise of his discretion.

48. The statute reads: “[e]very bill which has passed both houses of the legislature, and has not been returned by the governor within five (5) days, thereby becoming a law, is authenticated by the governor causing the fact to be certified thereon

by the secretary of state in the following form: ‘This bill having remained with the governor five (5) days (Sundays excepted), and the legislature being in session, it has become a law this day of,,’ which certificate must be signed by the secretary of state and deposited with the laws in his office.” (*Id.*)

49. Before filing this Petition, the Tribe requested that the Secretary fulfill his duty and certify Senate Bill 1011 as law and deposit it with the laws in his office. He refused. (Appendix B.)

50. The Secretary has asserted that he lacks authority to certify the bill as a law because “the requisite gubernatorial authentication under Idaho Code § 67-505 is absent.” (Appendix B.)

51. Contrary to the Secretary’s position, it is the Governor’s failure to return the bill within five days that “authenticates” the law. This is apparent from the plain language of Idaho Code § 67-505: “[e]very bill which has passed both houses of the legislature, and has not been returned by the governor within five (5) days, *thereby becoming a law, is authenticated by the governor ...*” (Emphasis added). The Secretary’s position would require an “and” before the phrase “is authenticated by the governor.”

52. Under Idaho law, the Governor did not return the bill with his objections in a timely manner to the Senate. Nothing more is required to give rise to the Secretary’s duties.

VI.

CLAIM FOR RELIEF

53. Petitioner hereby re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 52.

54. A writ of mandamus is an appropriate remedy when a governmental officer has refused to comply with a non-discretionary duty and when no other speedy and adequate remedy exists.

55. Idaho Code § 67-505 and § 67-506 impose non-discretionary duties upon the Secretary of State to certify bills that have become law, deposit them with the laws in his office, and assign them chapter numbers in the Idaho Code.

56. Senate Bill 1011 became law on April 4, 2015, after the Governor failed to return it to the Senate within five days of the bill's presentment to him.

57. Senate Bill 1011 must be certified by the Secretary of State in the following form: "This bill having remained with the governor five (5) days (Sundays excepted), and the legislature being in session, it has become a law this 4th day of April, 2015," which certificate must be signed by the Secretary of State and deposited with the laws in his office.

VII.

SUPPORTING DOCUMENTS

58. This Petition is supported by the Verification of Chief J. Allan, Chairman of the Coeur d'Alene Tribal Council.

59. Appendix A is a true and correct copy of the official Journal of the Senate for the First Regular Session of the Sixty-Third Legislature of the State of Idaho, containing the relevant portions of the Journals of March 30, April 2, and April 6, 2015.

60. Appendix B is a true and correct copy of a letter from Secretary of State Lawrence Denney, denying the Tribe's request that Senate Bill be certified under § 67-505 and deposited in the laws of the State of Idaho.

VIII.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that the Court grant the following relief:

(1) For the issuance of a writ of mandamus compelling the Secretary of State to certify that Senate Bill 1011 became law on April 4, 2015, in the format specified by Idaho Code §67-505, deposit it with the laws of his office, and assign it a chapter number in the Idaho Code pursuant to Idaho Code § 67-506;

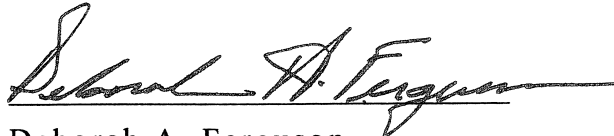
(2) For a show cause or other hearing as the Court may require pursuant to Idaho Appellate Rule 5(d);

(3) For an award of attorneys' fees, expenses, and costs under Idaho Code § 12-117, Idaho Code § 12-121, or as otherwise provided by law; and

(4) For any such further relief, including issuance of declaratory relief or other extraordinary writs as the Court deems just, equitable, reasonable and proper under the circumstances.

Dated: June 3, 2015

Respectfully submitted,



Deborah A. Ferguson
Craig H. Durham
FERGUSON DURHAM, PLLC

Attorneys for Petitioner
COEUR D'ALENE TRIBE

VERIFICATION

STATE OF IDAHO)
)
COUNTY OF ADA) ss.

