

# Senate State Affairs Committee

Minutes  
2005



## MINUTES

### SENATE STATE AFFAIRS COMMITTEE

**DATE:** Friday, January 14, 2005

**TIME:** 8:00 a.m.

**PLACE:** Room 437

**MEMBERS PRESENT:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Davis, Stegner, Little, Stennett, Malepeai

**MEMBERS ABSENT/ EXCUSED:** Geddes

**GUESTS:** Clive Strong, Office of the Attorney General

**CONVENE:** Chairman Burtenshaw called the meeting to order at 8:08 a.m.

**NEZ PERCE AGREEMENT:** Presentation from Mr. Clive Strong, with the Attorney General's Office.

**Mr. Clive Strong**, Division Chief of the Natural Resources Division for the Attorney General's Office, provided the committee with an unabridged version of the Nez Perce Water Rights Agreement as well as a short two-sided handout of the main points of the Agreement, which is attached to these minutes.

**Mr. Strong** stated that this Agreement has a lot of support but added that it does not have unanimous support.

The Agreement came about as a result of the Snake River Basin Adjudication. In 1987, the state commenced the SRBA to quantify all water right claims in the state of Idaho and to provide a comprehensive inventory of all the water rights. He explained that Idaho follows the prior appropriations doctrine. He stated that the federal Indian reserved water rights are an exception to state water law. Indian reserved water rights originated from the United States Supreme court case of *Winters v. United States*. This case involved the Fort Peck Reservation in Montana. Because all of the water supply had been fully appropriated under state law, there was insufficient water remaining to irrigate tribal lands. The Supreme Court held that the federal government must have intended to reserve sufficient water when the reservation was created to achieve the federal purpose of converting the tribe to an agrarian lifestyle. This water right was created under federal, not state law.

**Mr. Strong** outlined the four types of claims filed by the United States

and Nez Perce Tribe in 1993.

1. instream flow water right claims based upon tribal fishing rights at all usual and accustomed fishing sites;
2. instream flow water right claims based upon the tribe's exclusive right to fish on all streams within or bordering the Reservation;
3. consumptive use claims for domestic, municipal, commercial, industrial, agricultural purposes; and
4. claims for all the springs and fountains within the boundaries of the 1855 treaty.

**Mr. Strong** explained that these four sets of claims in total would have preceded all existing state water rights. He explained that after a period of litigation in the mid 1990's, Idaho Power, a group of Upper Snake River water users and the Nez Perce Tribe agreed it would be useful to enter into mediation and sought a court ordered mediation. This mediation commenced in late 1998, early 1999 and was conducted by Mr. Francis McGovern of Duke University. He added that this mediation included all water users. The State of Idaho agreed to participate in the mediation subject to the following conditions: 1) no federal instream flow water rights would be recognized; 2) no injury to existing water rights; 3) the settlement would be statewide; and 4) litigation would continue on a parallel track.

**Mr. Strong** explained that the District Court issued a "Confidentiality Order" which some have misconstrued as secret negotiations. All parties to the SRBA were afforded an opportunity to participate in the mediation. He further explained that this confidentiality order allowed for discussions in a nonthreatening environment. The proposed agreement is the product of the mediation effort.

**Mr. Strong** directed the attention of the committee to the notebook containing the aforementioned Settlement. He explained that there were five major components: the Nez Perce Tribe; Salmon/Clearwater; Snake River Flow; General Provisions, and at one time, an Idaho Power Company component.

**Mr. Strong** explained that the agreement would recognize a federal reserved water right for consumptive uses on tribal lands in the amount of 50,000 acre-feet.

**Senator Davis** asked if this amount was regardless of the date of appropriation. **Mr. Strong** replied that it was but added that the right cannot injure existing state water rights.

**Senator Stennett** pointed out that this is an enormous amount of water.

**Mr. Strong** stated that it is a relatively small amount of water given the flow of the Clearwater River.

**Mr. Strong** explained that there are 1,800 Springs and Fountain claims filed on the Federal, Private, and State Lands. He stated that the Tribe

will relinquish the claims on the private and state lands.

**Chairman Burtenshaw** asked if those rights on Federal land were used for irrigation or for grazing and livestock. **Mr. Strong** answered that they are used for grazing livestock and explained that the Tribe was nomadic and moved its livestock from fountain to fountain.

**Senator Little** asked for the geographical area. **Mr. Strong** replied that this area extends throughout the Salmon/Clearwater Basin within the boundaries of the 1855 treaty. He said that he would provide the senator with a map.

**Mr. Strong** explained that through this Settlement, the Tribe will receive, from the Federal Government, \$50 million in a multiple-use trust fund that will be appropriated over time. In addition, the Tribe will receive a \$23 million fund for the design and construction of sewer and drinking water systems for tribal communities and \$10.1 million to be provided in lieu of payment for the rental of storage water from the Payette River System.

**Chairman Burtenshaw** asked what that \$50 million can be used for. **Mr. Strong** answered that it can't be used on per capita payments but can be used for acquiring lands and water rights, restoring and improving fish habitat, fish production, agricultural development, cultural preservation, and water resource development.

**Senator Stegner** asked what the restrictions were for the \$10.1 million. **Mr. Strong** explained that this money will be folded into the multiple-use trust fund. He stated that the Tribe will manage the Kooskia Hatchery and co-manage of the Dworshak National Hatchery.

**Chairman Burtenshaw** asked about the 200,000 acre-feet in Dworshak. **Mr. Strong** explained that it is not a water right. He said that the Government was using the Dworshak Reservoir for flow augmentation. He stated that this Agreement would give the State and the Tribe some input on the decision of when to release water from Dworshak Reservoir. The objective is to hold the water behind Dworshak for the summer months. He added that the Tribe will also receive 11,000 acres of BLM land that was just appraised at around \$5 million. He said that the federal grazing permits would continue through their term.

**Senator Davis** asked how many permits and how long of life did each permit have. **Mr. Strong** responded that there are a total of 43 leases with a typical term of 10 years. **Senator Davis** followed up by asking if the land would be deeded ground and become a part of the reservation, or just stay deeded ground. **Mr. Strong** explained that with regard to the transfer of BLM lands, these lands would be held in trust by the United States as part of the reservation.

**Senator Stennett** asked if the rental rates would stay the same, or would the Tribe set their own. **Mr. Strong** answered that there are 550 AUMs involved and that the current federal grazing fee is about \$1.80 to

\$1.90. He added that once the leases expire the Tribe would set the rental rates.

**Senator Little** asked what the basis was for the flow augmentation. **Mr. Strong** reported that the federal government had shifted its theory for flow augmentation from volume to water temperature. **Senator Little** asked what if science doesn't bear out the temperature versus volume theory. **Mr. Strong** responded that the flow augmentation program could be terminated.

**Mr. Strong** reported that the federal legislation included \$200,000 as a one-time payment to compensate counties for lost payment in lieu of tax payments from the federal government. He said the federal government estimated that Lewis County and Nez Perce County would lose about \$11,000 in PILT payments annually as a result of the transfer of BLM land. Idaho and Clearwater Counties will not lose any PILT monies.

**Chairman Burtenshaw** asked which treaty these lands were acquired under. **Mr. Strong** replied that these lands were within the 1863 Treaty boundaries.

**Mr. Strong** then outlined the Salmon/Clearwater Component. He explained that water users in the Upper Snake River basin wanted a settlement that would resolve claims for water under the Endangered Species Act and the federal reserved water rights doctrine. In order to provide similar protection against ESA claims in the Salmon and Clearwater, the agreement provided for Section 6 Cooperative Agreements. Under the Section 6 Programs, a landowner may voluntarily enroll and receive incidental take protection under the ESA. The agreement creates an instream flow program, a forestry program, and a habitat improvement program. He said the State will implement these Section 6 programs under an agreement with the Federal Government. He added that the instream flow program is modeled after the Lemhi Basin Conservation Plan. The agreement provides for a habitat trust fund with \$13 million under the control of the Tribe and \$25 million under State control. The State is required to provide a 25% match to the federal monies, which can be in-kind services.

**Mr. Strong** said that the Agreement did not change the existing Forest Practices Act and that any landowner choosing not to participate in the program would have no new obligations. He pointed out that this program simply acts as an insurance policy for a participating landowner. The State has elected to enroll its lands in the Section 6 program. He also stated that this will have no significant impact on the returns from Endowment lands.

**Senator Little** asked if there was a standing suit. **Mr. Strong** replied that there is standing for ESA purposes but only beneficiaries may challenge endowment management based on trust principles. **Senator Little** followed up by asking if the beneficiaries would have a standing

suit if they thought there would be an impact to the endowment harvest. **Mr. Strong** answered that they would.

**Senator Stegner** asked about the \$25 million listed on the summary sheet 2.c. **Mr. Strong** explained that the Federal Government will provide \$38 million. One-third of that will go to the Tribe. The State would need to provide a twenty-five percent match for the other \$25 million for the habitat trust fund. The match can be in-kind services. **Senator Stegner** asked if this \$13 million was included in the before mentioned amounts, or was it additional. **Mr. Strong** replied that it is not included in category 1. **Senator Stegner** asked if there were any restrictions on that \$13 million. **Mr. Strong** replied that the \$13 and \$25 million were to be placed in a fund for habitat conservation. **Senator Stegner** asked if there was a limitation of where it could be used. **Mr. Strong** answered that this money would be used primarily within riparian zones for the listed species.

**Mr. Strong** explained that the instream flows referenced in the Agreement would be created under state law. He reported that these instream flows were divided into an "A" and a "B" list. The "A" list consists of instream flows in largely underdeveloped areas. The "B" list consists of developed streams and are a bit more challenging. He said the parties intended the instream flows to be satisfied with water bank rentals. The model for these instream flows was the Lemhi Basin Conservation Plan. He pointed out that all existing water rights are protected and that all the instream flows would be subordinated to future DCMI (notation on the summary refers to Domestic, Commercial, Manufacturing, and Industrial).

**Senator Stennett** asked if this agreement already creates the flows or if there were separate bills for each one. **Mr. Strong** answered that there will be a bill to approve the instream flows and added that there is a target date for the approval of the instream flows of March 31, 2005.

**Mr. Strong** then explained the third item on the summary sheet -- the Snake River Flow Component. He pointed out that up to 427,000 acre feet could be rented with approximately 200,000 from the Boise/Payette and another 200,000 from the Snake River above Milner.

**Senator Darrington** asked if this would affect the flow of the Snake in Southern Idaho. **Mr. Strong** answered that it will not change existing flows but should help to make water available for use in the Upper Snake River Basin. He added, however, that the federal government would be able to use power headwater from Anderson Ranch and Palisades in drought years. He said the Agreement also allows the federal government to acquire up to 60,000 acre-feet of natural flow below Milner and above Swan Falls. He said that the possibility of exchanging the natural flow for water above Milner to help address surface/ground water conflict was being explored.

**Senator Stennett** asked if this 60,000 was capped. **Mr. Strong**

responded that this number is a cap for the purposes of this Agreement but added that other discussions might result in more natural flow being acquired. **Senator Stennett** asked if there was a limit on how the \$2 million could be spent on mitigation and who makes that decision. **Mr. Strong** answered that this had not been decided. He reported that the estimated rental payments over the term of the agreement is about \$57 million.

**Mr. Strong** explained the General Provisions under paragraph 4 on the summary sheet.

**Mr. Strong** said that as part of the approval of the Snake River Water Rights Agreement of 2004 the Legislature would have to ratify the agreement; reauthorize Idaho Code § 42-1763B for 30 years and approve the "A" and "B" instream flows.

**Senator Davis** asked about the Forest Practices Act and if the standards are fixed, can be lessened, or be augmented. **Mr. Strong** that the measures are fixed by the Agreement. **Senator Davis** asked if the standards are listed in the Agreement and if these are not referenced, then could some other standards be changed. **Mr. Strong** replied that the measures are set forth on page 4, tab 1-16.

**Mr. Strong** then outlined the proposed schedule if the Agreement is not approved: Argument on the off-reservation instream flows would be in May; Decision in late 2005; a Petition for Cert. to the United States Supreme Court that would take six months to one year; Supreme Court Decision another year; and, if the case is remanded, a trial would follow. He figured that it would take three to four years before this was concluded. He added that there is a trial scheduled in late 2005 on the Springs and Fountains claims and that Consumptive Use claims would take three to four years.

**Senator Stegner** asked about the Settlement Path under A.2 and whether the flow augmentation legislation would be authorized for the length of the Agreement. He pointed out that this statute expired on January 1st of this year and added that this Agreement was drafted as a perpetual agreement. He asked if this would end that annual reauthorization. **Mr. Strong** replied that it would. **Senator Stegner** asked if the additional 60,000 would be included in that 427,000 acre-feet. **Mr. Strong** answered that flow augmentation could range up to 487,000 acre-feet depending upon the water conditions.

**Chairman Burtenshaw** asked if the 60,000 acre-feet of natural flow would carry the same stipulations as the 427,000. **Mr. Strong** responded that it would.

**Senator Stennett** asked if everyone had agreed to this under the ESA with regard to the biological opinion process. **Mr. Strong** answered that the biological assessment was prepared and submitted to the Federal Agency and added that if the biological opinion was not consistent with

the Agreement, the State and the water users had a right to withdraw from the Agreement.

**Senator Stegner** asked if the Federal Agencies would have this all put into place by March 31st so that it is not the last thing holding up this Agreement. **Mr. Strong** responded that it won't be holding up the Agreement.

**Senator Little** asked if this had been submitted to both Fisheries agencies and if it would cover all the species in that area. **Mr. Strong** replied that it would cover all the listed species currently in the area of the project.

**ADJOURN:**

There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 9:27 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

## MINUTES

### SENATE STATE AFFAIRS COMMITTEE

**DATE:** January 17, 2005

**TIME:** 8:00 a.m.

**PLACE:** Room 437

**MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, Malepeai

**ABSENT/  
EXCUSED:** None.

**GUESTS:** See attached Sign-in Sheet.

**CONVENE:** Chairman Burtenshaw called the meeting to order at 8:08 a.m.

**BILL # S1001** **Senator John Goedde** provided the members of the committee with copies of a story on the Veterans Home in Lewiston that was printed in the Coeur d'Alene Press. He explained that the Legislature passed a bill last session that included Veterans Homes. He pointed out that all three homes have ventilated areas and stated that this bill carves out these homes with designated smoking facilities. He remarked that he did not add an emergency clause but suggested that as an option, the committee could send it to the 14<sup>th</sup> Order for an amendment to include an emergency clause.

**Senator Davis** stated that Senator Hill questioned the viability of the effectiveness to the ventilation system when presenting the original bill last year. **Senator Goedde** responded that Senator Hill has documentation that would suggest the ventilation system doesn't totally eliminate the problem. **Senator Davis** followed up by asking if all the Veterans Homes provided a designated smoke-free area. **Senator Goedde** replied that all three have designated rooms equipped with ventilation systems. **Senator Davis** pointed out that on line 35, the bill includes the word "reduce" and not "eliminate". He asked if that was the word the Senator wanted there. **Senator Goedde** stated that he would like it to say "eliminated", but added that he couldn't use that word in all honesty.

**Chairman Burtenshaw** asked if there was anyone present from the hospitals to testify. **Mr. Richard Cesler** with the Idaho State Veterans Services Office explained that he works in the Boise home. He stated that a lot of the residents have to bundle up to go outside in their wheelchairs to smoke and added that with the cold weather, this is extremely dangerous to their health. **Chairman Burtenshaw** asked where the smoking area is and if the second-hand smoke could permeate through the rest of the hospital. **Mr. Cesler** answered that it is behind a doored area, in a separate wing, on the west side of the building. He added that there are automatic doors making it somewhat isolated from the rest of the hospital.

**Senator Davis** pointed out that if a Veteran goes out to dinner with his family to a restaurant, he isn't allowed to smoke. He added that this restaurant, by law, does not allow smoking and doesn't have the responsibility to provide proper health care. He continued that take this same veteran back to a hospital, which is charged with the responsibility of delivering that health care, and allow that veteran to smoke. Likewise, the patrons of both facilities, one is going to be exposed to second-hand smoke and one is not. **Mr. Cesler** responded that this is a home and not a hospital and added that this law can't tell people that they can't smoke in their own home. **Senator Davis** pointed out that line 35, "reduce smoke in adjacent nonsmoking areas" and asked the effectiveness of the ventilation system. He asked why those individuals hoping for a non-smoking environment should expect the State of Idaho to accommodate smoking. **Mr. Cesler** responded that the designated smoking area in the Boise home is well away from the rest of the patrons. He explained that it is at the very end of the building about 25-30 feet down a hall and behind automatic doors. **Senator Davis** asked if we should also carve out, while amending this, that occupants of nursing homes should be allowed to smoke. **Mr. Cesler** replied that he was only here for the Veterans homes. He reported that smoking is a habit that shouldn't be restricted since it is the one thing that these veterans enjoy.

**Mr. Patrick Teague**, Acting Administrator for the Idaho State Veterans Homes reported that he has been with the division for 15 years and has visited all three homes. He stated that Lewiston has extra filters and that Boise has a separate room outside of the facility. He explained that some veterans are 90 years old and that one of the few pleasures is that one cigarette. He added that he is not a smoker but supports this legislation.

**Mr. Charles Price** testified that he is also in support of the legislation. He added that all the rooms are well ventilated in order to keep others from being affected by second-hand smoke.

**Senator Hill** stated that he does not oppose this bill because it accomplishes what needs to be done. He pointed out that an emergency clause should be in it and added that it should not be sent to the amending order. He suggested that the changes should be made by the committee or a new RS introduced.

**Senator Davis** commented that the ventilation systems didn't work last year and asked why they work this year. **Senator Hill** responded that they still don't work. He reported that they intended to work with the Nursing Homes allowing smoking in private rooms, but added that this can be dangerous because of oxygen. He pointed out that the nursing homes provide individual supervisors when residents are smoking in private rooms. **Senator Davis** noted that the Fiscal Impact shows "None" but asked about the additional supervision and what that cost would be. **Senator Hill** stated that this would be an indirect impact and would not add an additional cost. He shared a story about a Boise nursing home who grandfathered in the residents. **Senator Davis** asked if there was a specific target date where there will be a migration out of this practice. He pointed out that historically, the US provided tobacco to the military and asked what is the value and if a time frame could be imposed. **Senator Hill** replied that there is a value but added that this would go beyond the

intention of the original bill. He commented that it would be inappropriate to put such a date on the Veterans home and not on nursing homes.

**Chairman Burtenshaw** asked Senator Geddes and Senator Davis if it was possible to change a bill in committee. **Senator Davis** replied that any modifications would go to the 14<sup>th</sup> Order. He listed the committees options: Do pass, No recommendation, and Hold with a request that the sponsor present a separate bill. **Senator Goedde** commented that it would be safe to send it to the 14<sup>th</sup> Order, attach an emergency clause and send it on. He added that Veterans are important.

**Senator Stegner** asked if Senator Goedde was giving his personal assurance that there would be no other amendments attached to it. **Senator Goedde** replied that they absolutely had his assurance. **Senator Stegner** asked if he was aware of other amendments. **Senator Goedde** answered that he had heard discussions of others doing something.

**Senator Davis** asked why he did not mirror the nursing home language. **Senator Goedde** stated that if smoking is allowed in personal rooms, then safety is an issue, but to have one person monitor many in a common room makes more sense and provides a cost-cutting measure.

**Chairman Burtenshaw** stated that if the committee were to hold the bill and have another RS drafted, would it cause problems for his time line. **Senator Goedde** replied that he was willing to do that but was concerned about the impression to the Veterans. **Senator Davis** pointed out that the Senate will not be going to the 14<sup>th</sup> Order soon and added that it may be faster to do a new RS. **Senator Geddes** commented that he had watched the news where the story implied that there was an emergency clause and added that if the public had been correctly informed we would have had more interest. He further added that he would be more comfortable with a new bill.

- MOTION:** **Senator Davis** made a motion to Hold S 1001 in committee and allow the sponsor to bring a new bill with changes. **Senator Geddes** seconded the motion.
- DISCUSSION:** **Senator Davis** commented that he can't represent to the sponsor that he will support the legislation. **Senator Little** commented that he opposes the motion and added that he takes Senator Goedde at his word.
- VOTE:** 5-2-2 in favor of the motion. Stegner and Little in opposition, Stennett and Malepeai excused.
- RULES:** **Chairman Burtenshaw** passed the gavel to **Senator McKenzie** for the Rules discussion.
- Idaho State Athletic Commission** **Chairman McKenzie** introduced **Mr. Tom Katsilometes** with the Idaho Athletic Commission. **Mr. Katsilometes** explained that last summer, the commission promulgated an emergency rule to exclude all non-combative martial arts from the Commission. He stated that this rule would make that change permanent and exclude them from the commission. He pointed out that the Commission should not be regulating teaching or

schools.

**Senator Davis** asked if the State Federation regulates martial arts. **Mr. Katsilometes** responded that there are about 70 that are regulated by the State Athletic Commission. He reported that this is a new duty and added that teaching and schools were just included last year. **Chairman McKenzie** pointed out Title 54, Chapter 4 regarding boxing code sections and asked if these might not apply to martial arts with regard to the “3-minute, 10 rounds” notation. **Mr. Katsilometes** replied that this is a reference to professional boxing and added that the definitions for martial arts are the same as they are for boxing. He also stated that each activity has it’s own set of performance rules. **Chairman McKenzie** asked if this rule would make them comply with State Code Title 54, Chapter 4. **Mr. Katsilometes** answered that this law gives the Commission that ability to authorize each activity to have their own set of performance rules in each federation. He pointed out that the Commission puts into place the different rules but that this leaves wide open the ability to do different rules in the rule-making process.

**Senator Burtenshaw** asked there were rules in place for karate. **Mr. Katsilometes** replied that each discipline has their own set of rules that are regulated by the Commission. **Senator Burtenshaw** asked if these rules could be looked at. **Mr. Katsilometes** responded that they could be looked at and added that they are part of the rule-making authority of the Commission.

**Senator Davis** asked about on page 4 under Licensing, if the code says that these schools and teaching facilities are exempt, why do they have to apply to the Commission for exemption. **Mr. Katsilometes** answered that they were exempt until July 1, 2004. He added that they had to make a temporary emergency bill to return them to exempt status. **Senator Davis** commented that he had no problem with this but added that he did have a problem with promulgating authority. He pointed out that the statute states they are exempt and noted that there was a structural problem if they have to apply to the Commission to be exempt. **Mr. Katsilometes** responded that the law did not exempt all those different activities. He explained that teaching and schools were not under the Commission before last year.

**Chairman McKenzie** informed the committee that a voice vote would be taken on each set of rules. He reported that both House and Senate committees would be reviewing these rules and unless both committees objected, then the rules would go into effect. He asked if the Commission could change the rules of each activity. **Mr. Katsilometes** answered that in statute is a rule that the Commission can change the rules based on the performance menu and added that this appears in the code section that Senator Davis just mentioned.

**Senator Stegner** commented that it was a good point whether the Legislature authorized the flexibility that the Commission wants and is taking and noted that the Commission had offered bringing the committee more information. He stated that he had no problem holding on to this. **Senator Davis** added that maybe we could do this the same time as his reappointment interview.

**UNANIMOUS  
CONSENT:**

**Chairman McKenzie** asked unanimous consent to revisit these rules when Mr. Katsilometes was up for reappointment. There was no objection.

**Public Utilities  
Commission**

**Mr. Paul Kjellander**, Commissioner with the Idaho Public Utilities Commission explained that the first rule was regarding gas pipeline. He explained that it was adopted by reference based on Federal regulation changes.

He explained Pages 6 and 7 regarding the Safety and Accident Reporting.

**Chairman McKenzie** noted Rule 110 under the Utility Customer Relations Rules. He asked if this financial assistance would come from unclaimed property and if there were any other programs to do this. **Mr. Kjellander** stated that the State does not have it own, but added that there are voluntary programs.

**Chairman McKenzie** asked about the Transfer of Deposit Rule 108. **Mr. Kjellander** explained that a deposit can be used to pay an unpaid balance. **Chairman McKenzie** asked what would happen if there was a dispute on the account. **Mr. Kjellander** responded that if there is a dispute, the money won't go to the account until the dispute is resolved.

**Senator Darrington** asked what can be categorized as "unclaimed". **Mr. Kjellander** replied that it could be a credit on an account from a settlement from the utility. He added that this is rare and stated that it is based on a deposit required of a customer at account setup. **Senator Davis** asked if a person has a bill, moves to another state and then takes bankruptcy, is this rule intended to apply. **Mr. Kjellander** answered that he has never dealt with this and added that he is not a bankruptcy attorney so he couldn't properly answer that.

**Mr. Kjellander** explained that page 11 relates to Telephone Corporations and added that there was no public comment with 4 workshops held.

**MOTION:**

**Senator Stegner** made a motion to approve the Rules for the Public Utilities Commission. **Senator Geddes** seconded the motion.

**VOTE:**

The motion passed by voice vote.

**Secretary of  
State**

**Mr. Tim Hurst**, Chief Deputy for the Secretary of State explained that this rule relates to the annual reporting of lobbyists. He stated that this drops the requirement for office expense, but added in telephone expense. He reported that the forms are now available on line. He remarked that this adds reporting of campaign debt and payments to campaign debt.

**Senator Darrington** asked about paragraph b and if the reporting period was included in statute. **Mr. Hurst** answered that it was.

**MOTION:**

**Senator Darrington** made a motion to adopt the Rules for the Secretary of State. **Senator Burtenshaw** seconded the motion. The motion passed by voice vote.

**Idaho  
Commission on  
the Arts**

**Mr. Dan Harpole**, Commissioner of the Idaho Commission on the Arts explained that these rules relate to the grant and award program.

**Chairman McKenzie** added that these are about the current practices with regard to applications. **Mr. Harpole** replied that he has been the Director for four years and reported that these rules have not been updated for more than 30 years. He explained that the Commission brought the Administrative rules last year that hadn't been updated for nearly 34 years.

**Senator Davis** asked about section 5 on page 23 regarding the office hours of 8-5 Monday through Friday except Saturday, Sunday and legal holidays. He noted that he only sees hours from 8-5 for the Secretary of State and asked why there was no notation for Saturday, Sunday and holidays. **Mr. Chuck Goodenough** replied that they ask the agencies to enter this information in. **Senator Davis** commented that what if someone wants to file on a legal holiday, like today, and there was no one there. **Chairman McKenzie** asked where the language was adopted from. **Mr. Harpole** responded that it came from a combination of policy language, a lot from the National Endowment for the Arts, and also that it reflects guideline language.

**MOTION:**

**Senator Davis** made a motion to adopt the rules for the Commission on the Arts. **Senator Geddes** seconded the motion. The motion passed by voice vote.

**Department of  
Administration**

**Ms. Joanna Guillfooy**, Attorney General for the Department of Administration stated that these rules are Temporary and will come back next year as Pending. She explained that they posted this information in a bulletin in December and received no public comment.

**Chairman McKenzie** asked about the type of dispute that may arise. **Ms. Guillfooy** responded that some entities form a Joint Power to operate an emergency communication system. She stated that the disputes are mostly about the money and explained that this rule relates to mediation. She stated that the mediation is non-binding and added that the parties could still go to court since there is no appeals process in place. **Chairman McKenzie** asked if there was a requirement to do the mediation process. **Ms. Guillfooy** answered that they must participate in the mediation process.

**MOTION:**

**Senator Burtenshaw** made a motion to adopt the rules for the Department of Administration. **Senator Stegner** seconded the motion. The motion passed by voice vote.

**Chairman McKenzie** passed the gavel back to **Senator Burtenshaw** for the remainder of the meeting.

**GUBERNATORIAL  
APPOINTMENT  
OF PAUL  
KJELLANDER**

**Mr. Paul Kjellander** appeared before the committee regarding his reappointment to the Public Utilities Commission from January 10, 2005 to January 10, 2011. He stated that he was first appointed six years ago and explained that since being appointed, the PUC has handled mergers, the Western Energy Crisis, the implosion of the telecom industry,

bankruptcies, and the “Perp Walk”. He explained that the Commissioners serve as an umpire of sorts with the strike zone being defined by the Legislature.

**Chairman Burtenshaw** asked if he anticipated any changes coming up. **Mr. Kjellander** replied that there are a number of troubling things looming on the horizon. He explained that hydro-relicensing is one of the issues and stated that the cost of the Hells Canyon complex has increased from 5% to 28% and that kilowatts may be reduced. He then listed rate kicks, Pacific Corp., Vista Corp., Water companies and Idaho Power. He reported that there have been no new dams built and added that we need to come up with a new way to generate power. He explained that the wholesale market is also volatile so we have to find new resources of our own. He then stated that there are also issues with coal transporting or transmission and concluded that the “siting” authority will rest with the Legislature.

**Senator Little** asked if there were any kind of resources at the counties for siting and if the PUC had resources for the local communities to use. **Mr. Kjellander** responded by citing the City of Eagle as a recent siting issue. He explained that ultimately, the city pushed the issue to the PUC for resolution.

**Senator Stennett** present at this time.

**Senator Stegner** asked about the prices and penalties paid for by wind users and suppliers and noted that Mr. Kjellander was on the prevailing side of this issue. He asked Mr. Kjellander to defend his position. **Mr. Kjellander** used the Dairy analogy where you purchase a gallon of milk and once opened, discover that it is 3/4 full. You take it back to the store and instead of them giving you another gallon, they tell you that you have to go out back and milk your own cow. He pointed out that they should provide a firm product to get the firm price and stated that if they provide a percentage of the product, then they should get the percentage of the price. He explained that this eliminated the penalty if the supplier provides product within a band of 90-110% and sets the price on a monthly basis. He pointed out that the Wind and Geothermal were lumped together and should have been separate issues. He then pointed out that some geothermal suppliers operate on a more stringent band. He reported that continuing discussions are happening regarding the incentives or policies and how they will be set. **Senator Stegner** asked about a time frame and if the supplier provides higher than the 110%, is his price higher. **Mr. Kjellander** answered that this is tied to a 10 mega watt. He stated that there is no obligation to purchase over 110% of the 10 mega watts and added that there is no penalty. **Senator Stegner** asked if Mr. Kjellander felt that this was within that strike zone and if he felt they needed to appeal to the Legislature with the State required guidelines. **Mr. Kjellander** replied that the Legislature would rein them in if the Commission misstepped. He added that they don't mandate what the contract has to be. He explained that they want a firm price so that they can deliver what the utility can put into their system to provide that utility to the public and added that if they say they will deliver 10 mega watts, then they should deliver that 10 mega watts.

**Senator Darrington** mentioned that there is a siting location of a solid waste site near Mountain Home and asked that even though Mr. Kjellander handles power, did he feel that there were any concerns with siting for power, nuclear, and other forms of power. **Mr. Kjellander** responded that he has concerns with the public interest where if one entity has control, it affects the entire public interest. He pointed out that there needs to be a broader group to look at this and make the decision. **Senator Darrington** asked if the legislation was there, would it make the job easier. **Mr. Kjellander** answered that the local control is tough to wrestle with and noted the Wood River Valley area with the burying of lines. He added that it is difficult to be an elected local official.

**Senator Geddes** asked about the rate kicks and if it was a lot of responsibility for three people on the Commission. He asked if it was time for Idaho to look at a larger commission in order to make the decisions more favorable. **Mr. Kjellander** replied that this was a great question for him to dodge. He stated that as a member of a group of three, he doesn't see any attacks from the dissenting party toward the other two like has happened at the FCC. He stated that if the Legislature were considering five members, they should look at some models and decide which one would be the best and added that whatever the Legislature adopted, the Commission would follow.

**Chairman Burtenshaw** stated that the committee would vote on his reappointment next week.

**ADJOURN:** There being no further business before the committee, **Chairman Burtenshaw** adjourned the meeting at 9:43 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

## MINUTES

### SENATE STATE AFFAIRS COMMITTEE

**DATE:** Wednesday, January 19, 2005

**TIME:** 8:00 a.m.

**PLACE:** Room 437

**MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, Malepeai

**ABSENT/  
EXCUSED:** None.

**GUESTS:**

**CONVENE:** Chairman Burtenshaw called the meeting to order at 8:03 a.m.

**Gubernatorial  
Appointment:** Mr. Lloyd Thies of Nampa to the Bingo-Raffle Advisory Board to serve a term commencing January 7, 2003 and expiring January 7, 2006.

Mr. Thies explained that he has been in Idaho since 1974 and a member of the Board since 1994. He commented that this may be his last term for health reasons.