Chief J. Allan, being first duly sworn under oath, deposes and states as follows:

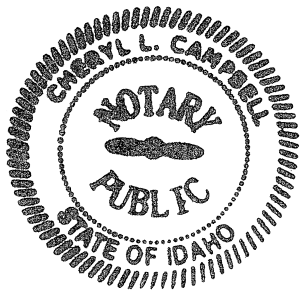
1. I am the Chairman of the Coeur d'Alene Tribal Council. I am authorized to verify this Petition for Writ of Mandamus on behalf of the Coeur d'Alene Tribal Council, which is empowered to act for and on behalf of the Coeur d'Alene Tribe.

2 The Coeur d'Alene Tribe was a proponent of 2015 Idaho Senate Bill 1011.

3. I have reviewed the foregoing Petition and am familiar with the facts asserted therein. The Petition and the facts asserted therein are true and correct to the best of my knowledge and belief.

Chief J. Allan
Chief J. Allan, Chairman
Coeur d'Alene Tribal Council

SUBSCRIBED and SWORN to before me this 2nd day of June, 2015.



Notary Public *Cheryl L. Campbell*
Residing at Wooty, ID
My commission expires: 9/25/20

APPENDIX A

SENATE JOURNAL
OF THE
IDAHO LEGISLATURE

FIRST REGULAR SESSION
SIXTY-THIRD LEGISLATURE

SEVENTY-EIGHTH LEGISLATIVE DAY
MONDAY, MARCH 30, 2015

Senate Chamber

President Little called the Senate to order at 9 a.m.

Roll call showed all members present except Senators Cameron, Martin, and McKenzie, absent and excused.

Prayer was offered by Chaplain Brent Adamson.

The Pledge of Allegiance was led by Lydia Deatherage, Page.

The Senate advanced to the Third Order of Business.

Reading and Correction of the Journal

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of March 27, 2015, was read and approved as corrected.

LODGE, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifth Order of Business.

Petitions, Resolutions, and Memorials

Senators Cameron and Martin were recorded present at this order of business.

SCR 127

BY STATE AFFAIRS COMMITTEE

A CONCURRENT RESOLUTION

STATING LEGISLATIVE FINDINGS AND APPROVING AND EXTENDING TEMPORARY RULES REVIEWED BY THE LEGISLATURE.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Legislature by statute must approve temporary rules by adoption of a concurrent resolution approving the rule if the temporary rule is to remain in effect beyond the end of the current legislative session; and

WHEREAS, the expiration of temporary rules would occasion additional expense to state agencies in readopting and republishing temporary rules needed to conduct state business; and

WHEREAS, the Legislature finds that it is in the public interest to adopt this resolution.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Sixty-third Idaho Legislature, the Senate and the House of Representatives concurring therein,

that all temporary rules adopted by state agencies pursuant to the Administrative Procedure Act and submitted to the Legislature at the Legislature's request through the Office of the Administrative Rules Coordinator for review during the 2015 legislative session, be, and the same are approved.

BE IT FURTHER RESOLVED that a temporary rule or partial temporary rule approved by this concurrent resolution shall remain in effect until it expires by its own terms or by operation of law or until it is replaced by a final rule, but in no event shall a temporary rule remain in effect beyond the conclusion of the Second Regular Session of the Sixty-third Idaho Legislature unless it is further extended by adoption of a concurrent resolution by both houses of the Legislature. Temporary rules or sections of temporary rules which are excepted from approval hereunder or which were not submitted to the Legislature for review during the 2015 legislative session shall expire by operation of statute upon adjournment of the First Regular Session of the Sixty-third Idaho Legislature, unless approved by adoption of a separate concurrent resolution by both houses of the Legislature.

SCR 128

BY STATE AFFAIRS COMMITTEE

A CONCURRENT RESOLUTION

STATING LEGISLATIVE FINDINGS AND APPROVING ADMINISTRATIVE RULES THAT IMPOSE A FEE OR CHARGE, WITH AN EXCEPTION, AND REJECTING A CERTAIN AGENCY RULE DOCKET THAT IS NOT APPROVED.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Legislature pursuant to Section 67-5224, Idaho Code, must approve certain administrative rules that impose a fee or charge by adoption of a concurrent resolution before the rules become effective; and

WHEREAS, the Legislature is vested with authority to reject executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that a certain rule docket of the Department of Insurance governing Schedule of Fees, Licenses, and Miscellaneous Charges is not consistent with legislative intent; and

WHEREAS, the Legislature finds that it is in the public interest to adopt this resolution.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Sixty-third Idaho Legislature, the Senate and the House of Representatives concurring therein, that all pending administrative rules or portions of pending administrative rules adopted by state agencies pursuant to the Administrative Procedure Act during the prior calendar year, and submitted through the Office of the Administrative Rules Coordinator to the Legislature for review during the 2015 legislative session, which impose a fee or charge, be, and the same are approved, with the exception of the following enumerated pending fee rule:

IDAPA 18.01.44, the Department of Insurance, Rules Governing the Schedule of Fees, Licenses, and Miscellaneous Charges, adopted as a pending fee rule under Docket Number 18-0144-1401, the entire rulemaking docket.

BE IT FURTHER RESOLVED that IDAPA 18.01.44, the Department of Insurance, Rules Governing the Schedule of Fees,

March 30, 2015

The JUDICIARY AND RULES Committee reports that Enrolled S 1157, S 1158, S 1160, S 1161, S 1162, S 1120, S 1163, S 1164, S 1166, S 1088, as amended in the House, and S 1011 were delivered to the Office of the Governor at 4:54 p.m., March 30, 2015.

LODGE, Chairman

The report was ordered filed in the office of the Secretary of the Senate.

March 30, 2015

The EDUCATION Committee reports out H 300, H 302, and H 308 with the recommendation that they do pass.

MORTIMER, Chairman

H 300, H 302, and H 308 were filed for second reading.

March 30, 2015

The HEALTH AND WELFARE Committee reports out H 298, HCR 19, and HCR 24 with the recommendation that they do pass.

HEIDER, Chairman

H 298 was filed for second reading.

HCR 24 was referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

On request by Senator Davis, granted by unanimous consent, HCR 19 was recommitted to the Health and Welfare Committee.

March 30, 2015

The JUDICIARY AND RULES Committee reports out S 1181 and S 1182 with the recommendation that they do pass.

LODGE, Chairman

S 1181 and S 1182 were filed for second reading.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Davis, seconded by Senator Stennett, by voice vote, the Senate adjourned at 5:25 p.m. until the hour of 9 a.m., Tuesday, March 31, 2015.

BRAD LITTLE, President

Attest: JENNIFER NOVAK, Secretary

SENATE JOURNAL

OF THE

IDAHO LEGISLATURE

April 1, 2015

FIRST REGULAR SESSION
SIXTY-THIRD LEGISLATURE

EIGHTY-FIRST LEGISLATIVE DAY
THURSDAY, APRIL 2, 2015

Senate Chamber

President Little called the Senate to order at 10 a.m.

Roll call showed all members present except Senators Brackett, Davis, and Lodge, absent and excused.

Prayer was offered by Chaplain Brent Adamson.

The Pledge of Allegiance was led by Samantha Mooney, Page.

The Senate advanced to the Third Order of Business.

Reading and Correction of the Journal

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of April 1, 2015, was read and approved as corrected.

LODGE, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

On request by Senator Winder, granted by unanimous consent, the Senate advanced to the Sixth Order of Business.

Reports of Standing Committees

Senator Brackett was recorded present at this order of business.

April 1, 2015

The RESOURCES AND ENVIRONMENT Committee reports out HJM 11 with the recommendation that it do pass.

BAIR, Chairman

HJM 11 was referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

On request by Senator Winder, granted by unanimous consent, the Senate advanced to the Ninth Order of Business.

Messages from the House

April 1, 2015

Dear Mr. President:

I transmit herewith HJM 12, which has passed the House.

ALEXANDER, Chief Clerk

HJM 12 was filed for first reading.

Dear Mr. President:

I return herewith S 1098, as amended in the House, which has passed the House.

ALEXANDER, Chief Clerk

On request by Senator Vick, granted by unanimous consent, S 1098, as amended in the House, was referred to the Tenth Order of Business, Motions and Resolutions, for consideration as to possible concurrence in the House amendments.