**Chairman Burtenshaw** asked what the responsibilities were of the members of the Board. **Mr. Thies** replied that there are 6 members who meet with the Lottery Commission and go over the Rules and Regulations for Bingo and Raffles and added that they make recommendations to the Lottery Commission. He reported that another change would be coming this year. **Chairman Burtenshaw** asked if there are funds raised and if so, where do these funds go. **Mr. Thies** responded that he has a bingo hall and explained that if they take in \$100 in sales, \$20 must go to charity, \$15 to expenses and the final \$65 back to the patrons as prize money. He added that if a hall can keep their expenses at \$10 then the remaining \$5 could be added to the prize money if approved by the Board. He reported that he oversees three organizations in Nampa who have put over \$240,000 back into the community.

**Senator Malepeai** asked if they had any jurisdiction on Indian Reservations. **Mr. Theis** answered that they do not. **Senator Malepeai** asked if these organizations are off reservations, do they have to come to the Commission for a permit. **Mr. Theis** responded that the organization has to be non-profit and licensed through the Lottery Commission. He added that they must take in less than \$10,000 in one year, play no more than three days per week or eight hours per day.

**Senator Little** asked if the Lottery Commission served as the enforcement agency for Proposition One. **Mr. Theis** answered that his Board has nothing to do with that and added that the Lottery Commission can't do anything with regard to tribal gaming.

**Chairman Burtenshaw** thanked Mr. Theis for appearing and announced

that the committee would be voting on his reappointment at the next meeting.

**RS 14387**

Proposing an Amendment to the Idaho Constitution to enable the State Board of Land Commissioners to sell selected parcels of endowment land in parcels of up to 640 acres to individuals, companies, or corporations.

**Ms. Denise Mills**, Assistant Director of the Idaho Land Department explained that this was created due to three reasons: poor access with some areas restricted; historically low returns to the endowments for some parcels; and extensive travel time required for the staff to access and maintain some areas.

**Senator Geddes** asked her to refresh the committee and commented that he remembered that this was before the committee last year. He asked her to remind us of the concerns voiced last year.

**Ms. Mills** explained that it did not pass and supposed that it was because some of the members were concerned with the ability to sell land at all. She added that there is a fear of a reduction in land base and the money to the endowments.

**Senator Darrington** asked if the money accumulated from the sale of land and put into a fund to buy other lands was required by the Constitution or by Code. **Ms. Mills** replied that Mr. Perry Whittaker would be better as answering that. **Mr. Whittaker** answered that it is under Idaho Code 58-133 relating to the Land Bank. **Chairman Burtenshaw** asked if there was a limit of the number of years the money could be in that fund and not used to purchase land. **Mr. Whittaker** replied that the term was extended from three to five years and added that if they don't reinvest the money, then it goes into the Permanent Endowment Fund. **Senator Little** asked how much money was in this fund. **Ms. Mills** replied \$80,000.

**Senator Davis** asked if the bill was held in committee last year and if so, which committee. **Ms. Mills** stated that this committee had the problems with it but wasn't sure if it was introduced in the House or the Senate.

**Senator Little** commented that the answer should be Facilitated Exchange and asked what were the problems with Facilitated Exchange that would require us to make this amendment. **Ms. Mills** answered that this Exchange was a way to circumvent the public auction. She stated that the Department is trying to diversify the portfolio into commercial properties, but not Tamarack. She explained that there are subdivisions, buildings and other lands that will increase the Department's flexibility to manage and reinvest.

**Senator Malepeai** asked if the reason that the Land Board sells the land is to generate money. **Ms. Mills** replied that it is. **Senator Malepeai** continued by asking if someone had approached the Board, or if the Board approaches someone prior to the sale of these lands. **Ms. Mills** replied that both happen. She explained that sometimes interested parties approach the Board, and sometimes do an exchange or sale. She added that this is how they have acquired commercial buildings in Boise

by this land exchange. She stated that they are trying to be more proactive so that the State and the beneficiaries can generate more money.

**Senator Stennett** commented that when a Facilitated Exchange happens, the State Land Board gets more land, but when a sale happens, the money goes into the Land Bank Trust. He asked if the Board had purchased any land, or if this money was going into the stock market.

**Ms. Mills** answered that they haven't purchased any land yet since there is only \$80,000 in the Land Bank. She gave the three-phase Boise Foothills Exchange as an example and shared that they had a parcel in Blaine County up for auction in October. The value of that land was \$5.1 million, which is the minimum bid at the auction. She reported that there were no bids for that land. **Senator Stennett** commented that if it was priced at \$5.1 million and no one showed up for the auction, maybe they had it priced wrong.

**Chairman Burtenshaw** asked how many acres were in the Endowment.

**Ms. Mills** answered that there were roughly 2.8 million acres. **Chairman Burtenshaw** asked if the timber from those lands was used or sold. **Ms. Mills** responded that the timber contributes 80-85% on only about one half of the lands. She reported that there were eight sections in a parcel with timber that was too hard to harvest or access due to habitat and stated that they are looking to exchange it with some other land. She further added that with the Boise Foothills Exchange, 8,000 acres will go to Idaho, some of which is timber, and 5,000 to Federal agencies.

**Senator Darrington** asked if the State owns the mineral rights on the land and if geothermal was considered a mineral right. **Ms. Mills** replied that the State does own those rights and added that they can sell those rights with the land.

**Senator Geddes** asked if you could purchase 640 acres by personally buying the first 320 acres and then working out a partnership with another person to buy the other 320 acres and sell it to you. **Ms. Mills** answered that 320 acres is the lifetime limit per person. **Senator Geddes** asked if the Board saw this type of agreement occurring from time to time. **Mr. Whittaker** answered that yes, up until 1982, they were selling crop land in Eastern Idaho to husbands, wives and children over 18 who then joined the sections together.

**Senator Little** asked if the Land Board had a rough figure regarding the frequencies of difficulties buying land. **Ms. Mills** said that she didn't know of the frequencies of difficulties, but stated that she would check the numbers. **Senator Little** commented that if the State was thinking of diversifying the portfolio, maybe they should consider picking up the deeds of the buildings that we already use and rent. **Ms. Mills** responded that this is an option, but added that the State would then be paying rent to the Endowments.

**MOTION:**

**Senator Stegner** made a motion to print RS 14387. **Senator Little** seconded the motion.

**SUBSTITUTE**

**Senator Stennett** made a substitute motion to return RS 14387 to

**MOTION:** sponsor. **Senator Davis** seconded the motion.

**DISCUSSION:** **Senator McKenzie** asked if the intent of the substitute motion was to kill the bill. **Senator Stennett** answered that the intent was to send it back and allow the sponsor to return with another.

**Senator Geddes** commented that he would support the substitute motion because larger parcels make it more unlikely for more people to be able to bid and that these smaller parcels keep the costs down.

**Senator Stegner** commented that this is a matter of efficiency and that a hundred year old Constitutional requirement is not appropriate in this age. He further added that it is not easy to manipulate the market to find a partner to buy the other 320 acres.

**Senator Stennett** stated that a land base is the most secure investment and added that Facilitated Exchange is the best way to maintain that investment, not to sell the land and put the money into the stock market. He pointed out that the exchange would give us more and better land in that land base. He concluded that this keeps us in land.

**Senator Little** commented that by printing this, it opens and allows for further discussion. He pointed out that the members of this committee took a pledge to uphold the Constitution but added that he agrees with the Pro Tem. He stated that our obligation is to get the maximum return and added that this merits more discussion.

**VOTE ON  
SUBSTITUTE  
MOTION:** Substitute Motion passed 5-4. The RS will be returned to sponsor.

**RS 14634C1** Ada County Courthouse Annex - Renovation and addition concurrent resolution

**RS 14635** Ada County Courthouse Annex - Demolish and Rebuild concurrent resolution

**Mr. Carl Bianchi** with Legislative Services introduced Director Pam Ahrens with the Department of Administration, Larry Osgood with the Division of Public Works, Steve Guerber Director of the Idaho State Historical Society, Brad Foltman with the Division of Financial Management and Eric Milstead with Legislative Services in Joint Finance and Appropriations.

**Mr. Bianchi** explained that we need a Capitol Annex for various reasons such as physical limitations and overcrowding of committee hearings. He stated that these are two different proposals to solve this problem. He directed the attention of the committee to the handout he provided. The Capitol renovation is trying to maintain the shell and the interior of the Capitol building. He reported that the dome and the skylights are going to be done this year following the session. He directed the attention of the committee to page 4 of the handout regarding the renovation of the Capitol in Utah. Page 5 reflects a schedule that includes a time frame for the addition to the Courthouse. He pointed out that we would need to add

6-8 months on to that schedule if we chose to demolish and rebuild where the Courthouse is. He added that the entire process is scheduled to be completed by 2009 and added that by doing something with the Courthouse, we would also have an Annex for state and legislative offices. Page 6 explained that if all of the offices in the Statehouse moved out for the completion of the restoration, we would need approximately 80,000 square feet, which is a daunting task. The Division of Public Works has come up with a figure of \$4.5 million to find other space for these displaced offices and added that this figure may be upwards of \$6 to \$7 million in the end. Page 7 is a time line for completion, Page 8 shows an architectural rendition of what the Annex may look like when the addition is completed. Page 9 shows 81,000 useable square feet, not including corridors, stairs, etc. Page 10 shows another drawing of a new building upon completion. He added that this is just an idea and that they would provide other architects with an opportunity to design a building in this space for consideration by the Commission.

**Mr. Bianchi** thanked the committee for allowing him to address both RSes at the same time. He explained that RS 14634C1 relates to the addition and remodeling of the building. He pointed out that the fiscal note shows construction at \$20.5 million and added that \$5 million has been requested from the Permanent Building Fund towards this. He explained that it would cost \$1.2 million to retire bonds in 20 years with a gap of about 4 years if payment began in 2007. He stated that in 2010, the Department of Correction bond would be paid off, and that money could then go towards the bonds for this project. He added that we also have to consider the cost of delay. He stated that this is simple and includes legislative intent under item 4 regarding hearing rooms and item 5 on line 22 of page 2.

**Mr. Bianchi** explained that RS 14635 relates to demolishing the existing Courthouse and rebuilding a new structure. He added that this will cost more and would increase the bond by \$150,000 per year. On page 2, they have added intent language with proposed architecture. He stated that this would be done in conjunction with the Capitol restoration and recommended that the committee print both and return them to the committee to take testimony.

**Senator Darrington** commented that as a member of the Permanent Building Fund, he agreed that this Fund approved \$5 of their \$7.5 million for this project.

**MOTION:**

**Senator Darrington** made a motion to print both RS 14634C1 and RS 14635 and return them both the committee for testimony. **Senator Davis** seconded the motion.

**DISCUSSION:**

**Senator Darrington** commented that they were trying to do a prequalification of contractors and added that this should be a consideration for the Capitol restoration. **Senator Davis** concurred that there should be prequalification for a specific and limited function and suggested that the language should be more carefully crafted. **Senator Darrington** stated that it was so noted.

**Senator Stegner** asked Senator Darrington if the \$5 million from the

Permanent Building Fund was for renovation or remodeling and if the intent was to only allow for a remodel or if it could be used for either. **Senator Darrington** answered that the Legislative Counsel requested \$5 million for a remodel but stated that he would need to check the Minutes. **Larry Osgood** reported that the motion was for "remodel" in the meeting. **Senator Darrington** stated that if this resolution passed to rebuild, he would ask the building group to put this back on the agenda and revisit it.

**VOTE:** The motion carried 8-0-1 with Senator Little excused.

**TOUR OF THE  
ADA COUNTY  
COURTHOUSE:**

**Mr. Bianchi** led the committee on a tour through the former Ada County Courthouse. We entered through the State Street Entrance. He explained that the two wings on either side would be removed prior to the remodel because they were not part of the original structure, but additions built on later. He further explained that the front foyer would begin in the parking lot about where we were standing. We traveled into a small courtroom on the first floor where Mr. Bianchi explained that all of the columns were structural and thus went through all four floors of the building. He stated that these court rooms were created many years after the building was built and were carved out of pre-existing office space.

At the top of the stairs to the second floor, Mr. Bianchi explained that the murals were part of the Federal Art Project established during the Depression to keep upwards of 5,000 artists alive. He stated that the original artist dropped out because he received a private commission. The artist that came in 1940 was Ivan Bartlett who was assisted by 24 other artists. He reported that these artists were all out of California and were noted as such under the signatures on these murals. He explained that the original design was to be terrazzo but due to costs and availability, they ended up making them paint on canvas and added that the designs were not changed from the original terrazzo designs prior to painting on canvas. He stated that these canvases can all be removed, cleaned and restored by the Idaho Historical Society. He pointed out the two Indian paintings at the top of the stairs, in the center, and explained that because of the nature of the content, Administrator Schroeder, now Chief Justice, had them draped. He added that all of the panels are out of historical order and depict different historical moments in Idaho history. Mr. Bianchi directed the attention of the committee to the base of the stairs and the stairs out the front of the building. He pointed out that this entrance is not easily handicapped accessible and added that the current front would become the back of the building after remodel.

**Mr. Bianchi** stated that some of the marble and the brass handrails may be salvaged and reused as we traveled up the stairs to the third floor. He took us into a large courtroom and pointed out that the ceiling was false. He explained that the original ceiling went clear through the fourth floor to the roof with clear windows in the center. He assumed that this would be approximately a 20 foot ceiling and added that during the remodel, they would try to refurbish the room close to the originality, yet making it more modern in use.

The committee then traveled to the fourth floor and the jail. We were able to witness the still-working manual mechanism to open the cell doors. Mr. Bianchi explained that nothing would be done with this floor or anything

above this floor, in the lantern of the building, and added that it also would not be heated. We concluded our tour on the roof of the building with a view of all sides of the building as well as the enclosed structure at the top.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 9:15 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

## MINUTES

### SENATE STATE AFFAIRS COMMITTEE

- DATE:** Friday, January 21, 2005
- TIME:** 8:00 a.m.
- PLACE:** Room 437
- MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett.
- ABSENT/  
EXCUSED:** Malepeai
- GUESTS:** See attached sign-in sheets.
- CONVENE:** Chairman Burtenshaw called the meeting to order at 8:08 a.m.
- MINUTES:** **Senator Darrington** made a motion to approve the Minutes dated Friday, January 14, 2005. **Senator Stegner** seconded the motion.
- The motion passed by voice vote.
- Senator McKenzie** made a motion to approve the Minutes dated Monday, January 17, 2005 with the change on page 5 regarding Rule 100. He stated that it should be Rule 110. **Senator Geddes** seconded the motion.
- The motion passed by voice vote.
- Gubernatorial Appointment:** **Public Utilities Commission**  
Paul Kjellander of Boise. Serving a term commencing January 10, 2005 and expiring January 10, 2011.
- MOTION:** **Senator Little** made a motion to approve the appointment and send this to the Floor with a Do Pass recommendation. **Senator Geddes** seconded the motion.
- The motion passed by voice vote.
- Senator Little** will sponsor this on the Floor.
- Gubernatorial Appointment:** **Bingo-Raffle Advisory Board**  
Lloyd D. Thies of Nampa. Serving a term commencing January 7, 2003 and expiring January 7, 2006.
- MOTION:** **Senator Little** made a motion to approve the appointment and send this to the Floor with a Do Pass recommendation. **Senator McKenzie** seconded the motion.
- The motion passed by voice vote.

**Senator McKenzie** will sponsor this on the Floor.

**RS 14580:** Clarifies that County Election Offices must accept voter registration materials at all times.

**Senator Elliot Werk** explained that in the last primary election, the Election Office for Ada County would not accept voter registration cards after the 24-day period and cited 34-408, Idaho Code. He stated that this Statute outlines that a person will not be registered for the Primary election, but will show up on the registration rolls for the General election.

He pointed out that no county should be allowed to interpret the law and added that this legislation clarifies that they “must” accept the registration cards at any time.

**Chairman Burtenshaw** asked if they still could register when they voted at the Primary. **Senator Werk** responded that they could register at the polls. He reported that during the 24-day time frame, the county should still be able to accept the cards and explain that the voter would not be entered into the registration system until after the election. He added that they should also inform the voter that they can still vote during the Primary election by registering at the polls with identification. He stated that sometimes people move from one district to another and simply need to change the information on file.

**Senator Davis** commented that a person, ten days prior to the election takes in his card and the county person says, “sorry, we can’t accept that right now” and added that even though they are not accepting it right now, the person will still have to register at the polls.

**MOTION:** **Senator Davis** made a motion to print RS 14580. **Senator McKenzie** seconded the motion.

The motion passed by voice vote.

**RS 14485C1:** Marriage Amendment: to add a new section to provide that only a union of one man and one woman shall be valid or recognized as a marriage in this state and to provide that this state and its political subdivisions shall not create or recognize a legal status identical or substantially similar to that of marriage for unmarried individuals.

**Senator McKenzie** explained that he was presenting an RS that also included 15 other senators as sponsors. He stated that he hasn’t seen such a broad list of sponsors in any bill before.

He explained that the first sentence on lines 16 and 17 relates to a marriage that is valid in the state. He stated that the second refers to marriages formed out of the state.

**Senator McKenzie** explained that the second sentence on lines 17-19 relates to only the political and government entities and not to employer or employees. He added that this does allow for the creation of reciprocal benefits.

He stated that the why of this legislation is because marriage is a social institution and that there are mainly two interests addressed: the responsible procreation as outlined in the Federal Defense of Marriage Act recently heard in Florida; and the rearing of children for the protection and well-being of children. He explained that children that are raised in a home with both a biological mother and biological father are safest, earn higher scores in school, and are less likely to commit crimes.

He remarked that marriage deserves the protection of the Constitution. He reported that in Idaho, State and Federal judges interpret the laws and apply them. He pointed out that the issue is fundamental to society and that the people of Idaho deserve the opportunity to vote on this issue. He added that the fundamental policy should be set by the people, not by the courts. He reported that there are 17 states with this on the books and 11 with this on the ballot just last November where it passed by an average of 70%.

**MOTION:** **Senator Davis** made a motion to print RS 14485C1. **Senator Geddes** seconded the motion.

**DISCUSSION:** **Senator Stennett** asked about the second half of the second sentence and if this would affect the non-gay couples as well. He asked how it would affect the status of those couples. **Senator McKenzie** replied that it would not affect existing Idaho law, but would affect the unions from other states such as the domestic partnerships in California which allows them to live together yet not be married. He added that with the domestic partnership ability, the couples are still allowed to feel married.

**Senator Davis** asked if this was proposed last year under Article III. **Senator McKenzie** replied that he did not know. **Senator Davis** asked why it was in Article III. **Senator McKenzie** answered that the drafters of this RS suggested it.

**VOTE:** Roll call vote showed 6-2-1. Ayes: Darrington, Geddes, Davis, Little, McKenzie, Burtenshaw. Nays: Stegner and Stennett. Excused: Malepeai.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 8:25 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

## MINUTES

### SENATE STATE AFFAIRS COMMITTEE

- DATE:** Wednesday, January 26, 2005
- TIME:** 8:00 a.m.
- PLACE:** Room 437
- MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett., Malepeai
- ABSENT/  
EXCUSED:** None.
- GUESTS:** See attached sign-in sheet.
- CONVENE:** Chairman Burtenshaw called the meeting to order at 8:06 a.m.
- APPROVAL OF  
MINUTES:** **Senator Malepeai** made a motion to approve the Minutes of Wednesday, January 19<sup>th</sup>. **Seantor Geddes** seconded the motion.
- The motion passed by voice vote.
- Senator McKenzie** made a motion to approve the Minutes of Friday, January 21<sup>st</sup> with minor changes on page 3. **Senator Malepeai** seconded the motion.
- The motion passed by voice vote.
- IECC UPDATE:** **Status Report of the Idaho Emergency Communications Commission.**
- Mr. Grant Nancolas, Mayor of Caldwell provided the committee with a handout. He explained that the Commission has 13 voting members with three additional members: the Adjutant General, a representative from the Attorney General's Office, and the Director of Idaho State Police. He reported that between August of 2004 and January of 2005, they held five meetings.
- He pointed out that the handout showed the planned expenditures that included an annual budget of \$97,500 (which is 85% of the total annual projected revenues in the amount of \$114,700). He stated that the Bureau of Homeland Security provided \$30,000 to be used between August 1, 2004 and January 30, 2005 with any remaining funds to be returned to the Bureau. He added that about \$4,500 has been collected to date from various counties with an anticipated quarterly revenue of about \$28,000.
- He reported that the Commission established operating procedures, created a mission statement, and created a website ([www.e911.idaho.gov](http://www.e911.idaho.gov)) which is also hot linked to the Governor's page. He explained that they have also created a survey to all counties for the Public Safety Answering Points (PSAP) which is done electronically. He

pointed out that the Commission meets the first Thursday of every month and listed February 3<sup>rd</sup>, March 3<sup>rd</sup>, and April 7<sup>th</sup> as scheduled meetings coming up. He also acknowledged the Bureau of Homeland Security, Ada County, and the State Administration Office.

**SIEC UPDATE: Status Report of the Statewide Interoperability Executive Council.**

Chairman of the Council Mr. R, Mark Lockwood, Chief of the Sandpoint Police Department, reported that his Council picks up the PSAP information and distributes it to the providers statewide. He stated that Executive Order 2003-7 established the Council with 18 statewide members and 4 technical advisors.

He explained that in the past year, the Council has established a mission statement, definitions of interoperability, and created an Office of Domestic Preparedness. The Council operates four divisions: a technical committee to develop a plan; the outreach program to educate the general public; and a funding division to help get money to provide for the haves and have nots. He added that they recently received one of five grants from the National Association of Governors.

He explained that the Council was formed following FCC mandates and shared with the committee the new agreements with microwaves and the decrease from 25 kw to 12.5 kw. He stated that with the wireless systems and other capabilities, the broadband is being used up and added that changing to the 12.5 kw will move to a digital capability. He reported that after January 1, 2011, no applications will be accepted for 25 kw and added that the migration to 12.5 kw will be in effect beginning January 1, 2013. He mentioned that one of the greatest assets in the state is our microwaves which run from Bonners Ferry to Pocatello and from East to West. He added that the Department of Administration manages these microwaves.

He provided the members of the committee with a DVD and a brochure about the Council.

**Ms. Dodie Linder-Collier** stated that the ECC handles 911 while the Council works with the citizens.

**Senator Malepeai** asked if they also include Indian Reservations. **Ms. Linder-Collier** responded that they do include Reservations and stated that Reggie Thorpe with the Shoshoni-Bannock Tribe was a member of the Council.

**Gubernatorial Appointment:**

**Adjutant General of the Idaho National Guard. Mr. Lawrence Lafrenze of Boise. To serve a term commencing January 15, 2005 and continuing at the pleasure of the Governor.**

General Lafrenz introduced himself and explained that in May of 1966 he enlisted in the Army and was sent to Fort Benning. He then outlined the past posts he has held which include Second Lieutenant, Platoon Leader, Company Commander, Battalion Personnel and Battalion Leader.

He explained that there is no substitute for readiness and added that the Army National Guard will continue to fight with maximum assets and will be ready when duty calls.

**Chairman Burtenshaw** asked how many National Guard people were in Idaho. **General Lafrenze** replied that there are 3,000 Army Guard and 1,500 Air Guard. **Chairman Burtenshaw** asked how many of these were currently deployed. **General Lafrenze** answered that there are 1,600 that are mostly Army.

**Senator Geddes** asked how much involvement he has with the troops in Iraq. **General Lafrenz** answered that he has daily communication via email and telephone communication three to four times per week. He added that if a situation arises, the commander contacts him.

**Senator Darrington** inquired about where the regular Army has downsized, is the National Guard being used and asked if those that they recruit are aware that they may be deployed. **General Lafrenz** replied that without a doubt, the new enlistees are aware that there will be continued deployments.

**Senator Stennett** asked about the recruitment difference and how they develop it. **General Lafrenz** answered that in the Army Guard, there is about 95% strength. He reported that the National Guard is at about 3,010 with the highest recruitment at 3,100. He stated that they plan to exceed the 3,100 by the end of the Federal Fiscal Year and shared that recruitment had dipped which brought about the enlistment bonuses. He explained that the bonus are upwards of \$15,000 and added that they also provide tuition assistance to enlistees. He further added that the citizens of Idaho have been very supportive of the military and stated that due to this, we may not see a decline in enlistment that the nation, as a whole, will see. He added that there are currently 350,000 enlisted nationwide.

**Senator Stennett** asked about the difference in ages between the National Guard and the Army Guard. **General Lafrenz** replied that the National Guard is the only component in the Army with their own recruiting. He stated that they compete with the Army Guard for the same type of people in the same age range. He pointed out that those in the Active Army are staying with the Active Army and explained that the National Guard recruits 30-35%, the Army Reserve 5-9% and the rest go into the Active Army.

**Senator Stennett** asked that since about 1/3 of our troops are overseas, would there be an additional call up and if so, how would that affect issues that could arise in Idaho. **General Lafrenz** answered that Congress recently authorized an additional 30,000 troops for 10 active brigades which would give a potential for active formations.

**Senator Davis** asked about the death benefit with Guard members activated compared to those active enlisted. **General Lafrenz** answered that when they are deployed, they fall under Title 10 which is the same benefit for active service at \$12,500. He added that they are trying to change that in Congress to bring it to the same level as the death benefit

for law enforcement.

**Senator Davis** asked if once activated, the death benefit is the same for both at \$12,500. **General Lafrenz** replied that it was. **Senator Davis** followed up by asking when they are released and come home, then the same death benefit no longer applies. **General Lafrenz** answered that this was correct and added that for \$6 per month, the soldier could voluntarily purchase SGLI insurance with a benefit of \$250,000. He pointed out that while they are deployed they fall under Title 10, but once they return home, they fall under Title 32. **Senator Davis** asked if the option to participate was identical regardless of the title they were under and was the cost identical as well. **General Lafrenz** said that it is identical.

**Senator Stegner** asked who underwrites this supplemental policy. **General Lafrenz** replied that it is a government sponsored life insurance policy called Servicemen Group Life Insurance. He added that he carries it and stated that 99.9% of the soldiers also have it. **Senator Stegner** asked how he assessed the readiness for the balance of the National Guard to respond to state activities. **General Lafrenz** answered that there is a standing policy at the national level that no state will deploy more than 50% of the forces. He reported that currently, Idaho has deployed 1,700 of the 4,500 on active duty. He added that if a situation arises, Oregon and Montana would be available to help.

**Senator Stennett** asked what was the average age of a reservist. **General Lafrenz** replied that in the Army and Air Guard, the average age was probably 30. He stated that many have made the military a career and added that historically, those in the Guard are older than those on active. He further added that these soldiers bring a tremendous amount of ability to the state. **Senator Stennett** asked if there were any other states with the same percentage of soldiers overseas. **General Lafrenz** replied that 1/3 of the states are in the same neighborhood of deployment but added that the brigade from Idaho is the largest.

**Chairman Burtenshaw** thanked him for coming and announced that the committee would vote on this next week.

**SCR 102:**

**Ada County Courthouse Annex - Renovation and addition.**

Mr. Carl Bianchi, Director of Legislative Services explained that this is one of two pieces of legislation with competing approaches. He then directed the attention of the committee to the two handouts in the packets regarding both SCR 101 and SCR 102.

Page 1 is a drawing of what the building could look like after the remodel and addition. Page 2 shows some fast facts about the square footage, price, and the scope of the project. He pointed out that we won't know the actual costs until the project goes out for bid. He stated that the amounts are an estimate through the Division of Public Works. He then shared the time line from page 3. He also mentioned that this bill includes legislative intent.

**Chairman Burtenshaw** stated that both were presented together last

time and asked what was Mr. Bianchi's intention, to hear each one, or both together and allow the committee to make motions following the presentation of both. **Mr. Bianchi** responded that he would do whatever the committee wanted and suggested maybe to hear one and vote, then hear the other one and vote. **Senator Stegner** commented that the committee should hear both and then make motions following the presentation.

**Senator Little** stated that the cost several years ago per square foot was less and asked what happened. **Mr. Bianchi** answered that the overall cost for the either proposal has increased about \$4 million since this was last visited. **Senator Little** noted that the advantage of a new building versus renovation has flip flopped and asked about the lowest cost per square foot for useable space. **Ms. Pam Ahrens**, Director of the Department of Administration stated that both have increased. **Mr. Eric Milstead** added that in October 2001 the usable space for the new building was \$175 per square foot and the cost for the renovation was \$175.50 per square foot of useable space.

**SCR 101:**

**Ada County Courthouse Annex - Demolish and Rebuild.**

Mr. Carl Bianchi, Director of Legislative Services directed the attention of the committee to page one of the handout for SCR 101. He explained that this is not the actual drawing, but that a design would be decided upon proposals submitted. He stated that page two relates to fast facts of 128,000 square feet of gross area with an increase in 9,000 useable space over the proposal to renovate the building. He stated that the cost is an estimate and that they will know more when the bids come in. He pointed out that the time line schedule will be extended at least 6 months and concluded that this authorizes the construction of a new building with an access tunnel to the Capitol.

**Mr. Bianchi** reported that he does not recommend one over the other, but does recommend that something be done this session.

**Senator Stennett** asked what the second design would do to the footprint of the building and the landscaping. **Mr. Bianchi** replied that it would be the same on the State Street side.

**Ms. Jan Frew** with the Department of Administration explained that this would depend upon the design that was chosen. She pointed out that the one in the packet does not go any closer to Jefferson.

**Senator Little** asked where will we park all of the cars. **Mr. Bianchi** responded that we do need more parking and added that we will need to build a garage. He reported that we have the land, but need the money to do so.

**Director Pam Ahrens** added that this lot behind the LBJ Building is the property that a garage will eventually stand on. She reported that there are currently 2300 employees and only 1300 to 1600 parking spots.

**Mayor Dave Bieter** of the City of Boise testified that he supports SCR 102. He reported that he was in the Legislature five years ago and noted

that the court house was in his district. He stated that of the constituent comment that he receives in his current office, nearly 100% of the opinions are to renovate.

He pointed out renovation successes such as the Idanha and the Union Block Building. He stated that the court house was completed in 1939 and added that it is a good value to renovate as well as cheaper as a whole. He stated that the current renovation of 8<sup>th</sup> Street Marketplace is at \$60 million in renovation and construction. He concluded that we go to our moms for wisdom and quoted his mom, "there's a whole lotta good wear in that building."

**Mr. Scott Chandler** stated that he is Vice Chairman of the Syringa Bank and shared his four views to renovate the building: architectural due to top quality limestone; business because it is structurally sound; development; and banking because issuing bonds is wise. He stated that he renovated the Bureau of Reclamation building where Idaho Public Television is in 1993 and added that time is money.

**Mr. Chris Blanchard** testified in support of saving the murals. He stated that the Boise Art Museum as well as Sotheby's were particularly interested in the historical and financial significance of the murals.

**Senator Stegner** asked if this was a professional opinion on the removal of the murals and if he had examined them personally. **Mr. Blanchard** replied that he has taken students to view them and added that he is the Assistant Curator for the Boise Art Museum. He reported that these were painted on canvas and glued on to the walls and should be removed by experts and properly preserved .

**Mr. Gregory Kaslo** testified that there are problems that we are faced with such as growth and the need for more meeting rooms. He stated that in it's existing condition, the building could be used to solve these problems. He listed a couple of proposals and shared recommendations and opinions to renovate it. He reported that this is the third court house on this location.

**Senator Hal Bunderson** testified that the cost of preservation is not part of the package. He stated that the appraisal when purchased was based 76% on land and 24% on the building. He further stated that artifacts are important, but added that we need to build for the future while honoring the past. He pointed out that the floors don't match, ramps would have to be built for accessibility and the challenges with the support columns in many of the lower rooms. He reported that there are 60 historic buildings around Idaho with no money to preserve them. He remarked that the building must compliment the Capitol. He stated that he supports preserving the artifacts such as the brass handrails and marble, and suggested cutting off the top four floors or "lantern" and moving it out to the prison.

**Senator Geddes** asked if he recalled a discussion as to why the county abandoned the building and built a new one. **Senator Bunderson** answered that the discussion was the cost of a new facility and the innovative funding they used to purchase the new building. He pointed

out that the State purchasing this building was a done deal and that the county just needed the money to fund the new building.

**Mr. Arthur Hart** stated that he is the Director Emeritus of the Idaho State Historical Society and added that he was Director for 17 years starting in 1969. He reported that 98 years ago we established the Idaho State Historical Society and added that 2007 will be the centennial of the Society. He stated that the task of the Society is to identify historical structures and to protect and preserve those structures. He reported that there are 6 buildings in Boise that have been successfully renovated and adapted for reuse. He explained that the court house is on the National Registry of Historic Places through the National Park Service. He stated that he is concerned that it will cost a lot more money to demolish and build a new building. He urged the committee to support SCR 102.

**Senator Little** asked if he thought the renovation schematic would impugn the integrity of the building. **Mr. Hart** answered that no it wouldn't and added that the murals are an integral part of the building.

**Mr. Charles Hummel** provided the committee with a handout and stated that SCR 102 would provide the most timely and best use of the existing building at a reasonable cost. He added that the cost to renovate is \$1.6 million less than the alternate proposal to demolish the building. He further added that SCR 102 also has the additional benefit of maintaining the historic identity and visual character of the locality.

**Senator Stegner** asked what his impression would be to put wings on the Capitol like the ones on the US Capitol versus an offsite annex. **Mr. Hummel** replied he didn't personally favor it. He stated that his grandfather was one of the architects of the Capitol and that he, himself, was responsible for some of this trouble. He also reminded the committee about the green curtains and enclosing the chambers 30 years ago. He pointed out that the problem may be the availability of materials to match the Capitol. He stated that it would be difficult and controversial to add the wings, but added that functionally, it is a good idea.

**Senator Little** asked about the materials and if he thought the limestone and remodel would impugn the integrity of the courthouse. **Mr. Hummel** replied that there is thin veneer limestone alternatives and added that the remodel preserves 75% of the original facade.

**Mr. Dave Thomas** urged the committee to support SCR 102.

**Ms. Tricia Canady** of the State Historical Preservation Office testified that Title 67, Chapter 46 provides for historic preservation. She stated that this building, along with the Capitol, was one of the first buildings in Idaho placed on the National Registry. She remarked that SCR 102 provides space, is cheaper and fiscally responsible.

**Mr. Dan Everhart** a Board member of the Idaho Preservation Heritage Trust testified by showing the committee a huge poster outlining his major points. He stated that the time line would be 8-10 months more if SCR 101 to reconstruct were supported. He stated that new construction costs more by \$1.6 million plus interest. He pointed out the historic heritage

and the difference in construction materials as opposed to the materials that are currently on the building. He urged the committee to support SCR 102.

**Ms. Suzi Neitzel** with the Idaho State Historical Preservation Office testified in support of SCR 102. She stated that remodeling is cheaper and the needs are met; that the building will be completed sooner and pointed out that waiting is expensive. She stated that by passing SCR 102, collective history is preserved and listed the Hurlbutt Mansion in Lewiston, the Rainbow Bridge on Highway 55, and the Lincoln County Courthouse in Shoshone.

**Mr. Don Watts** with the Idaho State Historical Preservation Office explained that he has been a Planner for 25 years and listed various buildings across the state such as Moscow High School, and Sandpoint High School. He concluded by saying that history is all around us, pass it on to future generations.

**Ms. Ann Swanson** with the Idaho State Historical Preservation Office shared copies of drawings for the new hearing rooms in the new addition of SCR 102. She stated that the value of open/common space can be listed by seasonal uses of these spaces and referred to the Buy Idaho show in the rotunda as well as other events held in the rotunda space. She quoted Ray Oldenberg's Third Space by saying that it provides a place for gathering of individuals and levels the playing field by providing common ground for gathering.

**Ms. Jill Osborn** read the testimony of Dan Everhart and commented on the Presidential Order to "Preserve America".

**Mr. Travis Pitkin** of the Idaho State Historical Society testified that beauty is in the eye of the beholder and asked the committee to vote to preserve the building.

**Mr. Alan Minskott** teaches Journalism at Albertson's College of Idaho. He supports SCR 102 because it contains history itself.

**Mr. Steve Guerber**, Executive Director of the Idaho State Historical Society testified that this bill will not shift money from the 60 buildings in Idaho alluded to by Senator Bunderson. He stated that the artwork has a very high value and shared that the same era of artwork through the WPA was discovered in a Broadway theater and was sold in small pieces earning over \$14 million.

**Chairman Burtenshaw** asked Director Ahrens if they had core drilled the foundation and if it was earthquake safe. **Director Ahrens** deferred to **Larry Osgood** who stated that they have not and stated that there is probably not any building, unless it is new, that would be earthquake safe. He added that the building appears to be sound. **Chairman Burtenshaw** asked if there were any plans showing where the steel was in the concrete. **Mr. Osgood** replied that they didn't have any plans yet.

**Senator Stennett** asked if there was any asbestos in the building and if any abatement had been done. **Mr. Osgood** answered that there was

some asbestos and reported that abatement had been done 6-10 years ago. He reported that there was some in the insulation on the pipes in the boiler room which would be a problem either way.

**Senator Malepeai** asked if we do either, would we have to go through a permit process. **Ms. Jan Frew**, Architect with the Department of Administration explained that we would. **Senator Malepeai** asked if there would be a parking concern with the permit approval and if so, would that hold up the permit approval. **Ms. Frew** replied that we would have to comply, but stated that this building is in a “zero” parking area. She further added that parking is not part of this proposal.

**Senator Little** asked if we could use Idaho Code 67-4618 to exempt the state if we take the option of preserving the building. **Ms. Frew** replied that we would comply with historic preservation. **Senator Little** asked if there was any cost savings to do the preservation. **Ms. Frew** answered that she was not sure it would save any money since we could do less expensive adaptations.

**MOTION:** **Senator Davis** made a motion to send SCR 102 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Little** seconded the motion.

**DISCUSSION:** **Senator Darrington** stated that he supports either proposal as long as one goes through the Legislature. He stated that he was concerned that the people here will push a design at Public Works.

**Senator Davis** stated that he supported the concept before and added that he is inclined to preserve as much as possible. He stated that there is enough there for the future and added that he is amazed at how functional renovated spaces are.

**SUBSTITUTE MOTION:** **Senator Geddes** made a substitution motion to send SCR 101 to the Floor with a **DO PASS RECOMMENDATION** and **HOLD SCR 102** in committee if we need to fall back on that later. **Senator Stegner** seconded the motion.

**DISCUSSION:** **Senator Geddes** reported that three years ago he carried both on the floor and that both failed. He stated that it is important to make a decision this year. He reported that not one person outside of the city limits of Boise was interested in this. He mentioned that he is a Geologist and stated that it is difficult to undo concrete reinforced with rebar. He reported that his impression of the old court house is different and stated that we need to look at what we get for the money when it is complete with regard to access, plumbing, and functionality.

**Senator Stegner** stated that he has no sentimentality for this building but reported that he has spent two years renovating a building he owns. He stated that there was little problem when the county owned it and added that the county was not interested in saving it. He remarked that he doesn't want a precedent set that the State will foot the bill. He pointed out that the artwork is a taboo subject and added that some of it is horrendous and that the subject matter was offensive. He added that the work was done by California artists and encouraged it's removal.

**Senator McKenzie** stated that he is in support of the substitute motion and recounted his visit to the Capitol following the flood in the basement. He stated that he desires to give these employees better, more modern space and added that we owe it to them and the people who come to testify at hearings.

**Chairman Burtenshaw** reported that the first ten years after high school and marriage he worked in construction. He noted that the concrete above the marble was combed and the cast iron pipes in the basement. He pointed out that when you tear things out, it sometimes costs more because things are uncovered that don't show on initial inspection. He stated that his instincts were to start anew but added that history is important. He concluded that his sense suggested tearing it down, but his heart was for restoration and that this wasn't an easy decision.

**Senator Malepeai** commented that during his travels he has noticed that each area is unique in it's character. He mentioned the cannonball in a wall in Carlisle, PA. He further stated that he regrets the tearing down of the Bannock Hotel in Pocatello and added that the local governments have a difficult time generating money to restore old buildings. He concluded that he will side with those in this district and vote to restore.

**Senator Davis** commented that the US Capitol is not efficient and pointed out that some things are appropriate to hold on to.

**Senator Little** stated that he has an issue with contingency costs and added that he will support Senator Davis' motion.

**VOTE ON  
SUBSTITUTE  
MOTION:**

4-5 Vote failed.  
Ayes: Geddes, Stegner, McKenzie, Burtenshaw.  
Nays: Darrington, Davis, Little, Stennett, Malepeai.

**DISCUSSION ON  
ORIGINAL  
MOTION:**

**Senator Stennett** stated that he is in favor of the motion. He pointed out that the law requires us to look at preservation and added that when the State bought it, they did so with open eyes. He urged unanimous support of this motion for this to look strong on the floor.

**VOTE ON  
ORIGINAL  
MOTION:**

9-0 Motion passed.

**ADJOURN:**

There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 10:58 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

## MINUTES

### SENATE STATE AFFAIRS COMMITTEE

- DATE:** Friday, January 28, 2005
- TIME:** 8:00 a.m.
- PLACE:** Room 437
- MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett., Malepeai
- ABSENT/  
EXCUSED:** None.
- GUESTS:** See attached sign in sheet.
- CONVENE:** Chairman Burtenshaw called the meeting to order at 8:04 a.m. He explained that the testimony would be limited to three minutes per person and directed the attention of the public to the timer on the podium.
- SJR 101:** **Senator Curt McKenzie** opened his presentation by saying that he and Senator Sweet are representing 16 Senators who are asking the committee to send SJR 101 to the floor and allow a vote by the entire Idaho Senate. He also introduced Mr. Dale Schowengerdt, an attorney with the Alliance Defense Fund, who has knowledge of other states which have been through this amendment process. He stated that in Idaho, we have a fairly unique process to amend the Constitution. He stated that the citizens of Idaho are the gate keepers of the Constitution. He pointed out that a "yes" vote would show that we are a government of the people, by the people, and for the people. He remarked that the people of Idaho should have a vote on this fundamental issue and that such a vote would allow this to be placed on the ballot.
- He pointed out that recently, in November, citizens in eleven other states had the opportunity to vote on similar amendments and overwhelmingly supported protecting marriage in their state constitutions.
- He stated that the language in this amendment provides that the union of only one man and one woman shall be valid and recognized as marriage in this state. It also provides that the state and its political subdivisions shall not create or recognize a legal status similar to that of marriage. The phrase in the first sentence "valid" refers to marriages created within the state, the reference to "recognized" refers to unions formed out of the state and complies with the Federal Defense of Marriage Act that was recently upheld by a Federal Court in Florida. The second sentence refers to state and political subdivisions and clarifies that the prohibition refers only to government entities, like state agencies, departments or other state entities, from granting official recognition to non-familial or non-marital relationships except as provided under marriage law. He pointed out that the Louisiana Supreme Court recently upheld a similar amendment. He added that this amendment does not prohibit the state from adopting laws that would allow individuals to create reciprocal benefits between them, or to undertake legal obligations to each other,

but it does prevent extending a status similar to marriage. He pointed out that the Louisiana Court said that this Constitutional amendment does not impair any property rights which are not identical or substantially similar to the package of unique property rights necessary for marriage. It does not prohibit any couple from entering into contracts for property, or to designate each other for making critical life or medical decisions in cases of medical emergency where one is not conscious, or acting as power of attorney. It also does not prohibit an unmarried couple from making wills to leave their estates to one another.

He read from the Indiana Court of Appeals discussion of this issue: "On January 12, 2004, the Massachusetts Supreme Judicial Court ruled that only same sex marriages, not civil union, would satisfy that state's constitution. Same sex couples have been marrying in Massachusetts since May of 2004. The City of San Francisco's Mayor issued marriage licenses to thousands of same sex couples and officials in other locales." Lawsuits similar to the one before us are pending in many other states.

He concluded that Idaho is not an island and that what goes on in other states, especially neighboring states, does affect us. He added that the decision we make today is whether we are going to allow the citizens of Idaho to vote on this fundamental policy or whether we will just leave it to the courts to set this policy. He stated that some have argued that we do not need an amendment in Idaho because Idaho judges are elected and therefore wouldn't go against the will of the people. But simply being elected does not guarantee that an official will follow the will of the people on a particular issue. He further pointed out that unelected judges from the Federal 9<sup>th</sup> Circuit frequently interpret Idaho's Statutes.

**Senator McKenzie** pointed out that under Article 1, Section 1 of Idaho's Constitution, all men, by nature, are free and equal and have certain inalienable rights, among which are enjoying and defending life and liberty. He added that by the decision of three out of the five Supreme Court Judges in Idaho or even two of the three 9<sup>th</sup> Circuit Judges Idaho could be required to redefine marriage. He reported that the bottom line is that this is a fundamental issue for our society and that through this amendment process, we put this issue before the people of Idaho and let the people decide what they want the policy to be, which is the appropriate course.

**Senator Gerry Sweet** reported that the Idaho Constitution has been amended 124 times since 1893. He pointed out that each of these amendments related to issues of great significance to the people of Idaho and stated that the institution of marriage is the foundation from which families are built on and should also be protected within the Constitution. He quoted an article by Dr. Matthew Spalding of the Heritage Foundation's B. Kenneth Simon Center for American Studies, *"For thousands of years, on the basis of experience, tradition, and legal precedent, every society and every major religious faith have upheld marriage as a unique relationship by which a man and a woman are joined together for the primary purpose of forming and maintaining a family. This overwhelming consensus results from the fact that the union of man and woman is apparent and manifest in the most basic and evident truths of human nature. Marriage is the formal recognition of this relationship by society and its laws. While individual marriages are*

*recognized by government, the institution of marriage preexists and is antecedent to the institution of government, which in turn presupposes and depends on the institution of marriage. Society's interest in uniquely elevating the status of marriage among human relationships is that marriage is the necessary foundation of the family, and is necessary for societal existence and well-being. The basic building block of society is the family, which is the primary institution through which children are raised, nurtured, and educated, and develop into adults. Marriage is the cornerstone of the family. It produces children, provides them with mothers and fathers, and is the framework through which relationships among mothers, fathers, and children are established and maintained. Only in the context of family built on the foundation of marriage can the sometimes competing needs and interests of men, women, and children be harmonized. Because of its characteristic relationship with the family, marriage is uniquely beneficial to society. Based on existing studies comparing two-parent and single-parent households, social science overwhelmingly demonstrates that children do far better when they are raised by two married parents in a stable family relationship and that children raised in other household structures are subject to significantly increased risk of harm. Evidence further suggests that one reason children do better in a married household is not just the stability of having two parents, but the fact that a male and a female parent each bring distinctive strengths, perspectives, and characteristics to the family unit that benefit both children and the parents. Although we have little information concerning children raised in households with same-sex parents, what we do know is that marriage between a man and a woman provides unique social, economic, and health benefits for children, adults, and society in general. Moreover, because of the shared obligations and generational relationships that accrue with marriage, the institution brings significant stability, continuity, and meaning to human relationships and plays an important role in transferring basic cultural knowledge and civilization to future generations."*

**Senator Sweet** clarified four of the prominent inaccuracies:

1. Amendment is discriminatory. He cited the 1971 Minnesota Supreme Court case of *Baker v. Nelson*, 191 N.W.2d 185. He added that it does not violate the US Constitution, in particular, the Fourteenth Amendment.
2. Amendment impacts the rights of couples. He referred back to the Louisiana Supreme Court ruling that Senator McKenzie spoke of.
3. Amendment impacts existing common law marriages. He pointed out that after 1996, Idaho code abolished common law marriages. He added that common law marriages prior to 1996 will still be valid after passage of the marriage amendment.
4. Opponents just want to expand the definition of marriage. He pointed out that they want to radically redefine marriage.

**Senator Sweet** remarked that we must not allow any adult special interest group's political agenda to deny our children the social ideal of marriage, or to use our children as test subjects in a risky social experiment with irreversible effects. He shared information on studies conducted by University of Michigan Professor David Chambers, studies conducted in the Netherlands, and another conducted by Harvard University Law Professor Mary Glendon.

He concluded by asking who should decide the marriage issue in Idaho?

He stated that in Massachusetts, it was four judges, and added that it should be decided by a vote of the people, in the form of a constitutional amendment. He then introduced Mr. Dale Schowengerdt with the Alliance Defense Fund, and Mr. William C. Duncan from the Marriage Law Foundation.

**Mr. Schowengerdt** explained that this issue has erupted in the past three years and stated that he has been involved in 11 lawsuits. He pointed out that there are great efforts occurring to define marriage then shared a couple of recent efforts in Massachusetts and Washington. **Mr. Schowengerdt** reported that in Massachusetts, they were very explicit in defining marriage and applied the lowest level of scrutiny. In Washington, two superior courts overturned the definition that was also based on the lowest level of scrutiny. He concluded by saying that this issue will be decided in Idaho, but asked would it be decided by the Legislature and the people, or by the courts.

**Chairman Burtenshaw** again defined the time allotment for testimony.

Below is a brief statement of each testimony. Full copies of each testimony are included in the State Affairs Committee Legislative Session Notebook.

**Ms. Julie Lynde** with the Cornerstone Institute testified in support by explaining that marriage is the cornerstone of civilization and is foundational. It is the cornerstone of who we, as a civilization, are. She added that diluting and redefining that cornerstone has serious ramifications. She concluded that the amending process is needed for a time such as this.

**Mr. Fred Prouty** of Mountain Home testified in opposition and said that he learned a few important rules from being a parent. He believes any combination of parents can raise their children well if they are involved with their children, create a family atmosphere and provide discipline. He shared 6 ideas relating to parenthood: never give up on your children; create a family atmosphere where children can develop good self-esteem; be involved in your children's activities away from home; provide a positive home environment; know the people and groups that influence your children; and provide discipline. He concluded that these concepts work with any family style and added that as a school principal, he discovered that parents of the same sex had no more or less problems with their children than any of the other parental makeups.

**Mr. Brad Miller** with Focus on the Family testified in support by saying that civil unions are unwise public policy because they teach our children and society that all close personal relationships are equal. He added that this is problematic because no society has ever been able to sustain itself with a buffet-like mentality of family; just pick what suits you, because all choices are equally valid.

**Mr. Scott Curtis**, a trained Social Worker in Boise, testified in opposition by saying that this amendment does not address the raising of children and that a constitutional amendment preventing the establishment of any recognized civil unions for non-heterosexual couples does not outlaw

parenthood by such couples.

**Mr. Nathaniel Longstreet** testified in support by saying that nature shows that the most stable societies are formed with monogamous relationships between one male and one female and that history shows that the strength of a society is founded on families formed with one man and one woman to raise children.

**Mr. Paul Rolig**, a computer programmer, testified in opposition. He stated that he believes that freedom to marry whomever you want is a matter of equal rights under the law. He remarked that under Article 1, Section 4 of the Idaho Constitution “bigamy and polygamy are forever prohibited in the state” and concluded that this amendment is not needed.

**Senator Davis** asked if he would strike the language about polygamy.

**Mr. Rolig** replied that he does not propose a change to the Constitution at this time. **Senator Davis** asked him to explain why polygamy and bigotry were included in the laws. **Mr. Rolig** answered that bigotry was probably put there to prevent deformed births and that polygamy was to stop multiple partners from qualifying for benefits under one provider. He stated that these were there as a caution to care for financial situations of the State.

**Mr. Allen Marsh** testified in support. He explained that “committed” homosexual relationships are radically different from married couples in several key respects: relationship duration; monogamy vs. promiscuity; relationship commitment; number of children being raised; health risks; and rates of intimate partner violence. He concluded that even though this amendment would not stop a federal judge from imposing his will on us, it will protect us from state judges and will put our state on the record as favoring the Federal marriage Amendment.

**Mr. Gene Arnold**, former Idaho Senate Chaplain from 2003, testified in support by saying that he believes that the present political currents and the agendas of certain ardent social activists demand that he join the voices of those who are advocates for the proposed amendment to the Idaho Constitution. He added that it takes nothing away and adds no rights to any segment of people in this state, it simply affirms the ancient, commonly accepted, nearly universal definition of marriage.

**Ms. Karen Pflieger**, teacher, testified in opposition by pointing out that Idaho has a history plagued with hate groups and discrimination. She stated that we need to move away from this history by embracing tolerance of all people and ensuring all people equal rights under the law rather than furthering a homophobic agenda. She asked the committee to not send a message that says Idaho is not tolerant.

**Mr. Christopher McGreer**, retired Chaplain and Fighter Pilot for the US Air Force, testified in support of this amendment. He stated that this resolution is giving us a firm definition of marriage that is needed in the midst of our society in which to debate the social issues and the traditional family. He concluded that this is for the good of our society, the good of our beloved state, the good of America and for our families.

**Mr. James East** testified in opposition. He reported that he is a conservative gay Idahoan, in a loving and committed relationship. He asked that if they cannot be married, then what are their alternatives? He then listed that he has spent more than 20 years trying to be straight. He pointed out that he knows of many who are pretending to be straight, are married with children, yet still long for homosexual intimacy. He remarked that this amendment will abandon more children to foster care, as wards of the state, denying them the chance to be adopted and raised in loving homes where they can receive stability, love, and learn values such as commitment, integrity, community and responsibility. He concluded that this will hurt children and families and is against the values and ideals of this great state and her people.

**Mr. Allen Gorin**, representative of *Toward Tradition*, a national, public policy coalition of Jews and Christians who work together where common purpose exist testified in support. He brought up three main points raised last year with HJR 9: Discrimination; Compassion for gays; and the need for a Constitutional Definition of Marriage. He stated that he views this amendment as insurance and concluded by saying that some things are so precious that they warrant insurance against even the possibility that some harm may come to them.

**Mr. David Johns** testified in opposition. He recounted an incident last summer where he was injured at a local water park and taken to the emergency room of a local hospital. He stated that because of hospital policy, the understanding nurse had to refer to his partner as "his brother Jim" for the night. He concluded that as a flight attendant for the past nine and a half years, he feels the most unsafe and receives the most bigoted remarks in Lewiston, Idaho Falls, Pocatello, Sun Valley, and Boise.

**Mr. Michael Duff**, with United Families of Idaho, testified in support of the amendment. He stated that the family is the natural and fundamental unit of society and should be valued and protected accordingly. He stated that United Families of Idaho seeks to strengthen families by promoting: marriage between man and woman, founded on chastity before marriage and fidelity within marriage; the sanctity of human life including unborn children; the right and obligation of parents to love, protect, provide for, and teach their children; respect for laws, policies, programs, political structures, cultural norms, and religious values that preserve and protect the family; and compassion for the distressed and truly disadvantaged. He gave a brief discussion on the institutional history of marriage, the proper role of government, protecting the form and substance of marriage, and social justice. He then presented information on the Federal Constitutional Amendment and concluded with a call to action saying that passage of SJR 101 will reflect continued adherence to the fundamental principles that made our society as great as it is today.

**Mr. Don Curtis**, retired General Manager of HP, testified in opposition. He shared three myths and explained how each are incorrect: being gay or lesbian is a choice; gays and lesbians are a threat to heterosexual marriage and the family; and constitutional change is the answer. He stated that we are not talking about some inanimate highway issue, but fellow human beings. He concluded that our humanity must be what

unites us and asked the members to not let the constitution be what divides us.

**Mr. Ron Vieselmeyer** a family and marriage crisis counselor with United Families of Idaho testified in support. He emphasized the important role that natural or traditional marriage and family play in the welfare of society. He shared with the committee findings from a postgraduate study he conducted for a paper on the "homosexual matrix". He pointed out that married people are less likely to report, "problem drinking", engage in risk-taking behavior such as drunk driving, smoking, and drug abuse, and are less likely to contract a sexually transmitted disease. He further added that marriage has also been linked with reports of increased happiness, life satisfaction, and overall occurrence of positive emotions. He concluded that the best way to improve society is to improve its families.

**Senator Geddes** asked what is society's responsibility to the gay community. **Mr. Vieselmeyer** replied that the gay community is not different than any other community and mentioned the gangs in California. He stated that it is the responsibility of society to provide stability and to protect the rest of society from dangers such as drunk driving among other things.

**Senator Malepeai** asked about his statement on suicide rates being the highest among homosexuals and asked if this had something to do with non acceptance by society. **Mr. Vieselmeyer** responded that this has been part of the argument and added that he has personally done research on this. He stated that he is more convinced suicides by homosexuals is due to guilt and depression that they live with.

**Mrs. Susan Curtis** a retired Nurse Manager with St. Luke's Regional Medical Center testified in opposition to the amendment. She shared with the committee that today is her 38<sup>th</sup> wedding anniversary and explained that she is the mother of four. She also shared what her gay son has accomplished in becoming a responsible and reliable adult and how he deals with the dilemma of how to honor and validate his relationship with his significant other in a society that will support neither. She stated that she is here because she is convinced that putting in place a constitutional amendment that clearly disallows the legal recognition of any commitment, covenant, or bond that is similar to marriage is both discriminatory and wrong. She concluded that she represents all those who are seeking ways to choose their life-time partner; make commitments to those persons in an honorable and respectable and acceptable way; and be legally protected in their joint decisions regarding life, liberty, and the pursuit of happiness. She believes that these rights belong to all.

**Mr. Bill Duncan** with United Families of Idaho testified in support. He stated that this is the simplest way to address this issue. He discussed true legal effects and raised three things: the amendment will not impact the ability of the Legislature to offer health insurance or other kinds of benefits; the Legislature is free to create any kind of scenario in the future as long as it does not redefine marriage or create a status substantially similar to marriage to give benefits through some other setting; and this would have no effect on private arrangements like wills, trusts, or other

legal instruments.

**Senator Geddes** asked him for his opinion as to what is adequate to reflect what we currently have in law versus a Constitutional amendment and what is the threat that this amendment is trying to address. **Mr. Duncan** answered that the reality is that we are trying to respond to something that we have not thought of before with regard to same sex marriage. He shared a story of a couple in Washington who sought a marriage license for a same sex marriage and were denied then sued the state in the 1970s. He added that this could happen in Idaho if the marriage statute were challenged today. The threat is that we can't control this without some kind of Constitutional amendment as to how courts in the state or out of state will interpret the statute in the future. There may be some other way to address this, but added that this is the simplest and less obtrusive.

**Senator Davis** stated that in the spirit of intellectual honesty, Mr. Duncan would have to acknowledge that although same sex relationships can write wills and enter into contract, heterosexual couples do not need to and they would still be the beneficiary based on laws of succession. **Mr. Duncan** agreed that this was correct. He stated that marriage gives those rights automatically. He stated that even with SJR 101, they could create simple beneficiary laws that do something like that in the future where the people register in the state and then access those kinds of benefits like medical decision making, power of attorney, etc.

**Ms. Julianne Russell**, a teacher of statistics, testified in opposition. She had her toddler child asleep in a backpack on her back. She asked the committee how history will view their role and their vote on this matter. She addressed the claims of "thousands of studies on this issue" and asked if they had read all of the research; noted who authored the research and funded it; who comprised the sample group and how were they chosen; was there a control group and how was it chosen; and how long was the study conducted. She listed the past choices made by politicians: Jim Crow laws, Internment Camps in WWII, and the guise of Manifest Destiny where the Indians were placed on reservations. She concluded that this vote will be scrutinized by future generations who will look to them for an explanation.

**Mr. Herm Steger** testified in support. He called upon the committee to become gatekeepers for marriage. He concluded that we have a choice of leaving future generations a blessing or a curse and urged the committee to vote yes.

**Mr. Edwin Keener** a retired pastor, testified in opposition by saying that this proposed legislation is hurtful, discriminatory, and unworthy of our Constitution. He urged the committee to have the courage to vote no.

**Mr. David Snyder** with the Treasure Valley Pastor's Policy Council testified in support. He pointed out that humans in society cannot make the decisions for society, but that almighty God must make that decision. He submits that we cannot make this decision.

**Mr. David Wettstein**, Bishop of St. Stephens Episcopal Church and the

Diocese of Boise, testified in opposition. He asked if this was good for the common good and what is just for our gay neighbors and our society. He concluded that together we may find more common good for all citizens of our state, rather than this attack on a minority.

**Mr. George Detweiler** an attorney from Twin Falls testified in support. He said that the Massachusetts court decision in favor of gay marriage was an outrageous example of judicial tyranny. He concluded that an amendment must be enacted.

**Mr. Leland Whitlatch** from the Cambridge Bible Church testified in support. He quoted Webster's dictionary entry of "marriage" and "Marry"; testified to the following reasons: that since the beginning of time, it has been one man and one woman in all cultures world wide; studies show both a mother and a father are needed to raise healthy children; Genesis 2:24 and Ephesians 5:31 regarding God establishing marriage of one man and one woman; procreation occurs only through one man and one woman; the design of the physical differences and how they provide sexual union; and the overwhelming majority of other states who have voted for this same type of amendment.

**Mr. Adam Graham** testified in support of the proposed amendment. He stated that even though we have strayed from traditional values, we can find our way back by re-affirming the values that made us great and by finding our strength once again in the bedrock of traditional marriage as God created and intended it. He concluded that the committee can help keep the hope of our society alive by passing this legislation.

**Ms. Shaun Engstrom**, a freshman from North Junior High School testified in opposition. She pointed out that our country was formed because of the realization of an unfair suppression put on us by the British tyranny. She reported that ever since we won our independence from Britain, our nation has faced, and overcome, many social injustices: the slaves being ruled by masters; women being suppressed by society; and blacks being controlled by whites. She added that it seems like every generation has had their civil battle, and we are now facing the beginning of our own. She reminded the committee that the Declaration of Independence includes John Locke's theory of natural rights: life, liberty and the pursuit of happiness and stated that one should have the freedom to live where they want, to learn what they please, and finally the freedom to love who they wish.

**Ms. Tiffany Hall**, a student at North Junior High, testified in opposition. She testified that the once women took their rightful place in the workforce, the gender roles with each parent started to deteriorate. As long as a child has enough love, and is raised in a supportive household, she does not believe that the gender of either parent should matter. She then provided some statistics that she gathered: 97% of students in public high school report regularly hearing homophobic remarks from their peers; 53% of students report hearing homophobic remarks being made by school staff; 45% of gays and 20% of lesbians have either experienced verbal harassment and/or physical violence because of their sexual orientation during high school. She concluded by asking the committee to not support SJR 101.

**Mr. Wendell Bartlow** testified in support by saying that he desires Idaho to follow the lead of the 11 states that rejected homosexual marriage last November. He concluded by saying that protecting your own interests is not intolerance. Upholding traditional families is not intolerance. It is those who seethe with envy and who jealously seek to devalue real marriages who are the intolerant ones.

**Ms. Julie Fanselow** explained that her brother is gay and in a long-term relationship. She stated that she opposes this because it fails to recognize the loving responsibility and commitment undertaken by couples of all kinds and that this resolution denies the essential humanity of a significant number of our citizens, which is unacceptable. She concluded that this is a real distraction from the real business of our state and urged the committee to vote no and move on to the business the taxpayers are paying them to do.

**Ms. Katherine Frazier**, Financial Advisor, testified in support by saying that the institution of marriage is not broken. She stated that it was weakened when no-fault divorce was passed. She then quoted Genesis 2:22-24 regarding the creation of man and woman. She concluded that it is a concern of the State and trusts that Idaho will be one of the leaders in this movement.

**Mr. Nik Dumas**, Travel Consultant, testified in opposition by chastising the Legislature for expending tax dollars to attempt to enter verbiage into the State Constitution that not only limits the rights of homosexual individuals, but also could very well nullify any common law marriages between heterosexual couples as well. He concluded that the Legislature should be addressing more prominent issues at hand and asked them to not let our state become one tainted with prejudice and filled with disrespect.

**Mr. John Elliot**, Businessman, testified in support. He shared some experiences he has had with the 150 employees, most of which are between the ages of 20-25. He stated that it is hard enough with the prevalence of divorce in our society for kids today to understand marriage, it's importance and the rock solid foundation that the union between one man and one woman provides. He added that without this amendment there is no guarantee that the institution of marriage will be preserved and have any hope of surviving.

**Mr. Tony Fisk** testified in opposition by saying that rather than using the Constitution to limit the marital rights of your constituents, use it to protect and defend the rights of the citizens of Idaho. He mentioned Martin Luther King III who spoke of the opportunity for parents today to show their kids how to love instead of hate by leading by example and gave this quote, "Judge people individually, by their merit and what they bring to the table. We all have talents, every last one of us." He concluded by asking the committee to make just, kind, and fair laws based on the best science and information that can be obtained at this point in our history and urged the committee to be open to change, to realize that change is the only constant in our history.