April 1, 2015

Dear Mr. President:

I return herewith S 1171, S 1172, S 1175, S 1176, S 1152, S 1154, as amended, S 1170, S 1169, SCR 103, SCR 117, SCR 118, SCR 121, and SCR 119, which have passed the House.

ALEXANDER, Chief Clerk

S 1171, S 1172, S 1175, S 1176, S 1152, S 1154, as amended, S 1170, S 1169, SCR 103, SCR 117, SCR 118, SCR 121, and SCR 119 were referred to the Judiciary and Rules Committee for enrolling.

April 1, 2015

Dear Mr. President:

I transmit herewith Enrolled H 94, as amended in the Senate, and H 170, as amended in the Senate, for the signature of the President.

ALEXANDER, Chief Clerk

The President signed Enrolled H 94, as amended in the Senate, and H 170, as amended in the Senate, and ordered them returned to the House.

April 1, 2015

Dear Mr. President:

I return herewith Enrolled S 1104, as amended in the House, S 1073, as amended in the House, and S 1069, as amended, as amended, as amended in the House, which have been signed by the Speaker.

ALEXANDER, Chief Clerk

Enrolled S 1104, as amended in the House, S 1073, as amended in the House, and S 1069, as amended, as amended, as amended in the House, were referred to the Judiciary and Rules Committee for transmittal to the Office of the Governor.

Senator Davis was recorded present at this order of business.

The Senate advanced to the Tenth Order of Business.

Motions and Resolutions

On request by Senator Davis, granted by unanimous consent, HJM 3 was recommitted to the State Affairs Committee.

The President announced that the House amendments to S 1098, as amended in the House, were before the Senate for consideration as to possible concurrence, the question being, "Shall the Senate concur in the House amendments to S 1098, as amended in the House?"

On request by Senator Vick, granted by unanimous consent, the Senate concurred by voice vote in the House amendments to S 1098, as amended in the House.

S 1098, as amended in the House, was referred to the Judiciary and Rules Committee for engrossing.

The Senate advanced to the Eleventh Order of Business.

**Introduction, First Reading, and Reference of Bills,
House Petitions, Resolutions, and Memorials**

**S 1192
BY FINANCE COMMITTEE
AN ACT**

REDUCING THE APPROPRIATION TO THE DEPARTMENT OF LABOR FOR FISCAL YEAR 2015; APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF LABOR FOR FISCAL YEAR 2015; APPROPRIATING MONEYS TO THE DEPARTMENT OF LABOR FOR FISCAL YEAR 2016; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; PROVIDING AN APPROPRIATION AND TRANSFER OF MONEYS TO THE WORKFORCE DEVELOPMENT TRAINING FUND; PROVIDING LEGISLATIVE INTENT FOR LOCAL DEPARTMENT OF LABOR OFFICES; PROVIDING LEGISLATIVE INTENT ON ACTIVITIES OF THE WORKFORCE DEVELOPMENT TRAINING FUND; AND DECLARING AN EMERGENCY.

S 1192 was introduced, read the first time at length, and referred to the Judiciary and Rules Committee for printing.

HJM 12, by State Affairs Committee, was introduced, read at length, and referred to the State Affairs Committee.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Thirteenth Order of Business.

Third Reading of Bills

On request by Senator Cameron, granted by unanimous consent, S 1173 was recommitted to the Finance Committee.

On request by Senator Cameron, granted by unanimous consent, S 1179 was recommitted to the Finance Committee.

On request by Senator Mortimer, granted by unanimous consent, H 309 was referred to the Fourteenth Order of Business, General Calendar.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Davis, seconded by Senator Stennett, by voice vote, the Senate adjourned at 10:30 a.m. until the hour of 1:30 p.m., Monday, April 6, 2015.

BRAD LITTLE, President

Attest: JENNIFER NOVAK, Secretary

SENATE JOURNAL
 OF THE
IDAHO LEGISLATURE
 FIRST REGULAR SESSION
 SIXTY-THIRD LEGISLATURE

EIGHTY-FIFTH LEGISLATIVE DAY
MONDAY, APRIL 6, 2015

Senate Chamber

President Little called the Senate to order at 1:30 p.m.

Roll call showed all members present except Senator McKenzie, absent and formally excused by the Chair; and Senators Buckner-Webb, and Nonini, absent and excused.

Prayer was offered by Chaplain Brent Adamson.

The Pledge of Allegiance was led by Joshua Price, Page.

The Senate advanced to the Third Order of Business.

Reading and Correction of the Journal

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of April 2, 2015, was read and approved as corrected.

LODGE, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

Senator Nonini was recorded present at this order of business.

Senators Buckner-Webb and McKenzie were recorded present at this order of business.

The Senate advanced to the Fourth Order of Business.

Reading of Communications

April 6, 2015

The Honorable Brad Little
President
Idaho State Senate

Dear President Little:

This communication reflects that Senate Bill 1011 was returned to my office at 8:52 am on April 6, 2015. To the best of my knowledge no earlier return was attempted to my office, nor was I asked to receive such a return at any earlier time. The return of S 1011 being due at 4:54 pm on April 4, 2015 and such deadline having passed, the provisions of Article IV, §10 of the Idaho Constitution and Idaho Code §67-504 and 505 appear to apply.

Sincerely,
/s/ Brent Hill
President Pro Tempore

The correspondence was ordered filed in the office of the Secretary of the Senate.

April 6, 2015

The Honorable Brad Little
President
Idaho State Senate

Dear Mr. President:

This communication reflects that S 1011 was not returned to my office by 4:54 p.m. on April 4, 2015 in my capacity as the Secretary of the Senate. Other correspondence of legislation were slipped under my door and returned in accordance with Article IV, §10 and Idaho Code §§67-504 & 505. Correspondence of legislation is routinely returned to me in this fashion. To the best of my knowledge no earlier return was attempted to my office, nor was I asked to receive such a return at any earlier time.

Sincerely,
/s/ Jennifer L. Novak
Secretary of the Senate

The correspondence was ordered filed in the office of the Secretary of the Senate.

April 6, 2015

The Honorable Brad Little
President
Idaho State Senate

Dear President Little:

This communication reflects that Senate Bill 1011 was returned to the Senate Pro Tem's office at 8:52 am on April 6, 2015. To the best of my knowledge no earlier return was attempted or effectuated to the Senate, nor was anyone asked to receive such a return at any earlier time. The return of S1011, being due at 4:54 pm on April 4, 2015, and such deadline having passed, S1011 is law pursuant to the provisions of Article IV, Section 10 of the Idaho Constitution and Idaho Code Sections 67-504 and 67-505.

Sincerely,
/s/ Michelle Stennett
Senate Minority Leader

The correspondence was ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Sixth Order of Business.

Reports of Standing Committees

April 6, 2015

The JUDICIARY AND RULES Committee reports that **S 1192** has been correctly printed.

LODGE, Chairman

S 1192 was referred to the Finance Committee.

April 2, 2015

The JUDICIARY AND RULES Committee reports that S 1098, as amended in the House, has been correctly engrossed.

LODGE, Chairman

S 1098, as amended in the House, was filed for first reading.

April 2, 2015

The JUDICIARY AND RULES Committee reports that S 1171, S 1172, S 1175, S 1176, S 1152, S 1154, as amended, S 1170, S 1169, SCR 103, SCR 117, SCR 118, SCR 121, and SCR 119 have been correctly enrolled.

LODGE, Chairman

The President signed Enrolled S 1171, S 1172, S 1175, S 1176, S 1152, S 1154, as amended, S 1170, S 1169, SCR 103, SCR 117, SCR 118, SCR 121, and SCR 119 and ordered them transmitted to the House for the signature of the Speaker.

April 2, 2015

The JUDICIARY AND RULES Committee reports that Enrolled S 1104, as amended in the House, S 1073, as amended in the House, and S 1069, as amended, as amended, as amended in the House, were delivered to the Office of the Governor at 10:35 a.m., April 2, 2015.

LODGE, Chairman

The report was ordered filed in the office of the Secretary of the Senate.

April 2, 2015

The TRANSPORTATION Committee reports out H 312 with the recommendation that it be referred to the Fourteenth Order of Business for amendment.

BRACKETT, Chairman

There being no objection, H 312 was referred to the Fourteenth Order of Business, General Calendar.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eighth Order of Business.