**Mr. Michael Hastings** testified in support by saying that Idaho does need

this amendment to our Constitution, or at least the opportunity to vote on the matter. He reported that homosexual unions are not natural union, regardless of how the media spins it and suggested that there have been countless studies of the harm caused to individuals and groups that participate in these unspeakable practices. He stated that we have passed "no smoking" laws because smoking causes cancer and stated that homosexual acts cause sickness, bodily harm, and a shortened life span by up to 20 years. He concluded that government is by the people, and for the people. By not allowing this issue to be put on a public ballot, this Senate will be sending a message that you don't have the confidence in your constituents to decide what is best for their families, their community, their state. A decision of this magnitude should not be decided behind the closed doors of the Senate, or by a rogue judge, but by the method that put the senators in the position they are in today, public vote. He urged the committee to let the people of Idaho decide.

**Ms. Josephine Halfhide** testified in opposition of the legislation by sharing some numbers relating to children and traditional homes as well as foster care. She concluded by requesting that the committee consider focusing on assuring that the children who are in the custody of the State of Idaho receive appropriate services and stated that we should not extend valuable time, money, and energy on legislation without proper data confirming that children raised in non-traditional family settings are at risk.

**Reverend David Hardesty** testified in support of the amendment by saying that this defines what marriage is rather than who one can marry. He pointed out that from the beginning, marriage was defined as one man, one woman.

**Ms. Vicki Worthan** testified in support of the amendment by saying that same sex marriage is unnatural on the basis of nature and pointed out that this country was founded on Christian values. She shared that she has three children and that there have been times when she has been shouted at with such things like, "Do you know what birth control is?", and "Hey, do you know where babies come from?". She concluded that everyone, at one time, has been ridiculed for something and urged the committee to support this amendment.

**Ms. Carla Finis** a Forensic Consultant, testified in opposition of the amendment. She informed the committee that Idaho has the fourth worst divorce rate of 5.6 per 1000 unions and stated that historically, the major causes for divorce and break up of the family are infidelity and stress due mostly to financial difficulties. She stated that if the purpose was to have an impact on reversing a trend of marriage and family dissolution, then perhaps they should bring legislation to outlaw divorce or to establish adultery as a felony as a reasonable course. She further asked the committee to not exchange the Aryan Nation bigotry for another.

**Mr. Jared Hawk**, an Insurance Agent, testified in support. He shared his personal feelings about marriage; support of the existing Idaho law banning gay marriage; and why the State Constitution should be amended. He pointed out that the right to get married is not a right to marry whomever or whatever we choose, it is a limited right to marry

someone of the opposite sex. He added that this right needs to be guarded by definition within the bounds of our law to secure marriage for generations yet to come. He concluded that "an ounce of prevention is worth a pound of cure." and urged the committee to support SJR 101.

**Mr. Travis Riggs** an Educator, testified in opposition. He shared a touching story of his wedding and reception followed by a discovery that his spouse had been diagnosed with a rare platelet disorder. He then explained that his spouse was a man. He pointed out that this legislation may force people to die alone in their hospital beds, or force their loved ones to be unemployed and have nothing if they were to die. He concluded that if the members of the committee have compassion for their neighbors and compassion for the people of Idaho, they should vote no.

**Mr. Jeff Estes** of Fellowship Baptist Church testified in support by saying that he feels marriage is a foundation of society and should be defined for future generations. He stated that without this definition, there would be no moral anchor and that a man could marry his child, pet, or as one man tried, his T.V. He concluded that marriage between one man and one woman is time-honored and tested as the healthiest ground for nurturing children. He urged the committee to vote yes.

**MOTION:** **Senator Geddes** made a motion to send SJR to the Floor with a **DO PASS RECOMMENDATION.**  
**Senator McKenzie** seconded the motion

**DISCUSSION:** There was no committee discussion.

**VOTE:** The roll call vote was 5-4. Ayes: Darrington, Geddes, Davis, McKenzie, and Burtenshaw. Nays: Stegner, Little, Stennett, and Malepeai.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 11:27 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

MINUTES

**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Monday, January 31, 2005

**TIME:** 8:00 a.m.

**PLACE:** Room 437

**MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Geddes, Davis, Stegner, Little, Stennett., Malepeai

**ABSENT/  
EXCUSED:** Darrington.

**GUESTS:** See attached sign in sheet.

**CONVENE:** Chairman Burtenshaw called the meeting to order at 8:03 a.m.

**S 1023:** **Relating to Idaho State Veterans Homes: to provide that Idaho State Veterans Homes may permit smoking in designated areas under certain conditions.**

**Senator Goedde** explained that this RS is the replacement for S 1001 regarding smoking in State Veterans Homes. He stated that this also includes the emergency clause that was omitted in the previous bill.

**MOTION:** **Senator Little** made a motion to send RS 14647 to print. **Senator Malepeai** seconded the motion.

**VOTE:** The motion passed 6-0-3.

There was some discussion following the meeting that the Sponsor had presented this as an RS which caused the confusion and the motion to print this even though it was a bill. Some members of the committee thought that this bill had not made the cut off date for personal bills and treated this as an RS. It was discovered that he had indeed, made the cut off date by two days.

Following the meeting, members of the committee and the sponsor came to an understanding of the confusion and reached an agreement to reschedule this bill for public hearing on Wednesday, February 2<sup>nd</sup>.

**RS 14545** **Relating to Simulcasting of Dog Races; to authorize simulcasts and pari-mutuel wagering at an alternate facility in the same county as a former dog racing track if approved by the Idaho Racing Commission.**

**Senator Dick Compton** explained that dog racing was created in an effort to stimulate the economy. He reported that they discovered years ago that the dogs were not being treated well so they discontinued live dog racing. He stated that they have a \$20 million facility that now acts as an off-track betting facility. He pointed out that this bill adds one sentence

to 54-2514a. *“Or at an alternate facility in the same county and approved by the commission.”* He reported that they are not bringing in another facility, just allowing it to be relocated.

**MOTION:** **Senator Geddes** made a motion to print RS 14545. **Senator Stegner** seconded the motion.

**VOTE:** The motion passed 8-0-1.

**RS 14592** **Relating to Legislative Subcommittees, for review of administrative rules review; to increase the number of days when rules review subcommittees may hold a meeting on proposed rules after receipt of the analysis from the Legislative Services Office.**

**Senator Elliott Werk** explained that it is difficult to decide and review Rules and Regulations in the time allotted with everyone scattered across the state. He reported that this would increase the time from 42 to 90 days for a subcommittee to meet and also increase the period of time when members of the subcommittee can request a meeting from 15 to 45 days of the receipt of the analysis from the Legislative Services Office.

**Senator Davis** asked who else was clamoring for this. **Senator Werk** replied that he had two other Education subcommittee members in the interim who agreed that it was difficult to get together. **Senator Davis** asked which Education chairman joins him in this. **Senator Werk** stated that Senator Schroeder agreed with the difficulties during the interim. **Senator Davis** asked who joins him in presenting this. **Senator Werk** answered that he is bringing it on his own.

**Senator Little** asked if the time frame affects the adoption of the rules. **Senator Werk** replied that it does. **Senator Little** asked if the interim was the problem or during the session. **Senator Werk** answered that the problem was during the interim and added that it is difficult to review and request a interim subcommittee with all the members scattered around the state. **Senator Little** pointed out that the drop dead date for rules approval was Sine Die of the Legislature. **Senator Werk** replied that this would provide more time to review and more time to schedule meetings.

**Senator Malepeai** stated that he didn't see anything wrong with expanding the time.

**Senator Davis** agreed that this was worthy of further consideration.

**MOTION:** **Senator Malepeai** made a motion to print RS 14592. **Senator Davis** seconded the motion.

**DISCUSSION:** **Chairman Burtenshaw** asked if he had checked with the rules people and if they had any problem with this. **Senator Werk** answered that he spoke with Dennis Stevenson who said that there was no problem.

**VOTE:** Motion passed 8-0-1.

**RS 14696** **Relating to a Credit Rating Enhancement Committee, to create the Idaho Credit Rating Enhancement Committee in the Office of the**

**State Treasurer, to provide membership, compensation, a quorum, meetings and personnel, and to provide the functions and duties of the Credit Rating Enhancement Committee.**

**Ms. Liza Carberry**, Investment Manager for the State Treasurer explained that Moody's rating on credit has upgraded the credit rating for the State of Idaho. She stated that it was suggested to create a committee to keep track of the State's guaranteed debt. She reported that the expenses will be small and will be absorbed by the Treasurer's Office.

**Senator Little** asked how many members there would be on the committee. **Ms. Carberry** responded that there would be about nine: the Treasurer, Administrator of DFM, one appointed by the Pro Tem from the Senate, one appointed by the Speaker from the House, the following appointed by the Governor: a member of the Bond Bank, Idaho Housing and Finance, the Building Authority, Department of Education, and one member at large.

**Chairman Burtenshaw** asked if they would have one to two meetings a year. **Ms. Carberry** stated that they would.

**Senator Davis** pointed out the language on page one, line 27: "(2) *The term of an appointed member is two (2) years, but an appointed member serves at the pleasure of the appointing authority.*" He stated that up above, the one senator is chosen by the Senate President Pro Tem and asked if that was the appointing authority. **Ms. Carberry** answered that it was. She also pointed out that the Governor makes appointments as well. **Senator Davis** remarked that they could then be removed by the appointing authority. **Ms. Carberry** responded that they could.

**MOTION:** **Senator Little** made a motion to print RS 14696. **Senator Davis** seconded the motion.

**DISCUSSION:** **Chairman Burtenshaw** asked **Senator Davis** if he was thinking that there should only be one appointing authority. **Senator Davis** replied that he didn't think that at all and added that he understood and felt peaceful about it.

**VOTE:** The motion passed 8-0-1.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 8:27 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

MINUTES

**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Wednesday, February 2, 2005

**TIME:** 8:00 a.m.

**PLACE:** Room 437

**MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett., Malepeai

**ABSENT/  
EXCUSED:** None.

**GUESTS:** See attached sign in sheet.

**CONVENE:** Chairman Burtenshaw called the meeting to order at 8:02 a.m.

**S 1023:** **Relating to Idaho State Veterans Homes: to provide that Idaho State Veterans Homes may permit smoking in designated areas under certain conditions.**

**Senator John Goedde** explained that there was nothing more to say and yielded the time to testimony.

**MOTION:** **Senator Davis** made a motion to send S 1023 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Darrington** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**RS 14773** **Relating to Liquor Stores and Distribution Stations; to provide the manner in which the distance between a liquor store or a distribution station and a school shall be measured.**

**MOTION:** **Senator Davis** noted that Senator Noble wasn't present so he made a motion to print RS 14773. **Senator Stegner** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**SCR 101:** **Ada County Courthouse Annex - Demolish and Rebuild concurrent resolution**

**Mr. Carl Bianchi** explained that this is the other approach to the Capitol Annex. He stated that it would provide modern hearing rooms and a place to house employees during the Capitol renovation. He then directed the attention of the committee to the packet enclosed in their committee folders. He stated that the resolution is clear and added that another page was included in the packet since the last meeting. This page was photos of the crowd outside of the Gold Room on Friday, January 28<sup>th</sup> during the State Affairs Committee meeting for SJR 101. He said that they had people coming to his office to complain about the lack of space and inability to participate in the public process.

He pointed out that a great deal of money has been wasted because of the delay and stated that we need to get this done. He urged the committee to unite and to move this forward.

**Senator Little** pointed out the mention of “rent payments” and asked who is paying the rent. **Mr. Bianchi** responded that he would have put “bond” in instead. **Senator Little** asked who is “we”. **Mr. Bianchi** replied that it is the State Building Authority. **Senator Little** asked about the source of revenue. **Mr. Bianchi** answered that it comes from the Permanent Building Fund. He added that we could use General Funds, cash or set up a bonding project. He pointed out that the Permanent Building Fund allocated \$5 million for this project.

**Senator Geddes** commented that he had read part of the Statesman this morning and asked Mr. Bianchi to comment on the current status of the law with regard to historical buildings. **Mr. Bianchi** replied that there is a question as to if the State is restricted on historical buildings. He pointed out that in 1975 the following was established in Idaho Code: *67-4601. PURPOSE. Whereas the legislature of this state has determined that the historical, archeological, architectural and cultural heritage of the state is among the most important environmental assets of the state and furthermore that the rapid social and economic development of contemporary society threatens to destroy the remaining vestiges of this heritage, it is hereby declared to be the public policy and in the public interest of this state to engage in a comprehensive program of historic preservation, undertaken at all levels of the government of this state and its political subdivisions, to promote the use and conservation of such property for the education, inspiration, pleasure and enrichment of the citizens of this state. It is hereby declared to be the purpose of this act to authorize the local governing bodies of this state to engage in a comprehensive program of historic preservation.*

He then stated that this was created to allow the Local Historic Preservation Commissions to decide what to do with historical property and explained that in 2001, under 67-4607 the following amendment was passed: *“d. Nothing in this chapter shall authorize or be construed to allow the designation, regulation, conditioning or restriction by ordinance or other means of any property or facility owned by the State of Idaho.”*

**Mr. Bianchi** further explained that the Attorney General says that there is no legal restriction on that property. He added that he has not seen any AG opinion or heard to the contrary.

**Senator Geddes** remarked that he had read those sections and asked Mr. Bianchi to explain that historical buildings and those valued to the state should be restored. He noted that a provision says that the State can't be regulated by a city. **Mr. Bianchi** responded that the City Council in Boise had formed a historical district around the Capitol but pointed out that the State is the ultimate authority. **Senator Geddes** remarked that there needed to be a sequel to the article in the Statesman to provide the rest of the story.

**Senator Davis** asked if there were any restrictive covenants that the county placed on the property to make us preserve it. **Mr. Bianchi**

responded that there were no restrictions at the time the conveyance was made. **Senator Davis** commented that the county could have put such a restriction. **Mr. Bianchi** answered that they could have.

**Senator Stegner** commented that there have been some fun issues in this committee and thanked the Chairman. He pointed out that the scenario has been only two options centered around the decision to have a Capitol Annex location one block away. He stated that these votes on the Concurrent Resolutions are affirming that decision. He asked if either of these had been endorsed by the Legislature at any time and further asked how they arrived at these two options. **Mr. Bianchi** answered that the Legislature in 2000 or 2001 endorsed a plan by the Capitol Commission (which was formed in 1998) and added that a resolution was adopted to approve the master plan. He stated that there was no endorsement at the time for either of the two proposals. **Senator Stegner** noted that both proposals didn't make it through the Legislature. **Mr. Bianchi** agreed. **Senator Stegner** noted that the vote this week on SCR 102 was less than a mandate or consensus and stated that he is concerned if we take this to the floor, it will have the same vote. He wondered if there were any other options and solutions and noted that they may cause a conflict with the time frames. He asked if the committee would consider or suggest any other options and if the Capitol Commission had any thoughts. **Mr. Bianchi** replied that the Capitol Commission would do what the Legislature wanted. **Senator Stegner** joked that this was the right answer.

**Senator Little** noted that even though the Legislature exempted the State, and quoted 67-4601 (text entered above) by saying that the vote the other day was from an economic standpoint and asked if this resolution may be against public policy of the State. **Mr. Bianchi** replied that he is not the State Legal Authority, the Attorney General is.

**Senator Stennett** asked if from an attorney's standpoint, wouldn't 67-4601, "*undertaken at all levels of the government of this state and its political subdivisions*" also include the State. **Mr. Bianchi** replied that he didn't think that this was intended at the time. **Senator Stennett** stated that as a point of general policy, wouldn't all levels of government also include the State. **Mr. Bianchi** answered that interpreting the Statutes is what the Attorney General does.

**Senator Darrington** noted that he thought the last statute takes precedence. **Mr. Bianchi** replied that it does. He pointed out that the Code was created in 1975 and the exemption of the State was placed in 2001 to clarify the law.

**Senator Geddes** stated that three years ago he worked on what would be feasible and added that the end result was that nothing happened. He pointed out that the Code is perhaps a way to do nothing until history falls in on itself. He reported that he is a Geologist and added that everything has history. He commented that the statement, "do its part to preserve history." is very broad and added that it was interesting to talk to those who took the tour. He concluded that the building does not meet our needs and added that maybe we need to try this resolution.

- MOTION:** **Senator Geddes** made a motion to send SCR 101 to the Floor with a **DO PASS RECOMMENDATION**. **Senator McKenzie** seconded the motion.
- DISCUSSION:** **Senator Stegner** stated that he is concerned that we will wind up with the same result and believes that there is at least one other option that deserves some consideration. He reported that he had asked the architect who was present at the last meeting about putting wings on the Capitol building and the feasibility of such a proposal. He stated that this gentleman noted that this would be a particularly political problem, yet the most practical approach. **Senator Stegner** added that this proposal does have a practical benefit for future needs. He pointed out that currently, there is no escape on the 3<sup>rd</sup> and 4<sup>th</sup> floors of the Capitol besides the Rotunda and added that adding wings onto both ends of the building would provide a much safer environment. He pointed out that this building needs faster and larger elevators and stated that there would have to be significant modifications to the Rotunda area to accommodate such a need, and added that wings on the ends would provide for such. He further added that wings would provide for larger, more accessible meeting rooms on the first floor. He remarked that we have the space and added that this would not be a significant architectural challenge. He then pointed out that the US Capitol made such a decision 100 years ago and added that we should be considering such an option now. **Senator Stegner** explained that we could build wings and move the Legislature into those wings while the rest of the Capitol was being remodeled. He reported that he has asked Legislative Services to draft a resolution, that he doesn't have today, to present to the committee. He remarked that he is aware that this adds to the time line and stated that he does not intend on slowing the process intentionally. He explained that if we modify the building, this would change what we do with the court house but added that the modification of the Capitol would provide for the intended uses.
- SUBSTITUTE MOTION:** **Senator Stegner** made a motion to **HOLD** SCR 101 in committee for **ONE WEEK**. **Senator Malepeai** seconded the motion.
- AMENDED SUBSTITUTE MOTION:** **Senator Davis** made a motion to send SCR 101 to the Floor **WITHOUT RECOMMENDATION**. The motion **failed** for lack of a sponsor.
- DISCUSSION:** **Chairman Burtenshaw** stated that on the sign in sheet, there are 34 people against it and none for it. He asked Senator Stegner if he had any idea of the cost for his proposal to add wings to the Capitol. **Senator Stegner** replied that he didn't have any idea and added that we should not stop hearing alternatives. He stated that this will force examination of feasibility and cost and added that it is worth it. He pointed out that he is not convinced that the costs are significantly more than what we have discussed with these.
- AMENDED SUBSTITUTE MOTION:** **Senator Stennett** made a motion to **HOLD** SCR 101 in committee. **Senator Malepeai** seconded the motion following point of clarification on how many motions a member can second.
- DISCUSSION:** **Senator Darrington** stated that he supports sending this to the floor. He reported that the Permanent Building Fund met last night and amended the decision to give \$5 million to remodel OR rebuild.

**Senator Stennett** noted that the members of the committee did not vote the same on the floor as they did in committee for SCR 102. He pointed out that this is a gut check and quoted an article from *Harpers* in 1975 titled "*Tearing Down Boise*". He stated that the vote was close enough on the senate floor that we should figure out how to do the right thing, remodel and keep the court house.

**Senator Davis** remarked that we had different intentions on SCR 102 and added that if SCR 102 failed, we would support SCR 101. He stated that he will keep his pledge to the committee even though he preferred SCR 102, he will support SCR 101.

**Senator Little** stated that he will vote against the amended motion, but will vote for the substitute motion to hold it for one week. He added that the Pro Tem talked of a bill to cap the expenses. He further pointed out that the exemption of the State might have been placed there as a cost issue.

**VOTE ON  
AMENDED  
SUBSTITUTE  
MOTION:**

To HOLD in committee: The vote failed 2-7-0.

**DISCUSSION:**

**Senator Malepeai** remarked that he has a conflict with where our duty is and added that he also knows that he is a temporary resident in the community. He stated that he fully understands our fiduciary role and added that he will support holding the resolution for one week in order to exhaust all options. He pointed out that if we go with SCR 101, the building is gone. He concluded that he wants to explore Senator Stegner's proposal.

**Senator Stegner** stated that he is only asking for one week and added that we are making big decisions here. He pointed out that most of us will not be around to utilize what we choose. He added that this decision is for the next 100 years and remarked that we should try to carry on the tradition. He commented that he is not asking to reject SCR 101, but is just asking for more time to make this decision and consider more options.

**Senator Davis** asked **Senator Stegner** if he was proposing these wings to be located in Boise or Lewiston. **Senator Stegner** jokingly replied that this was completely up for debate.

**Chairman Burtenshaw** commented that Senator Stegner's idea was good but added that this could branch into other things. He pointed out that we have to do something with the court house and suggested putting the Historical Society in it. He stated that in his best judgement, we need to move on and added that we gave SCR 102 a fair hearing with only one testifying against it.

**VOTE ON  
SUBSTITUTE  
MOTION:**

To Hold in Committee for one week. The motion failed 4-5-0.

**DISCUSSION:** **Chairman Burtenshaw** opened testimony and explained that he would allow three minutes per person. He assigned Senator McKenzie to keep time.

**Mr. Scott Chandler** testified in opposition and stated that he was concerned that we are giving money for a building we know nothing about. He pointed out that we might as well call the building the "Buy California Annex" because only firms from California would be able to bid low enough to get the job. He concluded that we deserve something that our children can be proud of.

**Ms. Maryann Jordan** testified in opposition and stated that the Boise City Council adopted a resolution to ask the Senate to reconsider SCR 102. She asked the committee to please not make the same mistakes that have been made in the past.

**Mr. Kurt Zwolfer** testified in opposition and urged the committee to continue the preservation of Idaho. He reminded the committee that this building is listed on the National Registry of Historic Places.

**Senator Darrington** asked the audience to show no emotion during the testimony.

**Mr. Mark Baltes** testified in opposition and reported that he has been a resident of Idaho for 47 years. He urged the committee to reconsider renovating the building and begged them not to demolish it.

**Mr. Jeff Neberman** testified in opposition and read a letter dated January 21, 2005 from First Lady Laura Bush congratulating Boise on its designation as a *Preserve America!* community. He informed the committee that there is \$10 million placed into a fund that is refilled every year to restore old buildings. He reported that we could qualify for it easily. He concluded that he knows many of the men who were paid 75 cents an hour during the Depression who built this building to last.

**Mr. David Thomas** testified in opposition by saying that in the past, we have lost many significant buildings in this state and especially this city, only to look back and wonder how this decision was made. He remarked about Title 67, Chapter 46 and concluded that while the State Code does not prohibit the demolition of this building, certainly it is obvious that demolition of this structure would not meet the spirit or intent of the State Code.

**Ms. Ann Swanson** testified in opposition by explaining that 20 years ago they wanted to take out the existing wooden windows of the Capitol and replace with aluminum. She pointed out that they ended up retrofitting the windows with thermopane glass and keeping the wood sash. She explained that the original code was established during the Bi-Centennial when everyone was trying to set policy to preserve history and added that the amendment a couple of years ago was done in a matter of days at the same time we were first talking about this issue.

**Ms. Joyceanne Fick** testified in opposition by stating that this should not be about expediency, but about doing the right thing and urged the

committee to vote no.

**Mr. Don Watts** urged the committee to vote not on SCR 101. He explained that old buildings can be adapted to modern uses and concluded that historic buildings belong to our future.

**Ms. Kay Hummel** testified in opposition and stated that she was denied the ability to testify on the amendment in 2001. She pointed out that the court house has a sunken foundation which will be very expensive to remove and fill back in. She commented that the Legislature suspends rules all the time and requested that they suspend the rules and reconsider SCR 102. She pointed out that the facts stated in floor debate for SCR 102 were not factual and added that since the vote was slim by a difference of 2, the committee can be the leaders here and reconsider SCR 102 which will be cheaper, quicker and the right thing to do.

**Ms. Jody Ochoa** testified in opposition and explained that her brothers, grandfather, uncles and a couple of cousins practiced law in that building. She stated that it is an important part of our local history. She commented that the State may own the building, but not our history and concluded that remodeling is the most economical option.

**Ms. Suzi Neitzel** testified in opposition and explained that renovation will cost less and be faster. She asked what if the state came into the hometowns of the members of the committee and wanted to demolish a historic building. What would they do?

**Ms. Elaine Clegg** with Idaho Smart Growth, testified in opposition. She remarked that we have a moral obligation to protect this building. She asked the committee to look into their hearts and see if they are truly living up to the intent of the 70s Statute. She pointed out that value should be looked at over a longer time frame and noted the mahogany, marble and limestone. She concluded by saying that great cities are built on great places.

**Ms. Barbara Bauer** gave the committee a statement from Clayton N. Carley showing the multitude of reasons to remodel the existing structure and the one reason to rebuild.

**Ms. Sherry Freemuth** testified in opposition and stated that it is important to be fiscally responsible. She urged the committee to vote no on SCR 101.

**Ms. Teri Schorzman** with the Idaho Advisory National Trust Foundation testified in opposition and urged the committee to save the building.

**Ms. Nancy Richardson** testified in opposition. She stated that she is a single mom with two teenage children. She reported that she moved from Montana to Boise in 1998 because of the benefits this area offered to her growing family. She explained that she has worked for Boise Tour Train, the Visitors Bureau, as well as the Tourism Office promoting the entire state of Idaho. She urged the committee to rethink their decision and to save a valuable piece of Boise and Idaho history.

**Mr. Dan Everhart** testified in opposition. He reported that he is the President of the North End Neighborhood Association. He stated that he questions the costs involved and also the plans for that building. He pointed out that Charles Hummel went back to his office following the meeting last week on SCR 102 and found the original plans and blueprints for that building. He stated that we now know where every pipe, wire, and tile is and urged the committee to not support SCR 101.

**Mr. Mark Johnson** testified in opposition and explained that he has been a resident of Boise for 30 years. He remarked that three years ago, President George W. Bush stood in the White House Rose Garden and declared the "We the People" project and added that \$20 million was appropriated to this project. He reported that he has dispensed several thousands through the Idaho Humanity Council. He noted Lieutenant Governor Risch's comments in the Statesman and stated that the Depression was a time of intense political change. He stated that the WPA program allowed people to pull themselves out of the pressure. He concluded that there seems to be a strong consensus in the community to preserve it and urged the committee to be differential to local views. He added that it is cheaper to preserve it.

**Mr. Ken Howell** explained that he has renovated five buildings downtown, including the Idanha. He stated that he is attracted to old buildings for the following reasons: connection to the past; and the economic benefits. He stated that new plumbing, wires, heating and cooling systems can be done for less than \$100 per square foot. He remarked that Senator Stegner's idea was brilliant. He reported that he met with Mr. Bianchi and Director Ahrens last May and stated that there is at least another alternative that would turn the building over to a private developer who would lease the building back for the next 20 years followed by turning it entirely back to the State after that 20 years. He concluded that SCR 102 is a better decision.

**Senator Stennett** asked if the historic nature of the building doesn't require a private developer to do repairs at a higher cost. **Mr. Howell** responded that there are Federal rules to receiving historic tax credits. He explained that these rules require the preservation of windows, marble, etc. but do not require you to keep original plumbing, wiring or heating. He added that it doesn't cost \$250 per square foot. **Senator Stennett** asked him if he toured the building and if he could do that for half. **Mr. Howell** replied that it would require a list of what was wanted and added that last May he quoted \$75 per square foot. He pointed out that it is similar to the Idanha except that with apartments the price is higher due to baths and kitchens. He stated that as a private developer, he would be able to take advantage of a federal gift of 20% and pass some of that back to the State with a lower lease gift.

**Senator Stennett** asked if there had been any RFP sought to do what Mr. Howell proposed. **Mr. Bianchi** stated that about a year ago they did pursue a lot of options. He pointed out that there are a lot of financial advantages with private developers but explained that ownership had to be turned over to the developer and then back to the State in 20 years. He stated that there was somewhat of an issue with the return back to the State following the 20 year lease. He added that Mr. Howell's proposal

provided a lower amount of useable square footage. **Senator Stennett** asked if a private developer could do it for \$75, why would it cost the State \$250. **Director Ahrens** answered that this proposal only yielded 38,000 square feet of useable space and would not allow for larger meeting rooms. She added that the meeting rooms would only be on the first two floors. She explained that to get the tax credit, it has to be remodeled as is with no tunnel or additions. She concluded that it is possible to have the private sector remodel it and then lease it back to the State. **Senator Stennett** asked what was the issue for return back to the State in 20 years. **Director Ahrens** explained that it would be considered a "lease purchase" with the cost being built into the lease to buy the building back after 20 years. She added that this would have to be part of the agreement from the beginning. **Senator Stennett** commented that we are moving faster than he would like to on this issue. He stated that if we can send it out to the private sector and get out of the political rat's nest for half the cost he'd be fine with that.

**VOTE:** Vote to send SCR 102 to the Floor with a **DO PASS RECOMMENDATION.**

The motion passed 5-4-0. **Senator Geddes** will sponsor on the Floor.

**GUBERNATORIAL APPOINTMENT:** **Adjutant General of Idaho National Guard Lawrence Lafrenz of Boise. Serving a term commencing January 15, 2005 and continuing at the pleasure of the Governor.**

**MOTION:** **Senator Geddes** made a motion to send the confirmation appointment to the floor with a **DO CONFIRM.** **Senator Stennett** seconded the motion.

**VOTE:** The motion passed by unanimous voice vote. **Senator Geddes** will present on the Floor.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 10:04 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

## MINUTES

### SENATE STATE AFFAIRS COMMITTEE

**DATE:** Friday, February 4, 2005

**TIME:** 8:00 a.m.

**PLACE:** Room 437

**MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett., Malepeai

**ABSENT/  
EXCUSED:** None.

**GUESTS:** See attached sign in sheet.

**CONVENE:** Chairman Burtenshaw called the meeting to order at 8:04 a.m.

**APPROVAL OF  
MINUTES  
1/26/05:** **Senator Malepeai** made a motion to approve the Minutes of January 26, 2005. **Senator Geddes** seconded the motion. The motion passed by unanimous voice vote.

**APPROVAL OF  
MINUTES  
1/31/05:** **Senator McKenzie** made a motion to approve the Minutes of January 31, 2005. **Senator Malepeai** seconded the motion. The motion passed by unanimous voice vote.

**GUBERNATORIAL  
APPOINTMENT:** **Idaho Athletic Commission**  
**Tom Katsilometes of Pocatello. Serving a term commencing**  
**January 7, 2005 and expiring January 7, 2009.**

**Mr. Katsilometes** explained that this is an important job and shared with the committee the unfortunate accident years ago at the Bank of America Center. He reported that this accident forced the change in rules and added that, as a result, the Commission no longer allows this type of event.

**Senator Stennett** asked how long he has been a member of the Commission. **Mr. Katsilometes** replied that he has been on the Commission for a year and a half following the resignation of the previous Commissioner. **Senator Stennett** asked what else the Commission regulates besides boxing. **Mr. Katsilometes** pointed out the handout he provided to the committee and answered that they also regulate mixed martial arts, and pro wrestling. He stated that the "Tough Man" event was slipped in under the martial arts venue and added that the Commission has since then tightened the rules. He further stated that each discipline has its own set of rules.

**Senator Malepeai** asked how the reservations fit into these rules even though they are a sovereign nation. **Mr. Katsilometes** responded that the Commission oversees the events hosted by the Coeur d'Alene Tribe through an agreement with the Tribe. **Senator Malepeai** asked about the Kootenai, Nez Perce and Shoshoni Bannock Tribes. **Mr. Katsilometes**

replied that there have only been two events at the Nez Perce facility, one at Coeur d'Alene and none at the Shoshoni Bannock reservation.

**Senator Stegner** asked if the Commission had agreements with all the tribes. **Mr. Katsilometes** answered that they only have an agreement with the Coeur d'Alene casino. He reported that the others rarely do events but added that they do regulate and oversee these events.

**Senator Little** asked about the source of revenue for the Commission. **Mr. Katsilometes** answered that their revenue comes from fees and revenue. He reported that they receive 5% of the gate with the rest coming from fees. He stated that there is a \$500 license fee for promoters each year and a \$10 fee per fighter each year. He reported that he has legislation to increase the revenue on pay per view. He stated that they lack money to pay the Department of Administration and the Attorney General's Office. **Senator Little** asked if we should do a bill to bring Kenny Keene out of retirement. **Mr. Katsilometes** laughed and said that it would be for one fight only and added that once you are over the hill, you are over the hill.

#### **RULES:**

#### **Athletic Commission Rules: 03-0101-0401:**

**Chairman Burtenshaw** turned the gavel over to **Senator McKenzie** who asked **Mr. Katsilometes** to address the information that he provided for the committee. **Mr. Katsilometes** explained that the committee brought up good questions at the hearing and pointed out that in the handout he had highlighted the important areas. **Senator McKenzie** stated that the question was under the definition of the statute to include martial arts and kickboxing. He added that under statute, there is a definition of the number of rounds and the length of time. He asked where the authority comes from to change this even though it is in statute. **Mr. Katsilometes** replied that it is under 54-406: "*Duties of commission - Sanctioning permits - Licensing - Exemptions - Medical certification.*" *Empowers the Commission to "direct, supervise and control all boxing contests, boxing exhibitions and professional wrestling exhibitions conducted within the state..."* He then pointed out on page 2, "*Boxing" includes, but is not limited to, kickboxing and martial arts but does not include professional wrestling.*" 54-402(1)(p): "*Kickboxing" means any form of competitive pugilistic professional contest or professional exhibition in which blows are delivered with the hand and any part of the foot.*" and 54-402(1)(t): "*Martial arts" means any form of karate, kung fu, tae kwon-do, sumo, judo or any other system or form of combat or self-defense art.*" He pointed out that in these two statutes is the basis of the position that the Idaho Athletic Commission has the duty and authority to supervise and control all kickboxing and other martial arts contests and exhibitions conducted within the State of Idaho. He stated that they have not changed the events, but are given the authority to oversee.

**Senator McKenzie** asked how general authority supercedes the regulations in statute. **Mr. Katsilometes** replied that the only way to do that is to let each discipline use their own rules and regulations as defined in the national organizations. He stated that they don't change their rules, but keep them and oversee the event. He pointed out that the Commission has only regulated mixed martial arts since July of 2004. He

added that they can change those rules and regulations if there is a problem and they have to be changed. **Senator McKenzie** stated that there may be a problem with the statute with regard to setting the number of rounds and the length of the rounds. He commented that it sounds like the commission has been acting appropriately based on each discipline, but added that the statute should be changed to be more consistent with the practice.

**Senator Little** asked if the National Boxing Federation changed the rules to 14 rounds and an increased amount of time, should we also change the code to allow the Commission to regulate based on the changes. **Mr. Katsilometes** answered that this was a good point and added that they have only had to do this since July. He commented that maybe this is a better way to do it.

**Chairman Burtenshaw** asked **Senator McKenzie** if he thought that we needed to change the statute. **Senator McKenzie** replied that we should since the practice is inconsistent with the statute but also appropriate. He pointed out that we need to clarify the guidelines to show that the rules are set by each discipline. **Chairman Burtenshaw** asked if he was suggesting that the committee turn down the rule or leave it in place and bring legislation to the committee to change the statute. **Senator McKenzie** replied that he suggested we vote against the rule and bring back legislation.

**Senator Little** asked about the definition of 8 and 10 ounce gloves and asked if we should look at other states. He added that maybe we should strike some language and joked that he likes to strike large parts of Code because it makes the book smaller. **Mr. Katsilometes** replied that maybe this is a good idea to put the rules on the national level and added that maybe we would want to act on Rule 732 since it exempts schools from Commission regulation. He pointed out that this was changed back in July and needs to be addressed now. **Senator Stegner** commented that there might be questions as to if the Commission has the authority to make that exemption and pointed out that the statute might not give the Commission such authority. **Senator McKenzie** pointed out that the Commission could issue an exemption based on the two exemptions listed under 54-406 regarding the contests at secondary schools and the amateur athletic events such as USA Boxing. **Mr. Katsilometes** commented that they don't have amateur boxing under the Commission at all since they have their own sanctioning body. He added that they only took out amateur boxing but kept in the events where a student is trying to get a judo belt and other non-combative events. He stated that the Commission has to oversee those now and that this rule change would allow them to get those out from under the Commission. He pointed out that they did a temporary change on this just last summer.

**Senator Darrington** noted that all rules go through ADAPA and the analysts who send a letter with the rule packet and remarked that this is the main function of the analysts.

**MOTION:**

**Chairman Burtenshaw** made a motion to approve the rule and look at a statute, with the Commissioner, to correct the discrepancies. **Senator Darrington** seconded the motion.

**DISCUSSION:** **Senator Little** asked if Mr. Katsilometes had spoken with Senator Bunderson since this was his bill last year. **Mr. Katsilometes** replied that he had and added that Senator Bunderson was in favor of this change last summer.

**Senator McKenzie** noted that the issue might be with the statute and suggested that we look at it and make the necessary clarification.

**VOTE:** The motion passed by unanimous voice vote.

**S 1074:** **Relating to Simulcasting of Dog Races; to authorize simulcasts and pari-mutuel wagering at an alternate facility in the same county as a former dog racing track if approved by the Idaho Racing Commission.**

**Senator Dick Compton** testified that in no way does this extend or expand racing in Kootenai County. He reported that years ago, the Legislature allowed dog racing at the \$20 million facility known as the Greyhound park. He explained that they discovered that the revenue didn't offset the expenses and also what was happening to the dogs. He stated that Representative Kellogg sponsored a bill to stop dog racing. **Senator Compton** reported that 25% of the facility is used by simulcasting and stated that the facility has also been used for the Indian Pow Wow and various graduations. He reported that the corporation would like the opportunity to move to a new location and get out of their current high-priced location. He stated that it generates \$385,000 in salaries per year. He further stated that there is no offer on the table for anyone to buy it, but added that with this legislation in place, it would make it location specific. He thinks that they will not move more than two miles down the road to a strip mall and concluded that this would save revenue and wages to the area.

**Senator Geddes** noted that he spoke a fair amount about horse racing and asked if there was simulcasting of horse racing at this facility as well. He noted that there was another section of code that would also restrict this activity. **Senator Compton** replied that simulcasting is not off-track betting since the person must be present to bet. **Senator Geddes** commented that it seems like this section allows dog racing to be moved, but added that it sounds like the facility does more than just dogs. **Senator Compton** replied that they do horses also. **Senator Geddes** noted that there might be another place in code. **Mr. Russ Westerberg** pointed out on line 12, *"The provisions of this section shall not be deemed to alter or affect simulcasts and simulcast pari-mutuel wagering at a facility that was licensed and authorized prior to January 1, 1996."* He explained that this also handles horse racing too. **Senator Geddes** stated that the problem is this whole section deals with dog racing. **Mr. Westerberg** replied that this code also addresses dog racing. **Senator Geddes** asked if they move, will the horse racing go with it. **Mr. Westerberg** answered that it would. **Senator Stegner** pointed out lines 10 and 11, *"On and after the effective date of this act, live dog races and pari-mutuel betting on such races or the training of dogs to compete in live dog races shall be illegal in the state of Idaho."* He stated that there may be another statute that would have to be altered to allow horse racing. **Ms. Ardie Noyes** with the Idaho Racing Commission, testified that this

covers it legally and noted that there is another section on simulcasting that is not specific to horse or greyhound. **Senator Geddes** asked if simulcast horse racing was legal at any place in Idaho. **Ms. Noyes** replied that it is only legal at the facility. **Senator McKenzie** commented that there may be a conflict with pari-mutuel betting at tracks. **Mr. Westerberg** commented that there is another section under Title 54. He stated that this site is the only site to conduct races and that this code makes live dog races in Idaho illegal, but allows this facility to do simulcast betting. He remarked that this is peremptory in case this property is sold, in which case, the economic activity would cease. **Senator McKenzie** noted Idaho Code 54-2512 as the horse racing section of the code. **Senator Stegner** stated that these are legitimate questions about other authority and noted that if this is a track, it should say so on line 13. He asked if they could add another line to clarify it. **Senator Compton** directed the attention of the committee back to line 12 that is included above. **Senator Stegner** stated that it would have been better for clarity to insert a broader definition on line 12 to include horses. **Senator Geddes** asked if they move to another location, it would have precluded the opportunity to have horse racing at a new location. **Mr. Westerberg** commented that January 1, 1996 is the date of licensing as noted on line 14. He pointed out that the only change is to allow the same business to be conducted at a new location that is approved by the Commission. **Ms. Noyes** commented that when a facility is issued a simulcast license, the Commission does not differentiate between dog or horse and added that the license covers both.

**Chairman Burtenshaw** commented that we could get an AG's opinion and address this later. **Senator Compton** asked the committee to just vote yes since he doesn't see a hazard here.

**Senator Little** asked if the Commission is the Racing Commission. **Senator Compton** answered that it is. **Senator Little** asked if they have to get a Conditional Use Permit. **Senator Compton** replied that they do.

**Senator Stegner** commented that it is difficult to save them from themselves and added that if this was approved, there could be a zealot in the county to claim that it only covers dog racing. He stated that the definitions of both might be included and added that this can be fixed easily rather than go forward and have a judge decide. **Senator Compton** replied that he could take a shot but added that he takes comfort in the Commission saying that they issue simulcasting licenses to both.

**Senator Geddes** stated that he has a problem with 54-2512 (c) *"The Commission may issue a license authorizing simulcast and/or televised races to a live horse race licensee only after that licensee has conducted at that facility a minimum of forty (40) live horse races in each of the two (2) calendar years preceding the application for such license. The requirements of this paragraph are only applicable to live horse race licensees who have received their initial live horse race license after April 1, 1997."* He stated that based on this, they can move the dog racing, but not the horse racing. He suggested that we step back and have the Attorney General help save a legal challenge.

**MOTION:** **Senator Stegner** made a motion to send S 1074 to the **14<sup>th</sup> ORDER**. **Senator Stennett** seconded the motion.

**DISCUSSION:** **Ms. Jean Boyles** passed out handouts of funds that have been contributed to the election accounts for the members of the committee. She urged the committee to consider the merits of the bill.

**VOTE:** The motion passed 8-0-1 to send S 1074 to the Amending Order.

**S 1076:** **Relating to a Credit Rating Enhancement Committee, to create the Idaho Credit Rating Enhancement Committee in the Office of the State Treasurer, to provide membership, compensation, a quorum, meetings and personnel, and to provide the functions and duties of the Credit Rating Enhancement Committee.**

**State Treasurer Ron Crane** explains that this creates an oversight committee to track the kind of debt the state is guaranteeing. He reported that the State currently guarantees \$360 million for the school districts. He stated that this committee would forecast for ten years, project needs, and report to the Legislature and the Governor. He pointed out that this will cost about \$1,000 which can be from the Treasurer's budget.

**Senator Little** asked about the utility upgrade in the school districts with the quasi-leasing thing from vendors. He added that this is a gray area of debt that also needs to be monitored. **Treasurer Crane** mentioned that he hadn't thought of that. **Senator Little** noted the audit in Meridian and how they discovered a lot of money was going to these types of leasing so that the district was able to take on debt without going to the voters. **Treasurer Crane** replied that he didn't know if he had the authority to do that since he only handles bonded indebtedness.

**Senator Geddes** asked how many members would be on the committee. **Treasurer Crane** answered that there would be nine. **Senator Geddes** pointed out on line 20, "*Other members of the committee shall be appointed by the governor after considering recommendations of the state treasurer and shall be from the following entities knowledgeable on matters of public finance including, but not limited to, the Idaho state municipal bond bank, Idaho housing and finance association, Idaho state building authority, the department of education as a representative of the school bond guarantee fund and one (1) member at large.*" He pointed out that this doesn't define the number of the committee for a majority or quorum standpoint. **Mr. Brian Kane** with the Attorney General's Office explained that the intent was for one person from each group. He did not think of "committee packing". He added that this would get everyone together once or twice a year so that the debt would be more definable. **Senator Geddes** stated that he would feel more comfortable if there were a (1) in parenthesis behind each one. He pointed out the CEC with the 16 house and the 9 senate members and added that more than nine members could stress that \$1,000 fiscal note. **Treasurer Crane** agreed that more than nine would indeed stretch that \$1,000.

**MOTION:** **Senator Geddes** made a motion to send S 1076 to the **14<sup>th</sup> ORDER**. **Senator McKenzie** seconded the motion.

**VOTE:** The motion passed by unanimous voice vote.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 9:16 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

## MINUTES

### SENATE STATE AFFAIRS COMMITTEE

**DATE:** Monday, February 7, 2005

**TIME:** 8:00 a.m.

**PLACE:** Room 437

**MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Malepeai

**ABSENT/  
EXCUSED:** Stennett.

**GUESTS:** See attached sign in sheet.

**CONVENE:** Chairman Burtenshaw called the meeting to order at 8:06 a.m.

**RS 14794** **Relating to Administrative Rules, to provide that no pending rule or portion thereof that has a fiscal impact greater than ten thousand dollars in any fiscal year shall become final and effective until it has been approved, amended or modified by concurrent resolution.**

**Senator Tim Corder** explained that both RSeS are companions. He stated that these result from a number of conversations from both sides of the Rotunda. He pointed out that the first piece brings an addition to the statute but is making no change on the temporary rules or the exemptions. Paragraphs (c) and 2(d) add a requirement that any rule with a fiscal impact over \$10,000 be included in the rule. He explained that the \$10,000 was an arbitrary number and a judgment call from Carl Bianchi. He reported that this will not interfere with the Arnell case and added that it makes sure that all rules are treated like a fee rule.

**Senator Davis** asked Senator Corder to help him understand that if an agency thinks that their fiscal impact is \$8,000 but are not aware that the reality is much higher, how does this address that. **Senator Corder** answered that there was no way to address this and added that he had nothing to suggest the impact. **Senator Davis** suggested that suppose we assume a company is affected adversely by an agency who is using part of the Administrative Procedures Act, then an attorney might look to see if there was a Concurrent Resolution that stated \$10,000 or more. **Senator Corder** answered that this would provide for each of the rules to have an affirmative action in both houses.

**Senator Little** stated that he has a similar concern and mentioned the battle with DEQ on "guidance vs. rule". He stated that he would like more information on what the agencies think because "guidance" is getting to be a problem. He pointed out that DEQ and Health and Welfare spend a lot of money on overhead for rules. He asked if when we are through with the resolution and have a roll call vote, would this manner of voting affect this. **Senator Corder** responded that it may affect the amount of time spent on these. He stated that House Leadership wants to tighten the rules a bit further and reported that this is a compromise in order to

experiment to get a better view. He added that this may add more cost in order to get that better look. **Senator Little** stated that there might be some unintended consequences and added that he is concerned with the definition of the word "fiscal impact".

**Senator Davis** asked about adding to line 12, "no collateral attack as to finality and enforcement of rule be allowed." **Senator Corder** replied that he wasn't sure what collateral attack would be. **Senator Davis** commented that he may move to print this but asked Senator Corder to take a look at his proposed language and visit with Legislative Services.

**MOTION:** **Senator Little** made a motion **TO PRINT** RS 14794. **Senator Geddes** seconded the motion.

**DISCUSSION:** **Senator Darrington** remarked that he didn't want this to be contested and added that we have been so careful.

**VOTE:** The motion passed by roll call vote 8-0-1.

**RS 14795** **Relating to Administrative Rules, to require that an agency include in a notice of proposed rulemaking a citation to the specific section of the Idaho Code that has occasioned the rulemaking and a specific description, if applicable, of any fiscal impact greater than ten thousand dollars; and declaring an emergency.**

**Senator Corder** explained that this requires that \$10,000 fiscal statement as well as the citation of the rule that occasions the change. He pointed out that there were 4,000 pages of rules this year and stated that in the ones that he saw, not once did they cite the federal or state statute that occasioned the change.

**Senator Little** noted that there was an emergency clause and asked what this would do to the existing rules. **Senator Corder** replied that those right now would not be affected but added that Carl Bianchi was concerned with the rules that would occur over the summer.

**Chairman Burtenshaw** noted all the dignitaries listed as sponsors and asked why this was started in the Senate. **Senator Corder** answered that he started here this year and reported that this was introduced in the House years ago but that it was much narrower, required affirmative action and did not include any amounts. He pointed out that the others agree with this and have promised to support it on the other side.

**Senator Little** stated that he knows the fiscal note on the bills is based on the author's best guess and asked about accountability. He wanted to know if the author just threw a number out and this ended up in a court action, would they get back to that definition. **Senator Corder** answered that he did not seek to define "fiscal note".

**Senator Davis** commented that he joins Senator Darrington in his concern with *Meade v. Arnell* and wondered if before we brought it back, in its final form to the committee, if we could get a letter from the Attorney General regarding the Legislature not losing their right on rules review. **Senator Corder** replied that he would be happy to do that.

- MOTION:** **Senator Davis** made a motion **TO PRINT** RS 14795. **Senator Geddes** seconded the motion.
- DISCUSSION:** **Senator Darrington** commented that with every set of rules there is a three member interim subcommittee who receives a sheet that shows if the rule is or isn't consistent with statutory authority. He stated that there are staff who examine statutory authority and added that many rules are reworked based on these examinations.
- VOTE:** The motion passed by voice vote.
- ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 8:29 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

## MINUTES

### SENATE STATE AFFAIRS COMMITTEE

**DATE:** Wednesday, February 9, 2005

**TIME:** 8:00 a.m.

**PLACE:** Room 437

**MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett.

**ABSENT/  
EXCUSED:** Malepeai

**GUESTS:** See attached sign in sheet.

**CONVENE:** Chairman Burtenshaw called the meeting to order at 8:03 a.m.

**APPROVAL OF  
MINUTES  
1/28/05:** **Senator McKenzie** made a motion to approve the Minutes of January 28<sup>th</sup>. **Senator Stegner** seconded the motion.

The motion passed by unanimous voice vote.

**APPROVAL OF  
MINUTES 2/2/05:** **Senator McKenzie** made a motion to approve the Minutes of February 2nd. **Senator Geddes** seconded the motion.

The motion passed by unanimous voice vote.

**GUBERNATORIAL  
APPOINTMENT:** **Bingo-Raffle Advisory Board**  
**Ms. Lee Periman of Coeur d'Alene. Serving a term commencing  
January 7, 2004, and expiring January 7, 2007.**

Ms. Periman explained that she has been a member of the Commission for four years and added that this is a reappointment for a second term. She reported that she is the Manager of a Bingo Hall in Post Falls and has been a resident of Idaho for 28 years.

**Chairman Burtenshaw** asked what the responsibilities of a Commissioner were. **Ms. Periman** replied that she is the President of the Commission. **Chairman Burtenshaw** asked if this requires a lot of time. **Ms. Periman** commented that it will be from now on since she has a bill in another committee at 9:00 a.m. this morning.

**Senator Geddes** thanked her for coming and noted the effort to move the Greyhound facility in Kootenai County. He asked if there were any plans to move the bingo facility and if there was any problems with a statute. **Ms. Periman** replied that there are plans to move their facility but stated that there is no conflict with the statutes.

**Chairman Burtenshaw** thanked her for coming in and informed her that the committee would vote on her appointment at the next meeting.

**RS 14756**

**Senator Stennett** explained that this came as a result of a discussion with the Mayor of Fairfield last year. He stated that it is a minor change in the law to include Emergency Medical Technicians (EMTs) as recipients for the Medal of Honor in case of injury. He further stated that it also adds EMTs in the appropriate places in the code. He reported that if the committee moves to print it, he will bring the Mayor of Fairfield to testify.

**Senator Stegner** stated that he will have questions on if it expands or changes the classifications for PERSI.

**MOTION:**

**Senator Stegner** made a motion **TO PRINT RS 14756**. **Senator Davis** seconded the motion.

The motion passed by unanimous voice vote.

**S 1075**

**Relating to Legislative Subcommittees, for review of administrative rules review; to increase the number of days when rules review subcommittees may hold a meeting on proposed rules after receipt of the analysis from the Legislative Services Office.**

**Senator Elliott Werk** explained that this deals with the problems during the interim with getting together subcommittees. He stated that the ability of the subcommittees is limited and added that if either the House or Senate objects to a rule, then this can be transmitted to the agency. He pointed out that the problem with the process is the time that is allowed to review the rules and then to call a meeting. He gave a scenario that you receive a rule packet on Friday then leave for a week's vacation. He stated that by the time you are back the next Monday, 11 days of the allotted 14 have been spent. He remarked that once you review a packet, you have limited time to meet as a subcommittee. He reported that this allows 45 days to review and 90 days to meet from the date of receipt of that packet.

**Senator Darrington** asked if this could delay the rule process a month and a half. **Senator Werk** stated that there would be no delay in the rules process, just providing more time for the Legislature to review and meet. **Senator Darrington** stated that in all the years of being on a subcommittee, he has only called a meeting three times. He further stated that he doesn't understand the problem but is interested to hear more. **Senator Werk** replied that in the meetings he has been involved in, it is difficult to get everyone together. He explained that time is compressed and added that it doesn't need to be.

**Senator Davis** assumed that Senator Schroeder would testify in support of it but asked Senator Werk how many chairmen he had spoken with and how many of those agreed, or disagreed, that this is a problem. **Senator Werk** answered that he had only spoken with Senator Schroeder.

**Senator Gary Schroeder** testified that a good part of us have other lives and pointed out that he goes through his own mail. He reported that sometimes following a vacation, he has one or two boxes of mail to go through. He commented that many times, 14 days go by very fast and that trying to get a hold of people is difficult during the summer because they may be on vacation as well. He stated that we are a citizen

Legislature and that because of this, we need more leeway. He added that he is still trying to catch up from the 2003 Session that went into May.

**Senator Geddes** commented that Senator Schroeder may have the most recent experience with why it was so difficult to catch people at home and asked why there was a concern. **Senator Schroeder** stated that he generally calls people to see if they object first. **Senator Geddes** asked Senator Schroeder to walk him through the process. **Senator Schroeder** explained that a meeting is called by the co-chairman within 14 days by notifying two or more members. **Senator Geddes** stated that he recalls that those members are not chosen by their committee chair. **Senator Stennett** pointed out that the ranking minority member, the chairman and the vice chairman of the committee all receive packets. **Senator Darrington** noted that someone checks with him every two years to see who he wants on the subcommittees. He stated that it has been either the Pro tem's secretary or the Leadership offices and stated that he was not sure who ratified the assignments. He added that he has always been asked for the subcommittee list.

**Mr. Dennis Stevenson**, Administrative Rules Coordinator with the Department of Administration testified that from an agency standpoint, this has never been much of an issue. He reported that the analysis comes from Legislative Services, through his office and on to the germane committees. He explained that the action of the committee if they have an objection is to pass that objection along to the agency, but added that the committee cannot tell them to make the changes. He stated that there is a moratorium from November through the end of the Legislative Session and added that this could be problematic if an extension of time to 90 days was passed. He pointed out that the agencies have until the end of August to provide their rules to his office for publication in the October Bulletin. He stated that if we wait the entire 90 days, it could cause some problems.

**Senator McKenzie** reported that he hasn't been involved with joint subcommittees and asked if the subcommittee suggestions were not binding. **Mr. Stevenson** answered that they are not binding because the subcommittee cannot tell them to change the rules.

**Senator Darrington** commented that the subcommittee can make suggestions and added that this is effective. He added that only an insensitive agency would not respond to a suggestion from a subcommittee. He added that there is nothing wrong with the process as a whole, but that this would just extend the days for review. **Senator Davis** commented that the Industrial Commission was insensitive a while back and tried to bring the rules that a subcommittee didn't like to the Legislature. He reported that they met Senator McLaughlin and were provided with a religious experience. **Senator Stennett** stated that the LSO provides analysis information with the packet and that the Legislature provides if the rule will fit into the community. **Mr. Stevenson** stated that the analysts point out conflicts with the statute and added that they do try to point out other problems in that analysis. He explained that the October Bulletin is the largest with about one half of the rules being included in it and added that the Legislators get a large packet in September as a result.

**Senator Stegner** asked if a committee member missed a deadline and called the agency with concerns a month later, would it make any difference if the agency responds or not. **Mr. Stevenson** answered that probably not but added that if it was his office, he would probably sit up and take notice. He explained that this tells the agencies that they have to come before the committees and added that this is a step to rein them in.

**Senator Little** noted that Health and Welfare, Education and DEQ are using “guidance” versus “rules” and asked if this extension would create a bigger incentive for agencies to use guidance. **Mr. Stevenson** replied that he was not sure that this would happen. He explained that Health and Welfare caseworkers in the field have interpretive documents to help them understand the rules and added that the courts have found that they can’t use those guidance documents. He stated that they do ask those agencies to put those guidance documents in the rules for the public to view. **Senator Little** commented on the nutrient pathogen studies conducted by DEQ with regard to the “guidance” issue and asked if these additional 80 days would exacerbate the problem. **Mr. Stevenson** replied that it would not.

**Senator Geddes** stated that he doesn’t pay too much attention to the rules in October since we’ll see them in January when the agency explains them. He added that this part of the process is used on a limited basis. **Mr. Stevenson** commented that there is an analysis up front to see if there is a problem with statutes. **Senator Geddes** asked if, from an industry standpoint, there is a problem with a rule in October, a Legislator will contact the trade organization and added that he didn’t remember anyone coming to him asking for the formation of a subcommittee. **Mr. Stevenson** added that he didn’t recall this either. **Senator Geddes** noted that we get a packet in October and have a month and a half to call a subcommittee which takes us into November and early December. He added that there would be an additional 90 days to call a meeting which would put us right in the middle of the session. **Mr. Stevenson** commented that it may take us past the end of the session but added that he didn’t see that this would cause problems or delays. He remarked that the agencies will proceed forward anyway and suggested passing it to see how it works.

**Senator Davis** pointed out that in light of Meade V. Arnell, there are periodic problems but added that this does not rise to a compelling and substantial change. He stated that even though this would push the time frame into the session, there are shorter time periods or solutions to address the sponsor’s concern. **Mr. Stevenson** replied that he wasn’t sure the need was there and also wasn’t sure if shortening to 28 and 60 days would matter much. He pointed out that the process is to make sure that we have the time that is needed. **Senator Davis** asked if there was a collective sigh from the House and the Senate that there is a need for a fix. **Mr. Stevenson** answered that he hears very little on this part of the process and added that they are removed from this part of the process. **Senator Davis** stated that he had to admit that during extremely busy times he hopes others were reading the packets but added that he is not sure that this is the way to go about it.

**Chairman Burtenshaw** asked if by putting this in place, could the time line be extended for one year if a rule was not acted upon. **Mr. Stevenson** answered that no, but if we wait for 90 days, the agencies hit the panic button to get the rule into “pending” which makes the committee deal with the issues during session.

**Senator Werk** thanked the committee for the extensive discussion and added that he was talking about the packets received in May through July. He noted that he was discussing the need for advisory meetings together to discuss in an open hearing with an agency. He pointed out that from a timing standpoint, every Legislator deserves the opportunity to look through the packets. He added that he doesn't know what “compelling and substantial needs” are but stated that every opportunity should be provided for us to save time on the back end. He concluded that Mr. Stevenson had also testified that he didn't see an issue.

**Chairman Burtenshaw** asked if there was ever a situation where rules couldn't be reviewed in a germane committee. **Senator Werk** responded that they all have the ability in committee to review the rules but explained that they would spend less time if it was done in a germane committee and added that it would be more efficient.

**Senator Schroeder** pointed out that with a new body of law, such as the Charter School Commission, he found two pages of little technical errors. He stated that the question was whether to push these into the Legislature, or to take care of them in the subcommittee. He added that the subcommittees are important when new sections of law are established.

**Senator Stennett** pointed out that as a leadership committee, there probably aren't too many of us who sit on subcommittees. He stated that he didn't see any harm in having a more effective process with more time.

**MOTION:** **Senator Stennett** made a motion to send S 1075 to the floor with a **DO PASS RECOMMENDATION**. **Senator McKenzie** seconded the vote.

**DISCUSSION:** **Senator Davis** noted that this is the healthiest part of reminding leadership on both sides of the rotunda of the process and that we need to teach others of the importance of the review of rules.

**SUBSTITUTE MOTION:** **Senator Davis** made a motion **HOLD** S 1075 in committee. **Senator Geddes** seconded the motion.

**DISCUSSION:** **Senator Geddes** explained that he feels that this has become a forgotten section of our process and stated that the most critical component is the narrow time frame. He pointed out that by extending the time frame, most of the importance of this process becomes diluted.

**Senator Stegner** stated that he was trying to apply some of his experience on one of the subcommittees and explained that from a personal standpoint, he would pick up the phone and contact the agency or the others members of the committee with his concerns. He explained that he is not sure if he would have called a meeting until Senator Schroeder talked of a working meeting to review the rules. He added that

he is not happy with the number of days chosen, but stated that an extension is warranted. He concluded that two weeks for a meeting notice is not long enough.

**Senator Stennett** stated that this provides more oversight and makes sure that the process is done correctly.

**Senator Davis** acknowledged that there is some additional sensitivity to this but stated that in his experience, if you give someone more time, they will just wait until the day before. He pointed out that the key to the solution is not the expansion of the time frames, but for Leadership to teach the chairmen the process.

**VOTE ON  
SUBSTITUTE  
MOTION:**

The motion failed 4-4-1.

**DISCUSSION ON  
ORIGINAL  
MOTION:**

**Senator Little** stated that this is only a little longer for us to look at the rules but added that the process time line continues on.

**VOTE ON  
ORIGINAL  
MOTION:**

The motion failed 4-4-1. S 1075 will remain in the committee.

**VOTE ON  
GUBERNATORIAL  
APPOINTMENT:**

**Idaho Athletic Commission  
Tom Katsilometes of Pocatello. Serving a term commencing  
January 7, 2005 and expiring January 7, 2009.**

**MOTION:**

**Senator Stennett** made a motion to approve this confirmation. **Senator Little** seconded the motion.

The motion passed by unanimous voice vote.

**FARM BUREAU  
PRESENTATION  
ON NEZ PERCE  
AGREEMENT:**

**Ms. Judy Bartlett**, Director of Public Affairs for the Idaho Farm Bureau presented the organization's opinion of the upcoming Nez Perce Agreement.

She explained that the organization is made up of all the county Farm Bureaus in the state and reported that they have an annual convention in December. She explained that they received the term sheet in May and met with Norm Semanko and Michael Bogart about if that term sheet could be changed. She reported that they were told that it could not be changed. **Ms. Bartlett** explained that they had conducted research and sent 30 legal documents to county farm bureaus, county commissioners and cities regarding the legal analysis of Randy Budge. She reported that their President met in July with Norm Semanko, Michael Bogart and Terry Uhling and added that they had a two-hour workshop conducted by Randy Budge prior to the vote in December.

She reported that 9 counties voted to support the agreement and that the other counties opposed it. She stated that Ada, Canyon, Twin Falls, Bonneville, Madison and Elmore have sent formal letters of intent to dissent and added that both Fremont and Bingham decided to dissent just

yesterday.

**Senator Stennett** asked if they had full-fledged operating organization in all 44 counties. **Ms. Bartlett** replied that they do but added that some counties partner with other counties to make one group such as Camas and Lincoln counties. **Senator Stennett** asked if Camas and Lincoln Counties opposed this too. **Ms. Bartlett** replied that they do but have not provide a formal letter of dissent. She reported that statewide there are at least ten policies in this agreement that they oppose:

1. Concerned that every single person in this state will be affected by the expansion of Tribal authority and the 1855 Boundary.
2. Changes in ownership with the Tribe receiving BLM lands and the \$60 million to buy other land. She added that there are access issues and tax burdens.
3. Concerned about "takings claims".
4. Increased agency budgets.
5. Possible loses to the Endowments.
6. Enforcement of Federal ESA on our state agencies.
7. Landowners within the Forestry component strongly believe that they will be forced to sign up for this. Although it does say "voluntary", it is kind of like a willing seller when the Federal Government decides they want your property.
8. Placing a higher burden and a higher standard on current practices.
9. Adamant and feel that for their own protection they have to sign up for this which will cost them increased costs, loss of their privacy, and giving free discovery for those third-party lawsuits which are still allowed under this agreement.
10. Also feel that because this is so open and vague, it is "lawyer bait".

She pointed out that this is not a simple law change that can be fixed next year. She spoke of grazing preference and property rights where grazing permits are designed for a period of time up to ten years and are attached to the property and renewable upon expiration. She further added that these rights are passed down to heirs and added that the heirs pay an inheritance tax on them.