Messages from the Governor

April 2, 2015

The Honorable Brad Little
President of the Senate
Idaho Legislature

Dear Mr. President:

I have the honor to inform you that I have signed today and am transmitting to the Secretary of State the following Senate Bill, to wit:

S 1076

As Always - Idaho, *Esto Perpetua*
/s/ C.L. "Butch" Otter
Governor of Idaho

The correspondence was ordered filed in the office of the Secretary of the Senate.

April 3, 2015

The Honorable Brad Little
President of the Senate
Idaho Legislature

Dear Mr. President:

I have the honor to inform you that I have signed today and am transmitting to the Secretary of State the following Senate Bills, to wit:

S 1025, S 1030, S 1040, as amended, S 1053,
as amended, S 1056, as amended, S 1072, as
amended, S 1088, as amended in the House,
S 1091, S 1109, S 1120, S 1121, S 1148,
S 1149, S 1150, S 1151, S 1157, S 1158,
S 1160, S 1161, S 1162, S 1163, S 1164, and
S 1166

As Always - Idaho, *Esto Perpetua*
/s/ C.L. "Butch" Otter
Governor of Idaho

The correspondence was ordered filed in the office of the Secretary of the Senate.

April 3, 2015

The Honorable Brad Little
President of the Senate
Idaho Legislature

Dear Mr. President:

I hereby advise you that I have returned without my approval, disapproved and vetoed, the following Senate Bill, to wit:

S 1011

within the time limited by law, the same having arrived in the Office of the Governor at the hour of 4:54 p.m. on March 30, 2015.

When the Legislature legalized pari-mutuel betting on historical horse races during its 2013 session, it was my hope that it would serve as a supplement, a shot in the arm for a struggling industry. I neither expected nor desired it to supplant live horse racing in Idaho, and it is my firm intention to limit and restrict this type of gambling in Idaho to race tracks.

Unfortunately, a beleaguered industry eager to get back on its feet financially expanded historical horse racing too quickly and without adequate safeguards to withstand inevitable scrutiny and criticism - not out of any enmity against a beloved Idaho tradition, but rather against the insidious specter of gambling's expansion unchecked in Idaho communities.

However, I do not believe it is too late to fulfill the promise of 2013 and refocus our attention on limiting and more effectively regulating rather than eliminating historical horse racing. In my view, a precious part of Idaho's western culture is at stake.

There are some actions that can be taken, even in the waning days of this legislative session, to salvage something for the many Idahoans whose livelihoods and lifestyles are tied to traditional horse racing. For instance, legislators still could act quickly to restrict historical horse racing to existing tracks as was envisioned in 2013. I also would welcome creation of a Gaming Commission to help fulfill the Legislature's constitutional responsibility to oversee pari-mutuel racing.

Meanwhile, I have directed the Racing Commission to issue a moratorium on licensing new facilities to conduct historical horse racing or introducing additional historical horse racing terminals (see attached letter) until a Gaming Commission has been created and established operating rules that are sensitive to both community and industry concerns.

In the interim, the Racing Commission must more carefully and stringently regulate historical racing operations to ensure their consistency with legislative intent. Indeed, the Commission has opportunity this very day to ensure that legislative intent is recognized in its reconsideration of an off-track facility's proposed operation in Idaho Falls.

And in an effort to establish definitively what so far has been the subject of opinion and speculation, I would ask the Legislature to join with me in appointing a special outside investigator as soon as possible to assess the legality of machines used at every facility that now conducts historical racing.

In vetoing this bill, what I'm seeking is an alternative capable of restoring public confidence in horse racing as a legitimate and even ennobling industry that is tied directly and irrevocably to race tracks, to stalls and starting gates, to paddocks and jockeys, and to people who love the sport.

I would also welcome working with the Legislature toward a more comprehensive and holistic review of the laws and policies governing all gaming in Idaho. Through that process, it is my hope that stakeholders and interested citizens will come together in a spirit of broader agreement on the proper limits to gambling in our state.

As Always - Idaho, *Esto Perpetua*
/s/ C.L. "Butch" Otter
Governor of Idaho

The question being, "Shall S 1011 become law, the Governor's veto notwithstanding?"