**Chairman Burtenshaw** asked about the expanded authority and how the tribe would get it. **Ms. Bartlett** responded that there was an incidence with the 1863 Boundary where the tribe owned 11% but tried to exert authority over the others, wanted payment by the school and the school to hire members of the tribe. **Chairman Burtenshaw** commented that the Tribe will have ownership of more private ground within the confines of the 1863 boundary and asked how they could expand their authority. **Ms. Bartlett** replied that the Tribe will have the ability to buy land that isn't defined by the 1863 boundary with that \$60 million. **Chairman Burtenshaw** commented that we have always worked with the Farm Bureau and noted that it is awkward to be in another position. He stated that he feels that because there isn't a way to change it, there is more potential for good rather than go to the courts to settle. **Ms. Bartlett** replied that they have read Judge Wood's decision and added that they are confident with the Supreme Court. She pointed out two options if this agreement is turned down: to form a new agreement; or to allow the

Supreme Court to continue with it. She reported that both tribal bulletins and the Tribal Chairman have said that they will go after Oregon and Washington water when the Idaho agreement has been reached. She added that there is an “unintended consequences” sheet outlining what could happen.

**Senator Davis** asked her who Judge Wood was. **Ms. Bartlett** answered that he was the Adjudication judge. **Senator Davis** asked what his first name was. **Senator Darrington** interjected that his name was Barry and that he was Magistrate Judge in Lincoln County and then moved on to Magic Valley.

**Senator Geddes** asked if the analysis from Randy Budge was confidential and noted that he was not sure why he had a copy. **Ms. Bartlett** answered that it was confidential until about an hour after the Board met. **Senator Geddes** stated that a lot of the Farm Bureau’s concerns seem to have been generated from that analysis and noted that it would be beneficial for Mr. Budge to meet with the committee. **Ms. Bartlett** agreed because it is a complex document.

**Senator Stennett** remarked that this deal is huge and impacts the individual water users as well as the economy of the state. He asked if the individual water users thought it was better to opt out. **Ms. Bartlett** replied that they do and discussed some of the problems with the biological assessment. She stated that this is at best a five-year issue even though it is being touted as a 30 year assessment. She mentioned Idaho Power and the Brownlee Reservoir where for two weeks in the summer the water temperature is higher than acceptable for the fish and how Idaho Power is going to have to put in a \$50 million temperature control device. She then pointed out that there are several species that are right on the edge of possible delisting such as the snails, bulltrout and the salmon. She concluded that the Farm Bureau believes that a new agreement needs to be proposed or to take this to court.

**Chairman Burtenshaw** asked if there could be third-party lawsuits and added that we have been led to believe that the biological assessment was for 30 years. He pointed out that in the beginning the agreements were discussed in an open forum with the public present but following a mandate by the judge, the talks were done in private. He reported that since the US Congress has appropriated money, the issue has been opened back up to the public. He asked if this goes back to court, why wouldn’t the judge point out that there was this agreement, and what would stop the tribe and the US Government from making an agreement anyway. He further asked if we weren’t gambling with the water rights of the people until we get a clear title. **Ms. Bartlett** replied that in Tribal newsletters they state that they have a water claim and not a water right. She stated that “treaties” is what Judge Wood ruled on and added that the Farm Bureau feels it is worth the risk.

**Senator Geddes** asked if Farm Bureau had been involved in the five-plus years of negotiations. **Ms. Bartlett** replied that the organization was not invited to sit at the table because the organization does not hold a water right. She added that she holds a water right and that even her water board was not invited into the negotiations.

**Chairman Burtenshaw** asked how many of the water users were members of the Farm Bureau. **Ms. Bartlett** responded that some water user members are also members of the Farm Bureau but suggested that this question be asked of Norm Semanko.

**Chairman Burtenshaw** thanked her for sharing this information with the committee and mentioned that there would be hearings on this later. **Senator Geddes** thanked her for starting the education process for the committee and reported that Idaho Public Television brought VHS copies of a documentary they produced on the SRBA and the Nez Perce Agreement. He offered them for the committee members to borrow for additional information. **Ms. Bartlett** added that she had seen the one on the eastern plain. **Senator Geddes** stated that he thought they were the condensed versions of the hour long programs.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 9:47 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

## MINUTES

### SENATE STATE AFFAIRS COMMITTEE

- DATE:** Friday, February 11, 2005
- TIME:** 8:00 a.m.
- PLACE:** Room 437
- MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett.
- ABSENT/  
EXCUSED:** Malepeai.
- GUESTS:** See attached sign in sheet.
- CONVENE:** Chairman Burtenshaw called the meeting to order at 8:04 a.m.
- APPROVAL OF  
MINUTES 2/4/05  
and 2/7/05:** **Senator McKenzie** made a motion to approve the Minutes for February 4, 2005 and also for February 7, 2005. **Senator Stegner** seconded the motion.
- The motion passed by unanimous voice vote.
- VOTE ON  
GUBERNATORIAL  
APPOINTMENT:** **Bingo-Raffle Advisory Board**  
Ms. Lee Periman of Coeur d'Alene. Serving a term commencing January 7, 2004, and expiring January 7, 2007.
- Senator Davis** made a motion to recommend the confirmation to the full Senate. **Senator Stennett** seconded the motion.
- The motion passed by unanimous voice vote.
- RS 14760:** **Relating to Nutrient Management Plans, to make technical corrections and to provide that all nutrient management plans shall be open to the public and available for inspection and copying.**
- Senator Stennett** had the Page distribute two handouts. He pointed out the second handout showing a bill from 2001 and directed the attention of the committee to the green highlighted area on the second page lines 2 and 3, *"The information provided in this subsection shall be available to the county in which the dairy farm, or the land upon which the livestock waste is applied, is located."* He stated that the Idaho One Plan has looked at this differently and reported that this RS will add "open to the public and available." He added that more information is better because it builds trust in neighbors.
- Senator Darrington** asked if this would go to the Agricultural Affairs Committee if printed. **Chairman Burtenshaw** said that it was at the call of the Pro Tem. **Senator Geddes** asked if the nutritional management plans were confidential or if any dairy, whether in Jerome or Preston, would have to comply. **Senator Stennett** answered that it outlines the number of acres but added that the issue has been neighbors wanting to

know where it's going. **Senator Geddes** stated that he knew that this had been proposed in the past and asked what the conflict was with making these plans open to the public. **Senator Stennett** replied that the diaries think they are open, but the Department does not. He pointed out that there is no clear policy.

**Senator Geddes** stated that he didn't have a problem to print this, but noted that this is an Ag issue and will be referred to the Agricultural Affairs Committee for hearing.

**Senator Little** stated that he is reluctant to repeat what is in code and asked what the Department was using as a reason for not allowing this information out to the public. **Senator Stennett** replied that he has not gotten a clear answer and added that some think this is under a negotiated rule with the information not available to the public. **Chairman Burtenshaw** pointed out that a dairy gets someone to write a plan and submits it to the Department of Ag for approval. He stated that as long as the plan is at the Department, it is public. **Senator Stennett** directed the attention of the committee to the first handout of the article from the Times News, third paragraph, *"On occasion, the Ag Department has denied the plans being released to the public when someone requested them."* **Chairman Burtenshaw** asked if while the plan was at the Department, had he asked to look at the plan. **Senator Stennett** replied that he had never requested a plan. **Chairman Burtenshaw** commented that they feel that the plans are confidential because of biosecurity. He added that DEQ and the Department of Ag have to accept the plan and stated that facilities house only so many animals and are checked once or twice a year to see if they are complying. He pointed out that as long as the plan was within the Department for administration, it was considered public, but once it was returned to the dairy, it was private.

**Senator Davis** noted that the one and half hours he was on the Ag Committee recalled that the intent was for the information not to be made public, because it was proprietary and unique.

**MOTION:** **Senator Davis** made a motion **TO PRINT** RS 14760. **Senator Stegner** seconded the motion.

**VOTE:** The vote was 7-1-1. The motion passed.

**RS 14781:** **Relating to Registration of Electors; to provide that a legible, accurate and complete registration card received in the Office of the County Clerk during the twenty-four day period preceding an election shall be accepted and held by the County Clerk until the day following the election when registration reopens, at which time the registration shall become effective.**

**Senator Elliot Werk** gave the committee a letter by Tim Hurst, Chief Deputy for the Secretary of State. He stated that this replaces S 1048 and added that the new language covers the whole gamut.

**MOTION:** **Senator Davis** made a motion **TO PRINT** RS 14781. **Senator Darrington** seconded the motion.

**DISCUSSION:** **Senator Little** stated that he was for the motion to print, but noted that a person can register but added that they still cannot vote until the next election.

**Senator Stegner** asked if the only correction was the addition of the new sponsor. **Senator Werk** replied that it was.

**VOTE:** The motion passed by unanimous voice vote.

**RS 14823:** **Relating to distributions of moneys in the State Liquor Fund; to clarify that the Liquor Account is now the Liquor Fund, that moneys in the State Liquor Account are to be deposited in the Liquor Fund, to revise the distribution of moneys in the State Liquor Fund, and to provide that sales tax on liquor be paid to the Liquor Fund.**

**Mr. Dyke Nally** with the Idaho State Liquor Dispensary explained that this is a way to save money and to make more money for the General Fund. He stated that this will freeze the current funds of 2004 as outlined in 24-404. He explained that the formula for distribution in Idaho Code 23-404 was established in 1985 to appropriate \$1,200,000 to Alcohol Treatment Fund, \$300,000 to the Community Colleges, \$1,200,000 to the Public Schools Income Fund, \$4,945,000 to the General Fund, and \$650,000 to the Cooperative Welfare account. He pointed out that this will allow the General Fund to share equally with the cities and counties and stated that "account" and "fund" are the same thing, so it was all changed to "fund" to be consistent. He added that this does not minimize the money to the cities, but does limit the amount of gain to the cities.

**Senator Darrington** noted that a couple of years ago, there was a proposal to take money out of the cities and counties to fund ABC. He stated that the cities and counties went ballistic and asked if there was any chance that they would now. **Mr Nally** replied that they felt that the money should come out of the General Fund. He pointed out that in 1995, it was \$55 million but is now up to \$90 million. He reported that consumption is not up, but that the people are buying more expensive products.

**Senator McKenzie** stated that the initial bill put the General Fund at a fixed amount and asked why the change. **Mr. Nally** answered that this section of code was changed in 1982 and in 1995. He stated that the intent in 1995 was to balance the distribution.

**Senator Little** asked when the sales tax happened under Idaho Code 63-3638. **Mr. Nally** answered that this was part of the mark up with distilled spirits and added that it all goes into the Liquor Fund. **Senator Little** asked when the change happened for the sales tax money to go into the Liquor Fund and not into the General Fund. **Mr. Ken Winkler** Chief Financial Officer of the Liquor Fund explained that the sales tax was added in 1982 and somehow it stayed in the fund and has been distributed to the cities and counties. **Senator Little** commented that this is how the 50/50 balance was tipped.

**Senator Stennett** asked what is 6% of the gross sales and how much sales tax is worth. **Mr. Nally** noted that it is \$6 million but goes down to

\$5 million in July.

**Senator Davis** asked why the State Liquor Dispensary cares where the money goes. **Mr. Nally** answered that they don't. **Senator Davis** asked who was pushing this. **Mr. Nally** replied that he just thinks this needs to be done. **Senator Davis** asked if it was being pushed by the gentleman on the second floor. **Mr. Nally** replied that this was just an idea to increase the General Fund. **Senator Davis** asked if the gentleman on the second floor had agreed that this was within his desires and who was the policy person. **Mr. Nally** answered that it was David Lehman and Sarah with DFM. **Senator Davis** asked if there were other proposals brought and rejected by the Governor. **Mr. Nally** replied that there were no other proposals.

**Senator Stegner** stated that he doesn't mind the fair distribution, but noted that if we rewrite it, we may allow for alcoholic treatment and substance abuse to share in the growth. He concluded that alcohol should pay a larger share for these programs.

**MOTION:** **Senator Stegner** made a motion **TO PRINT RS 14823**. **Senator McKenzie** seconded the motion.

**DISCUSSION:** **Senator Davis** stated that he is not a fan of the legislation, but added that he is a fan of what Mr. Nally is trying to do. He pointed out that the State is in desperate need of regional treatment facilities and added that he is more inclined to push money towards treatment. He concluded that he will support to print.

**VOTE:** The motion passed by unanimous voice vote.

**S 1085:** **Relating to Liquor Stores and Distribution Stations; to provide the manner in which the distance between a liquor store or a distribution station and a school shall be measured.**

*The following is verbatim transcription:*

**Senator Burtenshaw:** OK. We have Senate Bill 1085. Senator Noble

**Senator Noble:** Good Morning Mr. Chairman. I bring before you today Senate bill 1085 relating to, defining the minimum distance that a liquor store or distribution station to the nearest school of learning. A little bit of history before I refer to the bill; This has to do with dispensing stations or retail sales of liquor (Inaudible) for consumption on the premises. In relating to liquor by the drink, previously to now, that, as far as the relationship between the station of that sort of dispensing was previously defined as being, and let me read from statute 23-913 "No license shall be issued for any premises in any neighborhood which is predominantly residential or within 300 feet of any public school, church or any place of worship measured in a straight line to the nearest entrance of the licensed premises." Well, interesting enough, when referring to liquor for consumption off premises, that has never been totally defined as far as from entrance to entrance or from a location to the school. In reading 23-303 right now, it reads "No liquor store or distribution station shall be located within 300 feet of a school" and so there has been some mystery

in the minds of those in the industry as to exactly how that was defined. Now growing up in the city of Kuna, a small town of less than 1000 when I grew up, on main street there was 3 churches and about 3 bars so on Sunday service when you went to town we had any one of 6 places of worship for Sunday services. (laughter) Also on Main street was a state liquor store on the West end which was not very far from the High School. Was it within 300 feet, I can't exactly say. But in my bill it's fairly defined as far as what that minimum distance would be and I have even made it a little more clearer than the one concerning liquor by the drink in that this one is measured in a straight line from the nearest entrance of a liquor store or dispensing station to the nearest entrance of the nearest structure of the school in which the students are instructed, meaning that it can be any entrance of the school; back door, front door or side door, but I believe this is more clear. With that I stand for questions.

**Senator Darrington:** Mr. Chairman

**Senator Burtenshaw:** Senator Darrington

**Senator Darrington:** A couple of questions. One is, I don't know how you are defining school in this sense, but what if a home school or a charter school or a religious school came in and rented a building a couple of houses away from an existing store, would the existing store have to move?

**Senator Noble:** Following the moment when this bill should pass, that would come into question as far as a new school or charter school, and being that a charter school is another public school, and it houses children which are learning, they would have to set themselves apart if the dispensing station was already in business at that time.

**Senator Darrington:** Mr. Chairman. I interpret your answer to say that, Yes, the liquor store would have to move if somebody else moved in?

**Senator Noble:** No. The liquor store would **not** have to move.

**Senator Darrington:** You say the 300 feet is measured from the **entrance** of the school or the **entrance** of the liquor store, or is it the corner of the sidewalk there by the street to the corner of the sidewalk there by the street.

**Senator Noble:** Mr. Chairman, Senator Darrington, it would be the nearest entrance of any kind to the building which houses children which are learning. When I say this, in the past, the problem has been, and this says 300 feet of the school, does that mean 300 feet to the foot ball field or 300 feet to the bus shop or 300 feet to any number of buildings that might be on a school premises. If you can imagine a small town, and actually I've come to find that this also applies to larger towns even now with large super centers such as Albertson's or Wal-Mart or Winco where they are on one side of the street and the football field is on the other side of the street. And so, this is come as a question before, and so this would clearly define it now as being to the nearest entrance of the structure that should house children as they are learning.

**Senator Darrington:** Thank you Mr. Chairman. Thank you.

**Senator Burtenshaw:** Senator Stennett:

**Senator Stennett:** Thank you. Mr. Chairman, Senator Noble. To follow up on Senator Darrington's question, I heard whispered in the crowd that it had to be a public school but I don't see that in the legislation. I see that pre-school or private school, or charter school is in the public school clearly, would be able to locate within 300 feet of a distribution station. And I don't see the prohibitions that would go into effect, but you said it would **not** be required to close down but I don't see that connection.

**Senator Burtenshaw:** Senator Noble.

**Senator Noble:** Mr. Chairman, Senator Stennett. I think Senator Darrington's question is what would happen later and in referring to your question, I'm not exactly sure what was asked but...

**Senator Stennett:** Mr. Chairman let me make this clearer. Mr. Chairman, Senator Noble, my question is, If a school, pre-school, charter school, public school or private school is today, or in the future located within 300 feet (inaudible) of 300 feet of the liquor store, will the liquor store be required to close. And if you said to Senator Darrington that is not the case then I don't see it in the bill.

**Senator Noble:** Mr. Chairman, Senator Stennett. In the future, a day care, kindergarten, charter school or school of any kind would not be able to locate within 300 feet of the liquor store. Being that the liquor store had already been pre-located in the location.

**Senator Stennett:** Mr. Chairman, Senator Noble. Will this affect anybody today. Have you canvassed the liquor stores in town that this is going to have any effect on people today, rather than in the future. Are there any schools today located within 300 feet of a school.

**Senator Noble:** Mr. Chairman, Senator Stennett, We do not believe that today, as of this, as far as proximity of schools to liquor stores at this time...

**Senator Stennett:** Mr. Chairman one final follow up. Mr. Chairman, Senator Noble. You mentioned Wal-Mart and Albertson's in your example about being close to the schools. Wal-Mart and Albertson's sell wine and beer but they are not able to sell liquor. Is it your intention that wine and beer will also be included in the prohibition against locating within 300 feet of the school.

**Senator Noble:** Mr. Chairman, Senator Stennett, this bill only covers liquor.

**Senator Burtenshaw:** Senator McKenzie

**Senator McKenzie:** Following up with what Senators Darrington and Stennett said, it looks like to me, that problem exists in current code and I don't know if this code section

defines schools somewhere else, but the problem that you have identified would exist whether or not this amendment is made because that definition of schools is already in there. What I understand this legislation to do is to declare what that means so that the liquor store or distribution center wouldn't be prohibited within 300 feet of the edge of the school property or the football field or the shop but it would clarify that it is only measured from the entrance of the structure itself, I guess my question is, has there been a problem identified by planning and zoning boards or something, that this is addressing?

**Senator Burtenshaw:** Senator Noble.

**Senator Noble:** Mr. Chairman, Senator McKenzie. It has not been a problem concerning Planning and Zoning and such. This was a piece of legislation that was brought forth by the industry just to clear it up as far as when they trying to place liquor stores, it is very clear to them exactly where it can or cannot be because as you read in the laws that stand right now, 23-303 where it says 300 feet, and that's why it's been somewhat of a mystery in that this was established years ago and yet liquor-by-the-drink in the other statute, which is 23-913, that was established and made very clear as far as imagining a straight line to the nearest entrance to the licensed premises. And so that was a little bit clearer. They asked to make this portion of the statute more clear also. So that in the future, such as when there might be a charter school or a day care or a kindergarten located, it would be clear in everybody's minds as to where it could or could not be.

**Senator McKenzie:** Mr. Chairman, Senator Noble: Is school defined in code somewhere in this chapter?

**Senator Davis:** Mr. Chairman, the answer to that is No. I looked it up very carefully and the answer is no.

**Senator Burtenshaw:** Thank you. Senator Davis

**Senator Davis:** Thank you Mr. Chairman. I couldn't agree more with Senator McKenzie's analysis on that language on what currently exists in 23-303. The problem on the definition of school is all written there. This does help to provide for a little bit better definition. It does continue to football the question of the definition of which, by not addressing it, provides no definition, but I think Senator McKenzie's representation to the committee are accurate. It's my understanding that 23-303 was adopted in 1939. The other code section which you are referencing 23-913 was adopted in 1947, and neither had been amended since those time periods, or since initial enactment. Here is a few different questions for you though. Along the lines of the very last question and the answer that you gave, tell us specifically what problem is highlighting the need for this change and who is driving this particular legislation, if you will please.

**Senator Noble:** Mr. Chairman, Senator Davis. I can probably not say exactly who is driving it although as small stores, as cities are changing and there is growth going on in small towns, but then also in larger towns, there is being a reshuffle of where buildings are located and there are more convenience stores and likewise some of these convenience stores

or small grocery stores, retail stores coming into the business of selling liquor and it is for that reason that the questions come up amongst the retailers, but I was also approached by the liquor industry itself as far as they desire to have this defined so that when they are trying to fulfil their mission as far as giving permits for liquor licenses, it will be clear to them and whomever is asking that they would know that they are not in conflict with current statute.

**Senator Davis:** Mr. Chairman, Senator Noble. It seems to me that the primary change in the statute you are proposing really doesn't have to do with "as the crow flies". It has to do with the definition of where do you end the 300 feet. That you could have a school parcel of property in which I've got a football field that could start at the end of a liquor dispensary and it could be physically adjacent to a liquor store and by the time I get to the other end of the football field I've gone 300 feet and there is the school entrance. If I measure it to where the school property starts, the liquor dispensary or the liquor store cannot be located there. But if I force them to ignore the ancillary school structures or facilities uh, dot dot dot. Am I reading your proposal right?

**Senator Noble:** Senator Davis, I can always go back in time to when I was growing up in Kuna. The state liquor store was probably no more than 100 feet from the edge of the High School property. You know, when measured from front entrance to the nearest entrance of the structure it may have been 300 feet. Now that was, I'm sure that the state liquor store was there until up until the '70's. It was during the time in which this statute was in place, being that it was established in the year 1939. Now, obviously someone at that time, either A. Overlooked it, or B. Defined it differently and found it to be within the code or statute and so therefore they gave the license to what was then the Kuna SavOn, the name of the store, and they held that license. Now clearly, in referring to your question, this store may very well have been in conflict with the statute at that time. But they gave them the license irregardless. Today, they are asking to clearly define that so that we do know, was the Kuna Savon in conflict or not? Because the law here doesn't make that evident.

**Senator Davis:** Follow up Mr. Chairman on that point. Now look it seems to me that the real effect of Senate Bill 1085 is that it allows a liquor store and school to be closer together, not further apart. Am I wrong?

**Senator Noble:** Mr. Chairman, Senator Davis, it could, but not necessarily according to the way I have seen it in history. And of course this law comes from...

**Senator Davis:** If I could just, Mr. Chairman, really quickly on that. Are you aware of any school where the entrance of the school is not on school property?

**Senator Burtenshaw:** Senator Noble.

**Senator Noble:** Let me think just a second.

**Senator Davis:** Sure. My understanding of your answer was, it could, but maybe it couldn't. Or it may not. In my mind, I'm thinking to myself it is

mathematically, or it is probably impossible for a school to have an entrance that is not on school property and the odds are that there is probably a gap of perhaps inches or perhaps hundreds of feet until you get to the point where the school property line ends. If this bill became law it seems to me that under no circumstance would you be able to have a school where you are expanding the distance but in every instance you would have to be shortening the gap between the liquor store and the school. Am I wrong?

**Senator Burtenshaw:** Senator Noble

**Senator Noble:** You said a lot of things in there. (Laughter)

**Senator Davis:** Mr. Chairman, let me ask a better question. Jack that was ridiculous. Go to 23-913 for me would you please. That's that one that you are stealing the language from it? It does however, the 300 foot rule here applies not only to public schools but to churches or other places of worship and I get your point on that one. Measured in the straight line to the nearest entrance to the licensed premises, again there is still an open question in my mind there as to from where you start measuring. Are you now measuring, and it seems to me that the same problem here in 913, you've just defined the ending point on the other end being where the licensed premises property line begins, I just don't know where the beginning point is. I'd have the same problem in 913, that I've got in 303. But then there is some excepting language here in 913 you do not put in 303. It says: "Except, with the approval of the governing body of the municipality." So you say to the local municipality, look, we understand that every neighborhood is going to be different. Kuna, probably in 1947, thought to be in Nevada, (laughter) may approach this issue differently than the city of Idaho Falls. And we should give to each of those governing bodies a little bit of discretion. Is there a reason that you have excluded this excepting language as you have copied the language from 913 over to 303?

**Senator Noble:** Mr. Chairman, Senator Davis. Perhaps just overlooking that excepting language and perhaps it was due to excepting language like that in history that in some of these small towns where everything's on the same street, they were able to put the bars and liquor stores along by the High School and (inaudible)

**Senator Burtenshaw:** Any other questions? Senator Darrington

**Senator Darrington:** Mr. Chairman, Senator Noble. Who is they? You referred in the answer to this seat mate's question that the industry is driving this. Which industry? The distillers? The retailers who will contract liquor stores? Or the liquor dispensary who is here. Who is driving this? You referred to the industry.

**Senator Noble:** Senator Darrington, I have to think about that for a minute because I can't say I've been involved with liquor and state things like that. But, as far as I understand, when I say they, I guess I am referring to the State Liquor...

**Senator Darrington:** Dispensary?

**Senator Noble:** Dispensary. I wouldn't say they have necessarily been driving it. It's just a subject that came up not only by them but by the retailers. I wouldn't necessarily say it was their hot button issue for the year but it has come up in the past.

**Senator Darrington:** Mr. Chairman, so this was brought to you by the retailers and/or the liquor dispensary?

**Senator Noble:** Yes, and when I say that, Senator Darrington, Mr. Chairman, not necessarily brought it to me by Pam Eaton and her retailers but merely talked about it some.

**Senator Darrington:** Mr. Chairman, Senator Noble, Obviously you can tell there is a problem with the committee. I mean what is the problem that we are addressing and does this address the problem that it did. So that's what we are trying to get at.

**Senator Noble:** Mr. Chairman, Senator Darrington. Perhaps I can have Mr. Dyke Nally, if you would like, to come up and refer to this.

**Senator Burtenshaw:** Mr. Nally

**Senator Nally:** Thank you Senator Noble. Mr. Chairman, members of the committee. This, this is like, I'm trying to figure out an easy way to explain this. We have over 100 small contract stores like has been referred to in Kuna, in this state and many of those situations it is very difficult to have a distribution station that is 300 feet away from the school and beyond the city limits. To find a location to have that service that is wanted or needed in that community so to that point we have empathy with the situation that the Senator described. Secondly, when we are asked to locate a liquor store, in some cases a bar or licensed premises serving alcohol by the drink or a grocery store that sells alcohol up to 14% and beer and wine, can be 300 feet door to door from the school. We have to be 300 feet, including contiguous property which could be shopping center parking lot to football field, as Senator Davis described, to entrance and sometimes that can put you a half mile away to sell packaged liquor that the state derives revenue from (inaudible) the liquor dispensary and the others can, a bar or a grocery store selling the same alcohol product within 300 feet, where we have to be contiguous property to contiguous property. I think the Senator is trying to talk to you about who is behind this, I think it is the retailers in those communities who are, not Pam Eaton's group, particularly, the people who wish to have a liquor store and the people who have one now in small communities. Where a school could move in close. The liquor dispensary uses judgement. We have had some that are more than 300 feet that we haven't put in. We try to keep them away from churches, places of worship and schools, and we have some who have barely made the distance and we use judgement for that. Private enterprise of a bar owner, where he can get a tape to stretch 300 feet and therefore are within the law. So that, does that help clarify some of what Senator is trying to achieve here?

**Senator Burtenshaw:** Any questions for Mr. Nally?

**Senator Stegner:** Mr. Chairman, I can't find this to be anything but a liberalization of the standard, I mean the distance. Mathematically you can't come to any other conclusions and I see no particular reason to reduce that and make it more liberal and so I move that we hold Senate Bill 1085 in committee.

**Senator Davis:** Second

**Senator Burtenshaw:** It's moved and seconded to hold Senate Bill 1085 in committee. Any discussion.

**Senator Little:** Well Mr. Chairman, I guess I have a question for either Senator Noble or Dyke. In 23-913, if there is a grandfather clause in there, there is no grandfather clause in this and I'm, I think this body is always hesitant to change the rules in the middle of the game and I'm afraid that this legislation we've got, is that we have in front of us now, is as a rule change. Because in 23-913 it says "This limitation shall not apply to any dually license premises that at the time of licensing did not come within any restricted area of the subsequent licensing time therein." The grandfather clause that exists in 913 did not exist, in my experience, is that the Legislature is a little reluctant to change the rules in the middle of the game and, is this, Mr. Nally, is this a rule change to a certain extent.?

**Senator Nally:** Mr. Chairman, Senator Little...

**Senator Little:** of course it's a liberalization so I guess it's a rule change to the school and not a rule change to the, oh and one other question. It talks about nearest structure to the school which students are instructed, so a structure or pump house, the door on the pump house which is always further from the school because DEQ requires the well be as far as possible from the septic tank so there is always one structure on one end of the ground and one on the other but this liberalization, I guess you don't need a grandfather clause in it if it is a liberalization, is that correct?

**Senator Nally:** Yeah, Mr. Chairman, Senator Little, What my biggest concern is maybe consistency. (Inaudible) or grocery store. And the packaged liquor that you buy to take home is, you have to be further away. (Inaudible) And that's kind of the part of the manner that I'm trying to get across today.

**Senator Little:** Why would that be consistency?

**TAPE TURN OVER**

**Senator Stegner:** The suggestion that that language just allows the liberalization of the interpretation of that statute on a bar, we might kick that out and insert this language, so I don't think we should assume that that is the desire of this committee just because it happens to be the statute (inaudible)

**Senator Burtenshaw:** Any other discussion? Senator Noble, do you have anything else?

**Senator Noble:** No, I'm fresh out of stuff here.

**Senator Burtenshaw:** Any other motions or considerations? If not, do you want to read his motion? To hold in committee. Seconded by? The motion is to hold Senate Bill 1085 in committee. Secretary will call the Roll.

**Secretary:** Senator Darrington - Aye  
Senator Geddes - Aye  
Senator Davis - Aye  
Senator Stegner - Aye  
Senator Little - Aye  
Senator McKenzie - Aye  
Senator Stennett - Aye  
Senator Malepaei - Excused  
Senator Burtenshaw - Aye

**Senator Burtenshaw:** Thank you Senator . Any other business?

**VOTE:** The motion passed 8-0-1.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 9:09 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

MINUTES

**SENATE STATE AFFAIRS COMMITTEE**

- DATE:** Monday, February 14, 2005
- TIME:** 8:00 a.m.
- PLACE:** Room 437
- MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Malepeai.
- ABSENT/  
EXCUSED:** Stennett.
- GUESTS:** See attached sign in sheet.
- CONVENE:** Chairman Burtenshaw called the meeting to order at 8:04 a.m.
- RS 14952:** **Relating to Administrative Rules, to provide that no pending rule or portion thereof which has specified in its notice of proposed rulemaking that the rule would have a negative fiscal impact on the State General Fund greater than \$10,000 during the fiscal year when the pending rule will become effective, shall become final and effective until it has been approved by concurrent resolution.**
- Senator Tim Corder** explained that this provides for the notice of a fiscal impact on any rule greater than \$10,000. He stated that line 13 on page two adds, "...would have a negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year ..." He then provided the committee with a copy of the Attorney General's report.
- MOTION:** **Senator Davis** made a motion **TO PRINT** RS 14952. **Senator Geddes** seconded the motion.
- DISCUSSION:** **Senator Davis** commented that he was not sure that he would support this in this form, but added that this issue warrants additional discussion.
- VOTE:** The motion passed by unanimous voice vote.
- RS 14953:** **Relating to Administrative Rules, to require that an agency include in a notice of proposed rulemaking a citation to the specific section of the Idaho Code that has occasioned the rulemaking and a specific description, if applicable, of any negative fiscal impact on the State General Fund greater than \$10,000 during the fiscal year when the pending rule will become effective and to provide that the absence or accuracy of a fiscal impact statement shall not affect the validity or the enforceability of the rule; and declaring an emergency.**
- Senator Tim Corder** explained that this has a number of additions to it: the requirement of the citation of Federal Code; and lines 24-29 require the fiscal impact to be determined, "*(c) a specific description, if*

*applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided, however, that notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule;”* He pointed out that the language also prevents or mitigates collateral and added that the emergency clause gives agencies the ability to know that they have to begin this practice right after the session.

**MOTION:** **Senator Geddes** made a motion **TO PRINT** RS 14953. **Senator McKenzie** seconded the motion.

**VOTE:** The motion passed by unanimous voice vote.

**RS 14994:** **Stating findings of the Legislature and authorizing the Legislative Council to appoint a committee to undertake and complete a study of an alternative to restoring the Capitol building that would consist of enlarging the existing Capitol building by the addition of new building additions on the East and West ends of the existing Capitol building in order to maintain the Idaho Capitol building as a working Capitol building into the future, as well as to identify the estimated projected costs of any alternatives it might examine or recommend.**

**Senator Joe Stegner** explained that this offers an option in the current deliberations with the Ada County Courthouse and the block that it sits on. He stated that a couple of options already exist: raising the building and replacing with new; and to remodel and make it into a new annex. He pointed out that this is a third option which would decouple the Courthouse from the needs of the Capitol. He reported that this establishes an Interim Committee to calculate the feasibility and cost to add wings to the this building.

He explained that this opens considerations such as wings allowing access for the public, handicapped, and emergency to the ends of this building without the major modifications to the center core. He added that this building also needs new and more elevators that can be added along with new emergency stairways. He pointed out that there is no emergency exits or fire escape from the 3<sup>rd</sup> and 4<sup>th</sup> floors. He stated that new wings will provide handicapped access with a large room on the 1<sup>st</sup> floor on both wings and added that each wing could be configured to house the Legislature during the core restoration.

He explained that this RS provides for a study with a report back in one year, decouples the decision on the Courthouse and leaves that to others to decide on. He pointed out that the potential is obvious for the Courthouse with renovations for office space or to sell the building and retain the land with a lease/purchase back in 20 years. He added that there is a downside of an extension of one year. He stated that he doesn't know what the costs will be, but added that we need to be prudent in reviewing this option. He pointed out that the additional time is justified in light of the decision we are making and reported that we need solutions to benefit the occupants of this building, the State of Idaho and the people of Idaho. He stated that he is not suggesting that the wings are the best

and cheapest choice, but that they could be when taking into account the useful life of the additions for the next 100 years.

**Senator McKenzie** asked if there were any preliminary estimates for the total cost or the cost per square foot. **Senator Stegner** replied that he didn't have the total cost, but by using the rough numbers provided for the annex, we would be in the neighborhood of \$250 per square foot. He added that this is well over the cost for residential or other commercial but is based upon sandstone and a neoclassical architecture. He reported that the Interim Committee could research and report on the costs in one year. He then provided a small breakdown based on the information a week ago on SCR 101 with the inclusion of four stories, each 20,000 square feet per floor, and a basement for a total addition of 100,000 square feet. He then multiplied that by the \$250 to arrive at an estimate of \$25 million. He stated that this will provide additional square feet over the annex proposal while still arriving at the same price. He then pointed out that the size of each wing would be predicated by what would be architecturally correct.

**Senator Little** noted that one of the changes to the Capitol Mall is the purchase of the Borah Post Office and stated that the scope is now different. He asked if with regard to the 100-year Plan, if these two assets were taken into account. **Senator Stegner** answered that the Borah Post Office could wind up being a Senate complex and the Courthouse serving the same function for the House. He stated that the cost may not be the best for the long term but added that this all deserves review.

**Chairman Burtenshaw** asked if cost-wise, had Senator Stegner spoken with the Department of Administration. **Senator Stegner** replied that he had not discussed this with them at all.

**Mr. Charles Hummel** stated that he wholeheartedly supported this and remarked that he was well aware of the situation with housing the Legislature and pointed out that he was responsible for the remodeling of the 3<sup>rd</sup> and 4<sup>th</sup> floors 37 years ago. He explained that at that time, Legislative Council was chaired by Daryl Manning and added that the issue involved the size of the Legislature. He pointed out that there were three options regarding the Legislature: to make it smaller; make it the size it is today as provided for in law; or to double the size. He stated that by doubling the size, the House side floor would have been pretty crowded. He mentioned that this vision takes it one step farther and would permit the size of the Legislature to be increased. He added that he has no qualms in adding wings to this building and supported this proposal to thoroughly study this option. He reported that this keeps everything local and allows the Legislature to accomplish the public business in the most efficient way. He made a comment that every Capitol in the United States has, as business has increased, added wings, including the US Capitol. He pointed out that this proposal would be right along with historical development and added that the cost is the function of the size of the wings which will be determined in this study. He stated that the merit of the proposal leaves all options open and added that the time has come to take a long view. He concluded that it is unfortunate to set this project back a year, but added that this will save everyone from regret.

**Senator Geddes** noted that his firm has been involved in the Capitol over the past 100 years and asked if an addition was ever considered. **Mr. Hummel** answered that 37 years ago, it was not addressed and added that he didn't know why. **Senator Geddes** pointed out the unique characteristics with the geothermal heating and asked if there was enough of that resource to provide heat for the wings. **Mr. Hummel** replied that there is enough of the resource in the Borah Post Office resource and the City of Boise resource, which is looking for new customers. **Senator Geddes** noted that this building is on top of an old river bed and added that the groundwater is not too far below. He asked if **Mr. Hummel** would recommend above grade or a look at subgrade. **Mr. Hummel** responded that he didn't know of the geotechnical problems, but the flooding in the basement was due to a design error by his grandfather's french drains. He added that the parking garage at the Grove Hotel is fine.

**Chairman Burtenshaw** asked if we remodel the Courthouse without any additions and use it as agency space, did he have any idea of cost. **Mr. Hummel** replied that he relied on the numbers provided by the Division of Public Works showing the a remodel was \$1.6 million less. He stated that decoupling raises the possibility of other uses. He reported that the utility connection is desirable and added that the tunnel wouldn't be necessary which would provide a significant cost savings and open the Courthouse to other options. **Chairman Burtenshaw** asked if by putting wings on the Capitol would we, in essence, be sealing the fate of the Courthouse since we are not able to do both. He noted that we might be spending less on the Courthouse by not doing extensive remodeling, bring the state offices into it and not pay leases to private companies. **Mr. Hummel** commented that a thorough renovation and modest addition to clean up the State Street side would be all that was necessary. He pointed out the Capitol Mall Master Plan that was established four or five years ago, surveyed the needs of the state in the mall area and added that a lot of very useful space can be arranged in that building that is clearly an asset.

**Chairman Burtenshaw** asked Mr. Larry Osgood with the Department of Administration if he had any idea how much space the State leases outside of the Capitol Mall. **Mr. Osgood** answered that about 800,000 square feet is leased outside of the mall area and reported that we have more agency needs than we would have space for even if we did both buildings. He added that for example, the Tax Commission leases 110,000 square feet.

**Chairman Burtenshaw** introduced the students from Bishop Kelly and thanked them for coming.

**MOTION:** **Senator Stegner** made a motion **TO PRINT RS 14494** and send it **DIRECTLY TO THE FLOOR**. **Senator Davis** seconded the motion.

**DISCUSSION:** **Senator Little** asked if any of this would preclude the committee from looking at the entire mall and revisiting the master plan. **Senator Stegner** explained that the language does not direct the committee to do that. **Senator Little** asked if it was in the purview of the Legislative Council to explore this option. **Senator Davis** stated that the Pro Tem and the Speaker generally create a task force.

**Senator Darrington** noted that ten years from now we will still be talking about the Ada County Courthouse.

**Senator Geddes** noted that this was a bit broad of the how the committee would be formed and asked if Senator Stegner had any thoughts with regard to the size, who participates, and who appoints the members.

**Senator Stegner** pointed out that the language is consistent with the prior interim committee resolutions but added that he would recommend 10 members: 5 from each chamber with the nucleus as the leadership of each house. He suggested, however, that this would be up to the Pro Tem and the Speaker. **Senator Davis** commented that this used to be defined in the resolution but added that this is extremely consistent with what has been done over the past few years.

**Chairman Burtenshaw** asked if SCR 101 and SCR 102 would need to be addressed. **Senator Stegner** replied that he hoped to send this to the floor in the 6<sup>th</sup> Order of business for one day and then to address it in the 10<sup>th</sup> tomorrow. He pointed out that SCR 101 has been held in the 10<sup>th</sup> Order and commented that he is prepared to make a motion to put SCR 101 at the bottom of the order with the thought that when this passes, we would send SCR 101 back to the committee to be held until later.

**VOTE:** The vote was 7-1-1. The motion passed.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 8:56 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

## MINUTES

### SENATE STATE AFFAIRS COMMITTEE

- DATE:** Wednesday, February 16, 2005
- TIME:** 8:00 a.m.
- PLACE:** Room 437
- MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Stegner, Little, Stennett, Malepeai.
- ABSENT/  
EXCUSED:** Davis.
- GUESTS:** See attached sign in sheet.
- CONVENE:** Chairman Burtenshaw called the meeting to order at 8:02 a.m.
- APPROVAL OF  
MINUTES 2/9/05:** **Senator McKenzie** made a motion to approve the Minutes of February 9<sup>th</sup>. **Senator Geddes** seconded the motion.
- The motion passed by unanimous voice vote.
- RS 14949:** **Relating to contracts by governmental entities; by the addition of a new section to provide additional requirements for persons or entities entering into contracts with the state, to prohibit the state from awarding a contract to a contractor or subcontractor who performs the work at a site outside of the United States, to provide exception, to provide for damages and to provide for civil penalties.**
- Senator Stennett** explained that the Department of Health and Welfare's Food Stamp Division has been outsourced to India. He pointed out that we need to develop a call center in Idaho to keep jobs in Idaho or at least in the United States. He reported that this requires the agencies to make contracts in the United States and also provides penalties.
- Senator Geddes** asked with respect to state agencies, couldn't this be done with intent language on the appropriations. **Senator Stennett** replied that this would be up to the Pro Tem if the Chairman of Finance thought it was o.k. and added that it could be done within the intent language.
- MOTION:** **Senator Darrington** made a motion **TO PRINT** RS 14949. **Senator Malepeai** seconded the motion.
- DISCUSSION:** **Senator Stegner** noted on the Statement of Purpose that on line three, *"This measure would require that state agencies may not contract with contractors or vendors who perform services offshore that could easily be performed by those residing in the United States."* He remarked that he suspects that this would eliminate Micron for any service or product. **Senator Stennett** stated that if Micron was subcontracting a service for the State outside of the United States, then they would need to check it.

**Senator Stegner** remarked that he was only looking at the SOP and noted that in the fifth sentence, it reads, “*who perform services offshore*” and stated that this might be limiting contracting with our own Idaho companies. **Senator Stennett** directed his attention to subsection 1, line 17, “...*awarding a contract to a contractor or a subcontractor who performs the work at a site outside the United States...*” He pointed out that Health and Welfare has a call center outside of the United States.

**Senator Darrington** commented that if we print this, we will find the holes.

**Senator McKenzie** noted the civil penalty of \$50,000 and stated that usually protections are attached. **Senator Stennett** replied that the intent was to go after large companies and not individuals and added that he wanted the penalty to be large enough to get attention. **Senator McKenzie** noted that in a criminal case, if there are punitive damages, there are usually protections.

**Senator Little** noted the frustration with the Ethanol bill because it did not mandate that the ethanol be produced in Idaho. He stated that with Micron, we need to be careful to not penalize some companies in the state and added that there may be unintended consequences. **Senator Stennett** replied that Micron will be the first to check it out and noted that if there are holes, he will pull it.

**VOTE:** The motion passed by unanimous voice vote.

**GARVEE BOND  
PRESENTATION:**

**Mr. Chuck Winder**, Chairman of the Idaho Transportation Board reported that the Department of Transportation has proposed a budget of \$478 million to JFAC for this year and pointed out that there is a \$6 to \$8 million backlog of road projects in the state.

**Mr. Winder** reported that the vision of the Department and the Governor is the following projects: State Highway 16 extension from I-84 to South Emmett and on to Mesa; U.S. 20 from St. Anthony to Ashton; U.S. 30 from McCammon to Soda Springs; State Highway 75 from Timmerman Hill to Ketchum; I-84 from Caldwell to Meridian and from Orchard to Isaacs Canyon; U.S. 93 Twin Falls Alternate Route to the New Snake River Crossing west of Twin Falls; U.S. 95 from State Highway 1 to the Canadian Border; Garwood to Sagle; Worley to Setters; Thorn Creek Road to Moscow; and Smokey Boulder to Hazard Creek North of New Meadows, which was damaged by flooding.

**Mr. Dave Ekern** shared that the key financing tool to drive this vision was GARVEE Bonding or “Grant Anticipation Revenue Vehicle”. He stated that these bonds are pledges of a federal stream of revenue that does not pledge full payment. He reported that these are controlled through Congress and were established nearly 70 years ago. He stated that 16 other states use these for a total of \$10.4 billion since 1998 and added that these bonds are a very popular tool.

He stated that as we move into a project, the system performance should not be jeopardized with the current 84% pavement protocol. He pointed out that within this process, the Board annually adopts commitments to

improvement with improvement in the investments focusing over the long term. He stated that this would not implement a program that would eliminate Idaho contractors. He further stated that this investment would include a total of 13 projects and would not raise taxes. He pointed out that the Department is assuming no growth in taxes or revenue in any of the project estimates and added that these bonds will also not be used as a vehicle to grow the Department for delivery. He concluded that the GARVEE Bonds are subject to the same rules as federally aided projects.

He reported that Idaho enjoys a variable match with federal funds and explained that the federal government provides 92% of the funding with Idaho matching at 8%. He stated that the total for the Department budget is \$477.8 million. He then provided the following breakdown: \$285.4 million for highway investment programs statewide for enhancements and overlays; of which \$65.2 million goes to local roads; \$58.7 million for system preservation; and \$161.5 million for system improvements and expansion. He stated that the current system preservation is at \$51.0 million and added that with the \$161.5 million they could only do 88 miles.

**Mr. Ekern** explained that the investment benefits would include: 75,200 jobs in construction and services; \$4.6 billion to the Idaho economy; \$2.9 billion or more in additional sales in manufacturing, business services, service industry, tourism and recreation, and agriculture. He stated that the effects will continue past the construction period with an improved system that will be a major selling point to companies looking for a cost-effective environment. He concluded that the "pay-as-you-go" would require a \$6 billion investment.

He shared that the Department has estimated the following assumptions:

- 3.3% estimated annual growth rate in federal revenues, added that the funding growth is at 6.1% and noted that it could go up an additional 3.9% by 2009.
- 0% estimated annual growth rate in state revenues for 26 years but explained that they have understated these by 2%.
- 4.75% interest rate of bonds. He explained that they range between 3.1 and 5.6% and added that they are currently 4.3%.
- Each bond will be paid over an 18-year period and range from 2 to 20 years.
- 10% state participation in interest, underwriting fees, and state match.
- First bond anticipated in January to May of 2006.
- Final bond to be issued in 2014.
- Final debt-service payment in 2032. He added that this is based on the 26 year projection.

He explained that the 2004 value of projects currently totals \$1.64 billion with \$2.02 billion in program costs allowing for inflation up to 2014, and bond payments to come in at about \$3.06 billion in principal and by using 4.75% interest for the next 26 years.

**Mr. Ekern** stated that these are not blocks of money that are untied, but are specifically tied to projects such as preliminary engineering, right of way, and construction. He added that at no point should the principle or the interest dominate. He directed the attention of the committee to page

8 of the bound handout and explained the different colors of the table and what they represent. He reported that the lowest blue section is the commitment to local and state, is protected and grows as the federal aid grows. He added that this totals \$65 million. The next section up in magenta represents no growth in state funds. The Light blue/green section represents the current STIP. The dark green section represents the baseline which will grow at 3.3% annually and is available federal money for projects. The light green section represents the principle and interest payments and the white section represents the estimate of what we will invest in the GARVEE bonds over the life of bonding.

**Mr. Ekern** directed the attention of the committee to page 10 of the bound handout and explained the investment impact analysis. He stated that in FY 2014 and 2015, we will reach the peak of the principle and interest at 42% of the federal rate. He added that this will be 29% of the total operating budget for the Department but pointed out that 75% of the Department's budget will still be available for routine maintenance and other routine projects.

**Senator Geddes** stated that money isn't the issue oftentimes and asked if Mr. Ekern was aware of the situation with CSI where they have the money to put in a new traffic light but the process has stalled it. **Mr. Ekern** replied that one of the factors that is slowing the process is that the Department has a number of aging professionals who are retiring and taking with them the knowledge and experience in moving projects in a timely manner. He added that this GARVEE bonding process will allow the Department to streamline projects. **Senator Geddes** noted that there was \$530,000 in the federal money to improve the access to CSI and stated that it will take ITD a year and a half to start the project. **Mr. Ekern** responded that this money was given to the city and remarked that it is taking time for that money to be transferred to ITD.

**Senator Little** asked if we were a 137% Donee State. **Mr. Ekern** replied that there are three different types: Donor, Donee, and Minimum Guarantee. He stated that we enjoy a sliding match scale where we get back anywhere between \$1.31 and \$1.37 for every dollar that we contribute. **Senator Little** asked if people in the more populous states, like California, could ask their Congressmen to change that so we only get dollar for dollar. **Mr. Ekern** answered that this would have to go through Congress and noted that such a change is unlikely. **Senator Little** commented that this is quite a bit of debt and asked where the cash for the 10% contribution would come from. **Mr. Ekern** replied that it would come from the gas tax.

**Mr. Winder** stated that we won't borrow the full amount at once and added that they are not asking for approval of the whole program, but stated that they will visit the legislature annually for approval. He directed the attention of the committee to the bump chart and explained that the \$100 million represents 2% in 2006. He added that they can adjust the program if the rates change.

**Senator Little** asked where we are with the other states and the percent that they are bonded. **Mr. Ekern** answered that it is up to 48% and noted that California is 3.3% while New Jersey is 66%. He added that California

could be higher than these figures based on timing. **Senator Little** quoted that there is no such thing as a free lunch and asked if insurance makes bonds cheaper. **Mr. Gerald Hunter** stated that there is a basic credit backing from coverage ration. He remarked that without insurance, the rating is "A". He explained that we can purchase bond insurance and the rating goes up to "AAA" with the interest rate being lower. **Mr. Winder** added that the legislation does not require insurance so that we can adjust to markets.

**Senator Stennett** asked about the cost for acquiring easements and what was the average cost annually. **Mr. Ekern** responded that they assumed an inflation rate of 5.56% with the costs, labor, and inflation built in. **Mr. Winder** added that the statewide average is 13%. **Senator Stennett** asked if the 13% was the cost for the land. **Mr. Winder** replied that it was. **Senator Stennett** asked if the GARVEE Bonds were part of the tax exemption. **Mr. Ekern** said that they are. **Senator Stennett** noted that projects can be deleted by the Department or the Legislature and asked if there was a guarantee that they would be built. **Mr. Ekern** agreed and stated that this would be based on the eligibility of the project and would not guarantee that any would be built. **Senator Stennett** asked who decides. **Mr. Ekern** answered that the way the system works is that the Board has the decision of the projects. He stated that some have a greater environmental impact or opposition and added that federal funding may change. **Senator Stennett** asked them to give a 30,000 foot overview of the other financing options rather than GARVEE. **Mr. Hunter** answered that Goldman Sachs talked of others, but noted that those required a pledge from the state whereas the GARVEE only used federal backing where the State does not have to pledge any backing.

**Senator McKenzie** asked about multi-modal and if there was any projects to encourage bike paths or public transportation for larger areas. **Mr. Ekern** replied that there are some projects, but that others can be built into the designs of the projects. **Senator McKenzie** asked if other states use GARVEE bonds for public transportation. **Mr. Ekern** answered that New Jersey had some transit in their bonds and added that even cities can use GARVEE bonds.

**Senator Darrington** noted the 3.3% increase in federal money and the 0% in the gas tax and asked if there will still be some increased money through the years. **Mr. Ekern** answered that there would be.

**Senator Malepeai** asked if there were contracts geared towards local contracts so that local companies could bid on them and what kinds of services those contracts would be for. **Mr. Ekern** replied that they size the contracts between \$10 to \$500 million so that Idaho contractors can compete or partner with others. He stated that on the engineering side, they use consultants. **Senator Malepeai** asked if there were any provisions for encouraging local hires. **Mr. Ekern** remarked about the Davis Bacon laws and how they can hire anywhere. He added that they do attempt to hire locally.

**ADJOURN:**

There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 9:24 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

## MINUTES

### SENATE STATE AFFAIRS COMMITTEE

- DATE:** Friday, February 18, 2005
- TIME:** 8:00 a.m.
- PLACE:** Room 437
- MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, Malepeai.
- ABSENT/  
EXCUSED:** None.
- GUESTS:** See attached sign in sheet.
- CONVENE:** Chairman Burtenshaw called the meeting to order at 8:04 a.m.
- PAGE  
APPRECIATION:** **Chairman Burtenshaw** presented a letter of recommendation from the committee and a Senate watch to our Committee Page, Jedediah Bigelow. He thanked Jed for his diligent work and helpful nature and wished him well in the future.
- APPROVAL OF  
THE MINUTES  
2/14/05:** **Senator McKenzie** made a motion to approve the Minutes of Monday, February 14, 2005. **Seantor Malepeai** seconded the motion.  
  
The motion passed by unanimous voice vote.
- HCR 6:** **Stating findings of the Legislature concerning the program of America's Promise, designating the Idaho Legislature to be a Legislature of promise and encouraging legislators to support communities of promise to deliver the five basic promises to Idaho's Youth.**  
  
**Representative Mack Shirley** introduced Kelli Huston who is the Director of Serve Idaho. He explained that this legislation outlines the five promises to youth: ongoing relationships with caring adults; Safe places with structured activities during non-school hours; Healthy start and future; Marketable skills through effective education; and Opportunities to give back through community service. He reported that Idaho became one of the first states to adopt this promise and currently has 13 communities, with Meridian soon to make that 14, participating. He pointed out this list on the back of the resolution.  
  
**Representative Shirley** shared a few of the programs that are being provided which include after school programs for youth, a hardback book a month mailed to kindergartners, Drug-free community support programs, the Mayor/Youth Advisory Council, as well as Parents as Teachers. He reported that in his hometown, there are 250 parents acting as teachers with another 600 on a waiting list. He added that Idaho's Brightest Stars Program also included a number of other programs. He pointed out that many problems can be solved at the community level and added that this sends a positive message.

**MOTION:** **Senator McKenzie** made a motion to send HCR 6 to the floor with a **DO PASS RECOMMENDATION**. **Senator Darrington** seconded the motion. The motion passed by unanimous voice vote.

**S 1115:** **Relating to distributions of moneys in the State Liquor Fund; to clarify that the Liquor Account is now the Liquor Fund, that moneys in the State Liquor Account are to be deposited in the Liquor Fund, to revise the distribution of moneys in the State Liquor Fund, and to provide that sales tax on liquor be paid to the Liquor Fund.**

**Mr. Dyke Nally** read the Statement of Purpose and explained that this changes the balance of the funds with regard to the cities and counties.

**Chairman Burtenshaw** asked if the Liquor Dispensary had heard from the cities or the counties. **Mr. Nally** replied that he had just recently. He stated that the idea for this came from the need to create balance since the distribution had not been changed since 1985. He reported that it is now 75% to the cities and counties and 25% to the General Fund and added that in 1985, when it was originally set up it, the balance was a 50/50. He stated that when he asked who should bring this up, they told him to go ahead. He apologized for not getting in touch with the cities and the counties before.

**Senator Davis** asked if there would be a problem to send it to the 14<sup>th</sup> Order to allow the players to check for other formulas. **Mr. Nally** answered that this would be fine. He stated that the fixed amounts in this legislation are 60% to the cities and counties and 40% to the General Fund based on populations of the cities. **Senator Davis** asked if Mr. Nally would be willing to participate in checking formulas. **Mr. Nally** replied that he would be happy to.

**Mr. Dan Chadwick**, Executive Director of the Idaho Association of Counties testified that they oppose this and suggested that the committee hold the bill. He stated that Idaho counties spend 50% of those funds for community college tuition which totals over \$3 million per year and that the rest goes into jails and other public needs. He remarked that the counties will also be at the table to discuss the increase in catastrophic care deductibles that are expected to be between \$3 and \$4 million.

**Senator Davis** asked if we take this to the 14<sup>th</sup> Order, and find that the Dispensary is posing a proper question to discuss, would the Counties be willing to partner in finding an amicable formula. **Mr. Chadwick** replied that the would, absolutely.

**Senator Malepeai** asked if Mr. Chadwick would agree to go to the 14<sup>th</sup> Order. **Mr. Chadwick** responded that he would prefer to hold this and to start over from scratch and added that the appropriate response is to hold this in committee. **Senator Malepeai** noted that we do, as a state, have the responsibility to provide the money for cities and counties to operate and added that this legislation would impair this responsibility.

**MOTION:** **Senator Malepeai** made a motion to **HOLD S 1115** in committee. **Senator Darrington** seconded the motion.

**DISCUSSION:** **Senator Davis** commented that he is more interested in the discussion and not so much in the method to facilitate the discussion. He stated that if the Idaho Association of Counties and the State Liquor Dispensary are willing to join together to work this out, he is inclined to support the motion. He suggested including a committee member or two in the discussions. **Mr. Chadwick** added that this would be a great idea. **Senator Malepeai** strongly encouraged that as well.

**VOTE:** The motion carried by unanimous voice vote.

**H 59:** **Wine Sales - Amends existing law relating to the sale of wine to remove the requirement that a distributor may only sell or deliver wine to a retailer in case lots.**

**Representative Jim Clark** explained that this came from a constituent who owns a small deli. He pointed out that 23-1327 declares that wine must be sold in a case lot, *"No distributor shall sell or deliver wine to a retailer of a quantity less than a case lot. For purposes of this section, a "case lot" shall mean that quantity of containers of equal size containing wine which are equal to the smallest unit or quantity of containers of wine received by a distributor from an importer. Nothing contained in this section shall prohibit a distributor from mixing brands or types of wine to make up a case lot for purposes of sale or distribution to the retailer."* He stated that this legislation would strike out lines 9-15 (that are noted above) and makes a grammatical correction on the last line from "which" to "that". He pointed out that this was created in 1972 and that this repeal of language would allow for the sale of less wine, not more.

**Senator Davis** asked what was the public policy behind the case lot. **Representative Clark** answered that in 1972 there was a lot of jug wine bottled. He added that the distributors support this change and reported that the original legislation was written by Bill Roden in 1972. **Senator Davis** asked for the definition of "jug wine". **Representative Clark** replied that it was wine sold in a large jug.

**Senator Stegner** asked if he could assure the committee that there is no implications for taxes on wine. **Representative Clark** answered that there was no nexus whatsoever.

**Senator Darrington** noted that if a retailer can't handle a case, then their sales aren't so good. **Representative Clark** replied that this is primarily an inventory and cash flow problem for small businesses. **Senator Darrington** asked if this was a matter of sheer space and volume. **Representative Clark** agreed that it is.

**Senator McKenzie** asked if this applied to those who sell by the drink. **Representative Clark** answered that it does.

**MOTION:** **Senator Stegner** commented that with the thousands of different bottles of wine, this is a good idea and made a motion to send H 59 to the floor with a **DO PASS RECOMMENDATION**. **Senator Stennett** seconded the motion.

**DISCUSSION:** **Mr. Bob Corbel** with the Idaho Wineries stated that this also helps the

distributors and other small wineries who can now sell smaller quantities to restaurants and added that this will stop the big discounts on the extra bottles. He stated that this will allow the small wineries to make direct contact with restaurants.

**Ms. Pam Eaton**, President of the Idaho Retailers Association testified that they support this bill.

**Senator Stennett** commented that with the high dollar prices on some bottles, the restaurants could now buy a couple of those instead of a whole case.

**Senator Davis** asked if the current statute wouldn't prohibit that mixture in a case. **Mr. Dyke Nally** replied that the Dispensary does this now. He stated that they have some small stores around the state, like the one in Plummer, Idaho, that buy two higher priced wines as a single pack or a split case. He pointed out that the restaurants and bars can order what they want and added that he thinks that this is a good idea.

**Senator Little** asked if this will help the small distributors and the small buyers. **Mr. Nally** answered that it will.

**VOTE:** The motion carried by unanimous voice vote. Senator McGee will carry on the floor.

**S 1126:** **Highway District Board of Commissioners - Repeals existing law relating to open meetings and executive sessions of highway district boards of commissioners.**

**Mr. Stuart Davis**, Executive Director of the Idaho Association of Highway Districts explained that in over 20 years of doing this type of work, this is the first time that he is taking a law off of the books. He passed out copies of the two codes and explained that this legislation repeals 40-1306 sections (a) "*Board of highway district commissioners" means a quorum of two (2) or more highway commissioners in a highway district organized under the provisions of this chapter and three (3) or more highway district commissioners in a highway district organized under the provisions of section 40-1401, Idaho Code.* and (b) "*Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a board of highway commissioners is required, at any meeting at which a quorum is present, but shall not include those ministerial or administrative actions necessary to carry out a decision previously adopted in a meeting held in compliance with this section.*" and add that Idaho Code 67-2341, that is updated often, will now be the one place for the open meetings law.

**Senator Davis** remarked that he has no problem with the target of trying to eliminate duplicity. But asked if Mr. Davis was representing that if this passes, Idaho Code 67-2341 would apply to all of the highway districts.

**Mr. Davis** answered that he could amend 1306 (a) to say that it will now refer to 67-2341 if the committee wanted. **Seantor Davis** asked if he could provide a line-by-line comparison showing what will be covered under 67-2341 with anything in 40-1306 not contained in the open

meeting laws. **Mr. Davis** noted that 40-1306 (a) regarding the definition of “quorum” is also covered in 67-2341. **Senator Davis** stated that the burden and open meeting standard would by no exception be less by repealing 40-1306 and adopting 67-2341. **Mr. Davis** remarked that he is willing to do a point-by-point analysis for the committee if they agree to hold it for one week. **Senator Davis** stated that he would like to know with certainty that this would not be lessening the standard. **Mr. Davis** asked the committee to hold this legislation for a week so that he could provide that analysis.

**Senator Stegner** noted that this analysis might be useful for further presentations on the floor and over in the House. **Mr. Davis** promised that he would provide the information.

**MOTION:** **Senator Stegner** made a motion to hold S 1126 for one week. **Senator McKenzie** seconded the motion.

**DISCUSSION:** **Mr. Davis** stated that he will do the analysis based on Title 40 and show where it is in Title 67.

**Senator Davis** asked if this could be held for a time certain at the discretion of the chair.

**MODIFIED MOTION:** **Senator Stegner** modified his motion to be at the discretion of the chair. **Senator McKenzie** agreed to the modification.

**DISCUSSION:** **Senator Little** asked if they live by both and if there was no specific exemption for the highway districts in Title 67. **Mr. Davis** stated that there are more options in Title 67. **Senator Little** commented that Title 40 must be the default rules. **Mr. Davis** agreed.

**VOTE:** The motion carried by unanimous voice vote. Mr. Davis will report back to the Chairman for rescheduling on the agenda.

**INTRODUCTION OF NEW PAGE:** **Chairman Burtenshaw** introduced the new page for the second half of the session, Mr. Chad Reisen of Grace.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 8:51 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

## MINUTES

### SENATE STATE AFFAIRS COMMITTEE

**DATE:** Monday, February 21, 2005

**TIME:** 8:00 a.m.

**PLACE:** Room 437

**MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, Malepeai.

**ABSENT/  
EXCUSED:** None.

**GUESTS:** See attached sign in sheet.

**CONVENE:** Chairman Burtenshaw called the meeting to order at 8:06 a.m.

**RS 15050:** **Relating to Naturopathic Physicians; to provide Legislative purpose and intent, to define terms, to provide when a license is required, for scope of practice, prohibitions, exemptions, disclosure by those providing natural health care services, to create a Board of Naturopathic Medical Examiners, to provide powers of duties of the Board, to establish a Naturopathic Medical Formulary Council, to provide fees, qualification for licensure, license standards for other jurisdiction's applicants, an investigation, a hearing, for subpoenas, disciplinary action, a license denial or revocation procedure, enforcement penalties and severability, and to provide reference to the Board of Naturopathic Medical Examiners.**

**Mr. Larry Benton** explained that he is here representing the Idaho Association of Naturopathic Physicians and the Coalition of National Health. He requested that the committee print this RS and refer it to the Senate Health and Welfare Committee. He stated that they have achieved support and neutrality from others in the medical field. He reported that naturopathic health care has existed for over 100 years. He pointed out that naturopaths must pass a pre-med program, 4 year graduate program from an accredited school and spend 2 years in supervised clinical training or internship. He reported that there are currently 28 state or district licensing programs in place in Idaho.

**Mr. Benton** directed the attention of the committee to page 2, line 10 subsection (6) "*while the physician and surgeon is authorized to treat the sick and afflicted by any and all methods and means, the naturopath, the chiropractor and the osteopath are limited in their treatment to employment of their particular systems.*" He asked for the insertion of "and" after naturopath, the deletion of the comma after naturopath, and the deletion of "*and the osteopath*" on line 11.