Roll call resulted as follows:

AYES—Bair, Buckner-Webb, Burgoyne, Cameron, Davis, Den Hartog, Heider, Hill, Jordan, Lacey, Lakey, Martin, McKenzie, Mortimer, Schmidt, Siddoway, Stennett, Thayne, Tippets. Total - 19.

NAYS—Bayer, Brackett, Guthrie, Hagedorn, Johnson, Keough, Lee, Lodge, Nonini, Nuxoll, Patrick, Rice, Souza, Vick, Ward-Engelking, Winder. Total - 16.

Total - 35.

Less than two-thirds having voted in the affirmative, the President declared that S 1011 has failed to become law, the Governor's veto sustained. S 1011 and the Governor's message will be filed in the office of the Secretary of the Senate.

The Senate advanced to the Ninth Order of Business.

Messages from the House

April 2, 2015

Dear Mr. President:

I transmit herewith H 320, H 321, and H 319, which have passed the House.

ALEXANDER, Chief Clerk

H 320, H 321, and H 319 were filed for first reading.

April 2, 2015

Dear Mr. President:

I return herewith SCR 112, S 1168, S 1155, and S 1177, which have passed the House.

ALEXANDER, Chief Clerk

SCR 112, S 1168, S 1155, and S 1177 were referred to the Judiciary and Rules Committee for enrolling.

April 2, 2015

Dear Mr. President:

I transmit herewith Enrolled H 291, H 298, H 300, H 301, H 302, H 308, HCR 8, HCR 24, HJM 9, and HJM 10 for the signature of the President.

ALEXANDER, Chief Clerk

The President signed Enrolled H 291, H 298, H 300, H 301, H 302, H 308, HCR 8, HCR 24, HJM 9, and HJM 10 and ordered them returned to the House.

April 2, 2015

Dear Mr. President:

I return herewith Enrolled S 1159, S 1165, S 1071, as amended, S 1041, as amended, S 1136, S 1062, as amended, as amended, S 1066, S 1113, and S 1047, which have been signed by the Speaker.

ALEXANDER, Chief Clerk

Enrolled S 1159, S 1165, S 1071, as amended, S 1041, as amended, S 1136, S 1062, as amended, as amended, S 1066, S 1113, and S 1047 were referred to the Judiciary and Rules Committee for transmittal to the Office of the Governor.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eleventh Order of Business.

Introduction, First Reading, and Reference of Bills, House Petitions, Resolutions, and Memorials

S 1098, as amended in the House, by Resources and Environment Committee, was read the first time at length and filed for second reading.

H 320 and H 321, by Appropriations Committee, were introduced, read the first time at length, and referred to the Finance Committee.

H 319, by State Affairs Committee, was introduced, read the first time at length, and referred to the State Affairs Committee.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Davis, seconded by Senator Stennett, by voice vote, the Senate adjourned at 5:35 p.m. until the hour of 10:30 a.m., Tuesday, April 7, 2015.

BRAD LITTLE, President

Attest: JENNIFER NOVAK, Secretary

APPENDIX B



STATE OF IDAHO
OFFICE OF THE SECRETARY OF STATE
LAWRENCE DENNEY

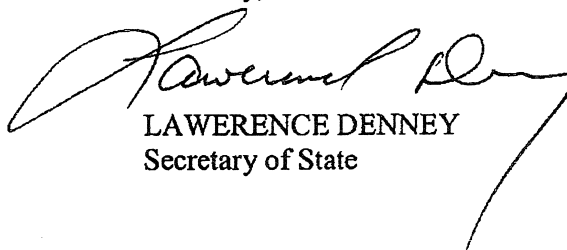
May 4, 2015

Mr. Bill Roden
599 W. Bannock Street, Ste. B
Boise, ID 83701

Dear Mr. Roden:

Upon review of your letter requesting that S. 1011 be deposited as law under Idaho Code §67-505 and the relevant legal authority, it appears that the requisite gubernatorial authentication under Idaho Code § 67-505 is absent. This office has no authority to certify without such authentication under that statute. Based upon the lack of discretionary authority designated to this office under Idaho Code § 67-505, the request to have S. 1011 deposited as law is denied.

Sincerely,



LAWRENCE DENNEY
Secretary of State

LD/lm