**Senator Malepeai** asked what licensing does now. **Mr. Benton** answered that it would allow them to do limited things since naturopathy is restricted care. He pointed out that the limitations include that they can't use the pharmacy formulary or do minor office procedures. He stated that

this will make it so that they can work with medical doctors and also will allow the state to regulate them. **Senator Malepeai** asked how they would regulate them. **Mr. Benton** replied that this will allow the identification of those who are practicing naturopathic medical work and pointed out that there is already a law regulating the practice of medicine in 1804.

**Senator Stegner** asked **Senator Darrington** if he had ever seen an RS modified by a committee. **Senator Darrington** explained that it could be done in this fashion: to send it to print with the modifications requested by the sponsor, have the Committee Secretary take it to Jeannine, then it would come back to the Committee Secretary with the changes. The Committee Secretary would take it back down to the Secretary of the Senate's Office to be read across the table and printed.

**Senator Geddes** noted that he knew of some naturopaths who have received some training at a 3-day seminar held in Jackpot, Nevada with an additional day for a post doctorate degree. He stated that he thinks the intent of this language is to lump these with doctors who have spent far more time and money and need to be protected. He added that he likes the work that has been done here by Mr. Benton.

**MOTION:** **Senator Geddes** made a motion **TO PRINT** RS 15040 with changes. **Senator Stegner** seconded the motion.

**VOTE:** The motion carried by voice vote with **Senator Darrington** voting no.

**H 24:** **Fire Protection Districts - Amends existing law to provide that the fiscal year of a fire protection district shall commence either on the first day of October of each calendar year, or on the first day of January of each calendar year, as established by resolution of the fire protection board of commissioners.**

**Senator Patti Anne Lodge** introduced Mr. Andy Peterson with the Nampa Rural Fire District. **Mr. Peterson** explained that he is the Subdistrict One Commissioner. He stated that they have an agreement with the Fire Department of Nampa City and that they also share the budget with them. He added that their budget follows Nampa City.

**Mr. Ron Anderson**, Fire Chief for Nampa Fire Department urged the support of the committee by explaining that this allows flexibility to start their budgets either on January 1<sup>st</sup> or October 1<sup>st</sup>.

**Senator Stegner** asked if all municipalities use the same calendar date. **Mr. Anderson** replied that most use October 1<sup>st</sup>. **Senator Stegner** asked if this allows other dates in statute with the possibility of picking up all options. **Senator Lodge** responded that the dates can either be January 1<sup>st</sup> or October 1<sup>st</sup>. She added that this gives the rural districts the flexibility to comply with state law.

**Chairman Burtenshaw** asked if this catches all fire districts. **Mr. Peterson** replied that it catches at least 95% but added that the rest could fall in easily. **Chairman Burtenshaw** asked if every fire district was in the city. **Mr. Peterson** answered that they are all rural but that they have joint powers and an agreement that the city can come out and help during a

fire. **Chairman Burtenshaw** asked if this was prevalent throughout the state. **Mr. Anderson** said that it is and added that the districts can align with the city fire departments.

**Senator Stegner** noted that his only concern is that the October date picks up all districts. He stated that they could have written this as any date and added that he is concerned that they will be back next year with another date. **Senator Lodge** mentioned Article 7 of the Constitution "SECTION 1. FISCAL YEAR. The fiscal year shall commence on the second Monday of January in each year, unless otherwise provided by law." She added that with 153 Fire Districts, they could be back next year.

**Mr. Mike Nugent** explained that this was to pick up and fix a problem with the Constitution and Title 50 where fiscal years are separated into: Cities in January, State in July, and Counties in October. He stated that the only city that may be a wild card would be Bellevue who does theirs by charter.

**Senator Little** noted the Constitution providing for the second Monday in January and asked if this was just doing as otherwise provided. **Senator Lodge** replied that it is.

**MOTION:** **Senator Little** made a motion to send H 24 to the floor with a **DO PASS RECOMMENDATION**. **Senator Darrington** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**H 39:** **Search and Rescue - Amends existing law relating to search and rescue operations to provide that pilot registration fees may also be used for pilot safety programs; to transfer authority for coordination of general search and rescue operations to the chief of the Bureau of Homeland Security; and to clarify that aerial search operations shall be coordinated by the Idaho Transportation Department, Division of Aeronautics.**

**Mr. Bob Martin** with the Aeronautics Division of the Idaho Department of Transportation explained that this transfers Search and Rescue under the Bureau of Homeland Security. He stated that Idaho Code places the responsibility on Search and Rescue that is implemented by the Aeronautics Division. He added that this creates a two notification system but does not remove the Aeronautics Division from Search and Rescue of aircraft or airmen. He pointed out that the Bureau of Homeland Security has field offices to communicate with the military and police among others. These offices use local resources and emergency responders and added that this would enable both the state and local resources to use the same system with responding. He reported that there is a \$12 bi-annual registration fee that is only used for Search and Rescue within the Division of Aeronautics. He stated that this permits the use of that money for that and also for safety programs for pilots.

**Senator Little** asked if the Department expenses are associated with the Search and Rescue coordination and if this was a liberalization of how the money would be used or a realization of how the money is actually used now. **Mr. Martin** replied that it is a liberalization since they will take the excess money and use it for pilot safety programs. **Senator Little** asked

how the pilots think of this change. **Mr. Martin** answered that the Civil Air Patrol is the only organization that does safety programs and added that the Idaho Aviation Association has provided a letter of support for this legislation.

**MOTION:** **Senator Malepeai** made a motion to send H 39 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Stegner** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**H 22:** **Codifier Corrections - Amends existing law to "clean up" various code sections and subsections by renumbering those code sections or subsections that were redesignated by the compiler of the Idaho Code as a result of multiple amendments to code sections prior to the 2005 Legislative Session.**

**Mr. Mike Nugent**, with Legislative Services explained that this is the Codifier's bill and includes 50 pages with no substantive changes. He pointed out that on page 24, lines 4-5 is a repeal of the surplusage definition for 33-5202.

**Mr. Nugent** explained that the Idaho Code Commission's duties are to find conflicting section or duplicate sections and clean them up. He pointed out that in the 1980s, the licensure bills had a lot of the same numbers that were passed. He reported that this will clean those amended sections up.

**MOTION:** **Senator Stegner** made a motion to send H 22 to the Floor with a **DO PASS RECOMMENDATION**. **Senator McKenzie** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**HJM 2:** **Nuclear Weapon Tests - Stating findings of the Legislature and asking that, upon verification of the effects of nuclear weapons testing on Idaho residents, "downwinders" be compensated in the same manner and to the same extent as those individuals previously compensated for similar exposures.**

**Senator Little** explained that in the 1950s and 1960s during the above ground test in Nevada the weather patterns brought nuclear fallout to Idaho, Arizona, Nevada and Utah. He stated that Arizona, Nevada and Utah were granted payments under RECA through Congress.

**Senator Little** shared a story about an event in Emmett where one of his friends had two brothers and a sister all with cancer. However, he did not have cancer because he was lactose intolerant. He pointed out that most of those affected had consumed whole fresh milk from local dairies. He then introduced Mrs. Sharon Garmon.

**Mrs. Garmon** stated that she grew up on a dairy farm in Gem County and was born in 1951. She pointed out that four of the five hottest counties in the Nation are in Idaho with between 11 and 13 rads. She explained that Congress passed the Radiation Exposure Compensation Act and that this legislation asks for our Congressional delegation to have the State of

Idaho included in this Act.

**Mrs. Garmon** reported that on June 6, 1952, she was exposed to 70 rads, or the equivalent of 10,000 chest x-rays. She stated that she came from a family with no cancer history and recounted that at the age of 39 she was struck with thyroid cancer, at the age of 48, breast cancer and at the age of 51 with liver and bone cancer that metastasized from her breast cancer.

**Mrs. Garmon** explained that there are 13 cancers that are recognized and compensated for by RECA that was passed in 1990 and amended in 1997 and 1998. She shared that on November 6<sup>th</sup> last year there was a hearing with the National Academy of Sciences with Senator Crapo where eight hours of testimony was heard by between 300-400 people. These testimonies included stories of families inflicted with any or many of these 13 types of cancer. She remembered grass covered with radiation as a child. She also shared that her father, a dairy farmer, testified at his embarrassment for giving his children whole fresh milk carrying the radioactive isotopes. She reported that he passed away four weeks ago today. She concluded by saying that she was asking for help from the committee and our Congressional delegation to have Idaho recognized as one of the states under RECA.

**Representative Carlos Bilbao** testified that he had two cousins, an aunt and an uncle who all died from cancer and were dairy farmers on the bench. He also recalled snow in the middle of summertime and urged support for this legislation.

**Mrs. Margaret Satterlee** testified that she grew up in Bellevue as a fifth generation native. She was one of six children born between 1950 and 1968, who ate from their own garden and bought beef and milk from a local farmer. She reported that her sister, Rose, was a 19 year old cross country star who died of ovarian cancer and added that Rose would have been 45 this past December.

**Mrs. Satterlee** reported that her father died of lung cancer four years ago, yet never smoked a cigarette in his life. She stated that her father was in WWII in the Pacific theater.

**Mrs. Satterlee** explained that there were four girls in her family: one had an ovarian cyst, one Thyroid problems, Rose died of ovarian cancer, and her, who has had three non-cancerous tumors that were removed at age 14, age 17 and at the age of 30, she had a hysterectomy. She shared the motto of Bellevue, "People in Bellevue only die of two things: car wrecks or cancer". She also shared that at the time her sister was at MSTI, there was a male friend of theirs who was the same age as her sister, grew up on the same street and also had testicular cancer.

She stated that it was not just her community that suffered, but that there are communities all over Idaho that suffered as well. She explained that what struck her most about the heart wrenching testimony to the Board of Radiation Effects in Boise, was that it was like walking down any main street in Idaho. It was middle America: old and young, rich and poor, white-collar and blue-collar. Idaho's men and women. She is not here for

the money, and added that no amount of money could change what her family and the people of Idaho have gone through. She was here for an acknowledgment and an apology from the government for what it did to her family and to countless others.

**MOTION:** **Senator Little** made a motion to send HJM 2 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Stennett** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 9:06 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

## MINUTES

### SENATE STATE AFFAIRS COMMITTEE

- DATE:** Wednesday, February 23, 2005
- TIME:** 8:00 a.m.
- PLACE:** Room 437
- MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, Malepeai.
- ABSENT/  
EXCUSED:** None.
- GUESTS:** See attached sign in sheet.
- CONVENE:** Chairman Burtenshaw called the meeting to order at 8:06 a.m.
- APPROVAL OF  
MINUTES  
2/16/05:** **Senator Malepeai** made a motion to approve the minutes dated February 16<sup>th</sup>. **Senator McKenzie** seconded the motion.  
  
The motion carried by unanimous voice vote.
- RS 15029:** **Stating Legislative Findings and Honoring the Idaho Falls Post Register on the 125<sup>th</sup> Anniversary of its founding.**
- Senator Davis** explained that when he was eleven years old he delivered newspapers with a friend and then became the chief newspaper boy in his neighborhood. He stated that he covered Austin between 9<sup>th</sup> and 12<sup>th</sup>, Homer and Coster.
- He reported that his father had been an Eagle Scout and shared that his family had this particular route for many years. He stated that you could stop delivering papers once you earned that Eagle Scout Award and proudly announced that he did it in record time. He added that this was a good and healthy experience.
- He explained that the Idaho Falls Post Register has been in circulation since before Idaho became a state. He noted that even though the Editorial Page sometimes is brutal, and he doesn't see eye to eye with the issues, he still values the contribution the paper has made and urged consideration of this concurrent resolution.
- He reported that he has been a member of the same Rotary Club as Rob Brady for several decades and mentioned that Mr. Brady and his family are setting the paper up for the employees to own it even though he could have sold it for a pretty penny.
- He promised to have some stories of his "delivery boy" days when he presents this on the Senate floor.
- MOTION:** **Senator Stennett** commented that having been a publisher of a paper that is 124 years old he moves that RS 15029 be sent **TO PRINT and to**

the 10<sup>th</sup> ORDER. **Senator Malepeai** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote. **Senator Davis** to carry on the Floor.

**RS 15036:** **Relating to Administrative Rules, to provide that no pending rule or portion thereof which has specified in its notice of proposed rulemaking that the rule would have a negative fiscal impact on the State General Fund greater than \$10,000 during the fiscal year when the pending rule will become effective, shall become final and effective until it has been approved by concurrent resolution.**

**Senator Tim Corder** pointed out that the changes made are administrative changes on page 1, lines 26-28. He stated that the practice of how the rules are adopted and published in the bulletin was not in print. He directed the attention of the committee to the bottom of page 1, lines 42 and 43 and explained that this restates the goal of this bill. On line 3 is the remedy for the discussion brought by Senator Davis regarding the ability for cause of collateral action against the state with a restatement of what previously existed. Lines 32-38 are our goal regarding the \$10,000 fiscal impact.

**Senator Little** asked if he had received much input from the bigger agencies with how much time and money these changes will cost them. **Senator Corder** replied that only the Department of Agriculture had contacted him with concerns, but noted that since they are a dedicated agency, the concerns weren't part of this. He added that no other agencies have come forward with concerns.

**Senator Davis** asked about the Idaho Administrative Procedures Act and pointed out on the top line of page 2 regarding the rule making based on federal statute or CFR. He asked if IDAPA gives authority based on the Federal Statutes Act. **Carl Bianchi** responded that this is already repeating the IDAPA citation on the rule and added that this could be based on Federal Statute. **Senator Davis** asked if someone could take a look at this if this is printed and come back with a verification. **Mr. Dennis Stevenson** pointed out 52-21 1(a) regarding the proposed rule.

**MOTION:** **Senator Little** made a motion **TO PRINT** RS 15036. **Senator McKenzie** seconded the motion.

The motion carried by voice vote.

**H 46:** **Master Settlement Agreement - Amends existing law to provide that for an unstamped "roll-your-own" tobacco container, each nine one-hundredths ounce of "roll-your-own" tobacco shall equal one unit sold for purposes of the Idaho Tobacco Master Settlement Agreement.**

**Mr. Brett DeLange** with the Office of the Attorney General explained that in 1999 the Legislature passed the Tobacco Master Settlement Agreement Act where the manufacturers had a choice to either join the settlement agreement or to establish a qualified escrow fund.

**Mr. DeLange** explained that roll your own tobacco is defined as point nine ounces being equal to one cigarette. He stated that this measurement decides how much escrow will be deposited into this fund. He pointed out that the problem is based on the taxation of RYO because it is not an excise tax but taxed at 40% of the value. He stated that some manufacturers believe that they don't have to deposit any money into that escrow fund at all.

He stated that H 46 clarifies that the escrow needs to be deposited for RYO tobacco and any other cigarette sold in Idaho.

**Senator Darrington** asked what happens to the money in the escrow fund. **Mr. DeLange** explained that it is in the escrow fund for 25 years and if the state obtains a judgment against the manufacturer, then that money is there to go towards the settlement. He added that if no judgment is filed, then the first year's payment goes back to the manufacturer.

**MOTION:** **Senator Darrington** made a motion to send H 46 to the floor with a **DO PASS RECOMMENDATION**. **Senator Little** seconded the motion.

The motion carried by unanimous voice vote. **Senator Darrington** will carry on floor.

**H 47:** **TOBACCO PRODUCT MANUFACTURERS - Amends existing law to provide that the Attorney General may condition certification of a nonparticipating tobacco product manufacturer upon obtaining from the manufacturer its consent to be sued in Idaho district court for purposes of the state of Idaho enforcing any provisions of Chapters 78 and 84, Title 39, Idaho Code, or for the state bringing a released claim.**

**Mr. Brett DeLange** with the Office of the Attorney General explained that this relates to which brands of cigarettes can be stamped and sold in our state. He stated that there are currently 40 companies who have agreed with the Master Settlement Agreement Act but noted that there are many more who have not. Two examples of those who have not include the Peoples Republic of China's China National Tobacco company, which is the second largest tobacco producer in the world, and the Seneca Cayuga Indian Tribe in upstate New York. He explained that the China National Tobacco Company falls under Federal trading laws and added that the Seneca Cayuga Tribe has not waived sovereign immunity in state court. He stated that this bill allows the Attorney General to condition a certification in which both of these manufacturers would be able to sell in Idaho if they give consent to be sued in Idaho district court.

**Senator McKenzie** mentioned the voluntary nature in choosing to sell in Idaho and asked if this would apply to a manufacturer who sells in another state and the product is brought here. **Mr. DeLange** answered that when they send the cigarettes to a stamper, if the manufacturer is not on the directory, then they have to be certified by the Attorney General. In order to be certified, they must sign a consent to be sued in Idaho district court before they can be stamped.

**Senator Little** asked if this mirrors legislation in other states and if we are not breaking ground on the commerce clause. **Mr. DeLange** replied that this has not passed other states yet, but added that this will only affect Idaho. He stated that this is the best way to address this issue.

**MOTION:** **Senator McKenzie** made a motion to send H 47 to the floor with a **DO PASS RECOMMENDATION**. **Senator Malepeai** seconded the motion.

The motion passed by unanimous voice vote. **Senator McKenzie** will carry on the floor.

**S 1114:** **Relating to Registration of Electors; to provide that a legible, accurate and complete registration card received in the Office of the County Clerk during the twenty-four day period preceding an election shall be accepted and held by the County Clerk until the day following the election when registration reopens, at which time the registration shall become effective.**

**Senator Elliot Werk** explained that this legislation is regarding voter registration cards 24 days prior to an election. He stated that this 24-day time frame is understandable since the offices need time to compile their election rolls. However, he reported that Ada County would not accept any registration cards during that time frame for the last election. He stated that this language allows them to take the card and hold on to it until the day after the election and then enter it into the registration system.

**Mr. Tim Hurst** with the Secretary of State's Office pointed out that this allows the clerks to accept cards and hold them until the day after the election then register them. He stated that the clerks and counties are not opposed to this language but pointed out that this does create a problem if someone is out going door-to-door doing voter registration and then brings all the cards in during that 24-day period. He stated that the people who filled out those cards were under the impression that they had registered, then get to the polls and discover that their name is not on the rolls. He remarked that the clerks caution people not to do voter registration drives during that 24-day closed period.

**MOTION:** **Senator Malepeai** made a motion to send S 1114 to the floor with a **DO PASS RECOMMENDATION**. **Senator Little** seconded the motion.

The motion carried by unanimous voice vote. **Senator Werk** will carry on the floor.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 8:37 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

## MINUTES

### SENATE STATE AFFAIRS COMMITTEE

- DATE:** Friday, February 25, 2005
- TIME:** 8:00 a.m.
- PLACE:** Room 437
- MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, Malepeai.
- ABSENT/  
EXCUSED:** None.
- GUESTS:** See attached sign in sheet.
- CONVENE:** Chairman Burtenshaw called the meeting to order at 8:03 a.m.
- APPROVAL OF  
MINUTES  
2/11/05:** **Senator McKenzie** made a motion to approve the minutes dated Friday, February 11<sup>th</sup>. **Senator Darrington** seconded the motion.  
  
The motion carried by unanimous voice vote.
- RS 15066C1:** **Relating to Podiatry; to revise the definition for surgical treatment, to require advanced surgical procedures to be performed in certain hospitals or surgical centers, to provide a code reference, to revise the definition for podiatrist and to make technical changes.**  
  
**Mr. Larry Benton** explained that this is to clarify the surgeries code and will update the statute so that they can perform surgeries on ankles and the foot.  
  
He stated that medicine is dynamic and added that the only other definitions refer to medical doctors and D.O.s. He pointed out that this section was updated in 1950.  
  
He reported that the Board will meet today and noted that the lobbyists have no opposition to this change in the scope of practice.
- MOTION:** **Senator Darrington** made a motion to send RS 15066C1 **TO PRINT**. **Senator Stennett** seconded the motion.  
  
The motion carried by unanimous voice vote.
- DISCUSSION:** **Senator Geddes** stated that he has a potential conflict of interest in that he helped draft this and his son-in-law is in his third year of podiatrist school. He pointed out that there is a need for these specialists to practice in Idaho and added that the scope of practice has not kept pace with schooling and training.
- VOTE:** The motion carried by unanimous voice vote.

**RS 15038:** **Chairman Burtenshaw** explained that there was some last minute changes to this RS and added that the sponsor requested that it be postponed until Monday.

**H 106:** **Energy Resources Authority Act - Adds to existing law to create an Idaho Energy Resources Authority as an independent body; and to authorize the Authority to issue revenue bonds for construction of transmission facilities.**

**Senator Brent Hill** asked the members of the committee to picture themselves as a co-op or a municipality. He stated that these groups import 50% of their power from out of state with most of this from Bonneville Power, who has no more to sell as these groups grow. He pointed out that now these groups have to go out into the open market, which is very expensive.

He explained that this will allow these groups to enter into joint ventures, but not Partnerships or Limited Liability, to borrow money to build a facility. He stated that this club would be called the Energy Resources Authority. He is asking the state to form this authority with no exclusions to joining the club. He pointed out that these groups will get better interest rates, be able to do bonds, and added that when the debt is paid off, the assets go back to the investors.

**Chairman Burtenshaw** asked if this was similar to Idaho Housing and where the source for income came from. **Senator Hill** responded that it comes from the members of the group who pool their resources from the fees paid by their customers. He added that the bonds are issued in the market like another other bond. **Chairman Burtenshaw** asked if the facilities back the bonds. **Senator Hill** replied that the members of the group will back the bonds with their good credit.

**Senator Stennett** asked what backs the bonds from the municipal tax base. **Senator Hill** answered that the municipal utilities and the co-ops back the bonds, not the municipalities.

**Representative Eskridge** commented that the bonds are secured by assets that the participants are building. He added that this is not an obligation of the state, just the participants and the rate payers. He further stated that these projects would need to be approved by a vote of the rate payers.

**Senator Stennett** asked him to explain how and when the vote would be done, by a two-thirds vote or a majority, with advertising or what. **Mr. Ron Williams** with the Idaho Consumer Owned Utilities, stated that the municipality would have a contract with an agreement under Article 8, Section 3, *"without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose."* **Senator Stennett** asked if this election would be held on the consolidated election date. **Mr. Ken Harward** with the Association of Idaho Cities, explained that it would be held on one of four consolidated election dates unless it was an emergency situation. **Senator Stennett** asked what would be considered an emergency. **Mr. Harward** responded that an emergency may be a natural disaster such as a flood or other disaster.

**Representative Eskridge** pointed out that Idaho utilities import over 50% from outside of the state with most of that coming from the Bonneville Power Authority. He added that the BPA's capacity is stretched to the limits. He stated that prices depend upon the market and can sometimes be very expensive. He reported that the current administration has suggested that the BPA move from a rate-based pricing on cost to a market-based rate. He stated that we would be placed at a severe economic disadvantage since the municipal utilities can't do projects on their own and added that this legislation is only about building transmission or generating facilities. He stated that they have an opinion by the Attorney General saying that if H 106 were enacted and reviewed by the Idaho Supreme Court, it would be found constitutional.

**Senator Little** pointed out on page 12, lines 49 and 50, *"they are payable solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance"* He asked how a bank issues the bonds and what funds are pledged for repayment. **Representative Eskridge** answered that they are under contract to agree to provide the revenue. **Senator Little** asked if everyone who participated had the same level of debt. **Representative Eskridge** replied that the rate payers of each participating entity are responsible. **Senator Little** asked if they could do that now. **Representative Eskridge** answered that the co-op can enter into a joint venture, but the municipal utilities cannot. **Senator Little** asked if those facilities would be tax exempt or at the same tax as they are now. **Representative Eskridge** replied that this authority would change none of that responsibility.

**Senator Stennett** asked if the merchant plant didn't pay property taxes. **Representative Eskridge** responded that they pay on the portion of the plant that is not owned by the municipality and would be based upon a percentage. **Mr. Williams** added that nothing changes the property tax structure with power plants. He explained that who participates defines the tax base and added that merchant plants are a fourth type of tax that is centrally assessed. **Senator Stennett** asked if this authority goes out and constructs it's own merchant plant, wouldn't it then be exempt from local property tax. **Mr. Williams** answered that hypothetically this can't exist because they can't do something on their own since there are no powers granted to initiate any power on our own. He concluded that they have to respond to requests for participation. **Senator Stennett** asked if the municipality requests it to be built. **Mr. Williams** replied that if a municipality builds a plant, then that tax structure would apply. He stated that the whole point is to save us from being held hostage by the wholesale market.

**Mr. Williams** handed out two documents: a letter of his testimony and a table showing the number of customers and the kwh sold in 2004 by the ICUA members. He reported that these members represent the second largest utility in Idaho but added that they are not large enough individually to build since 95% of the transmission is met by private investors. He stated that we need to take a more proactive role to address our future power needs and added that this is all about lower cost financing to build an infrastructure for rural Idaho.

**Senator Little** noted the pledge stated on page 13 starting on line 13,

*“will not limit, alter, restrict or impair the rights of hereby vested...”* and asked if that language is used for others such as the Housing Authority. **Mr. Williams** replied that he saw a chart on the bond council showing the Building Authority and the Hospital Finance Authority. He explained that all statutes are lifted from those with similar language.

**Senator Stennett** pointed out on page 13, lines 25-27, *“(2) Nothing in this chapter precludes such limitation or alteration if and when adequate provision is made...”* and asked what is the intent of this language. **Mr. Williams** directed the attention of the committee to the pledge on page 13 on line 10, *“(1) The state pledges to and agrees with the holders of any bonds issued under this chapter, and with those parties who may enter into contracts with the authority pursuant to the provisions of this chapter...”* He stated that this is consistent with the Constitution and added that the second part says that even if the state joins in, it can somehow mitigate changes in rules.

**Senator Darrington** asked if any facilities under this would be considered public works and subject to public works laws. **Mr. Williams** read that one page 9, *“(4) Notwithstanding the language, terms or definitions contained in sections 61-119 and 61-129, Idaho Code, the authority shall not be considered to be an electrical corporation as provided by section 61-119, Idaho Code, or a public utility as provided by section 61-129, Idaho Code, and the rents, fees and charges established by contract between the authority and one (1) or more participating utilities for the purchase and sale of the output or services provided by any facility shall not be subject to supervision or regulation by any department, commission, board, body, bureau or agency of this state other than the authority provided that any participating utility regulated pursuant to title 61, Idaho Code, shall be required to submit such contract to the commission to the extent required by title 61, Idaho Code.”*

**Senator Stegner** noted that back a year ago, there was a similar bill considered by the Interim Committee on Energy. He asked Mr. Williams to provide comparisons between that bill and this one. **Mr. Williams** explained that the earlier bill was H 30 and said that he had a letter. **Senator Stegner** clarified that he wanted a comparison not between H 30, but the one that was considered last fall. **Mr. Williams** answered that the draft in November of 2004 was printed as H 30 and added that it received resistance. **Senator Stegner** mentioned the one back a full session. **Mr. Williams** stated that there was one two years ago allowing the creation of the Idaho Energy Resources Authority and reported that they decided not to run that bill. **Senator Stegner** asked what was the primary difference between that effort and this one. **Mr. Williams** replied that there is not a lot of substantive difference except that they took out the distribution funding and added sideboards. **Senator Stegner** asked him to jump to last fall and discuss the differences between H 30 and this bill. **Mr. Williams** answered that the key difference is that they took out the ability of IERA to fund developers of renewable energy. **Senator Stegner** noted that this is then not the same bill as last fall. **Mr. Williams** replied that this was correct.

**Senator Little** referred back to page 13, lines 10-16 regarding the state's pledge and asked if the repayment of the bond is predicated on the

stream of cash flow and if we pledge to not do anything to regulate. **Mr. Williams** replied that this doesn't say that the state can't further regulate, it only pledges that we, "*will not limit, alter, restrict or impair the rights of hereby vested in the authority to acquire, construct, reconstruct, maintain and operate any facility...*" He stated that this is imposing a higher standard of clean air or water that is not precluded. **Senator Little** noted if it mattered if we pulled this section out since it looks like a stretch.

**Senator Stennett** pointed out page 11, line 39, "*(5) Neither the directors of the authority nor any other person executing such bonds shall be subject to any personal liability or accountability by the reason of the issuance thereof.*" He mentioned the Enron situation and asked if this language existed in the Idaho Housing Language. **Mr. Williams** replied that he couldn't answer that right now since he didn't have a copy of the act, but commented that he could get that for the Senator.

**Mr. Curt Mendenhall**, with the City of Burley, testified that this will impact everyone since there are currently only two providers for the people to get power from. He stated that case in point, five years ago United Electric tried to form a partnership for a local generating plant but was unable to because there weren't enough lines or transmission capabilities. He stated that this would have employed 25 to 35 highly paid people. He added that they estimate \$200 million or more lost in personal property tax. He stated that 42% of the wholesale rates are our rate increases and added that this makes common sense. He asked the committee to not leave us an Enron or California legacy, but put people in Idaho back to work.

**Mr. Jake Eimers** the Manager of Idaho County Light and Power co-op testified that they service 232 accounts in Idaho and Lewis Counties. He stated that this will create more viable opportunities to generate sources. He reported a wind farm in his territory will provide benefits through construction costs, property sales and tax dollars.

**MOTION:**

**Senator Davis** made a motion to send H 106 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Geddes** seconded the motion.

**DISCUSSION:**

**Senator Stegner** reported that he will vote against this since he was a member of the Interim Energy Committee. He stated that a lot of people wanted to develop alternate power such as anaerobic digesters, which would allow dairies to invest in equipment to capture methane gas from the waste; wind power; and geothermal power. He pointed out that these options have been eliminated from participating in this and were removed since the meeting in November. He added that he was not consulted regarding these omissions and added that if he were skeptical, he would think that this was a "bait and switch" tactic. He noted that this is excluding a significant and important portion of those who could broaden our sources of fuel for the future. He assumed that these were removed for political expediency and added that he has been told that there may be a trailer bill to include these. He reported that he had been asked to support this bill with the promise that a trailer bill was coming, but noted that since it is the first of March, he cannot be sure that a trailer bill is coming.

**Senator Malepeai** asked who was on the Interim Committee. **Senator Stegner** listed Senators Hill, Werk, Sorenson and Noh, and Representatives Eskridge, Cuddy, Bell, and Stevenson. **Senator Malepeai** asked if this committee gave support to this bill. **Senator Stegner** replied that the committee supported H 30, not this version. **Chairman Burtenshaw** commented that he felt that the Interim committee was not endorsing this bill. **Senator Stegner** replied that he had heard no comment that the committee was endorsing this. **Senator Hill** added that this was correct, the Committee supported H 30, but added that the committee died on November 30<sup>th</sup> and has not been reestablished.

**VOTE:** The vote was 8-1. The motion carried.

**RS 14866C1:** **Joint Memorial to the Senate and House of Representatives in the United States in Congress Assembled, relating to Title 7 of the U.S. Code and Section 11(h) of the Endangered Species Act, that the state of Idaho reserves the rights and remedies to prevent and control damage or conflicts on federal, state, or other public or private lands caused by predatory animals, rodents or birds, that are injurious to animal husbandry, agriculture, horticulture, forestry, wildlife and human health and safety.**

**Representative Lenore Barrett** asked the committee to send this to print and assign to the Germane committee.

**MOTION:** **Senator Davis** made a motion to send RS 14866C1 **TO PRINT**. **Senator Geddes** seconded the motion.

**DISCUSSION:** **Senator Little** pointed out Title 7 of the US Code, section 11h and asked what was in it. **Representative Lenore Barrett** replied that she was hoping to bring that up at the hearing but stated that it was allowing the Secretary of Agriculture the right to perform predator control. She added that it is the extra ribbon on the bow.

**VOTE:** The motion carried by unanimous voice vote.

**H 48:** **Relating to Municipal Records; by the addition of anew section50-907, to provide for classification and retention of municipal records; to provide for designation, powers and responsibilities of municipal records management officers and to provide duties of city officials concerning municipal records; to provide for retention of municipal records using photographic and digital media.**

**Mr. Justin Ruen** with the Association of Idaho Cities introduced some city clerks that were present: Annette Mooney with the City of Boise; Christene Pappas with the City of Post Falls; Jan Fisher with the City of Hayden; and Susan Weathers with the City of Coeur d'Alene. He shared a handout with the committee showing the main points of the legislation.

**Mr. Ruen** directed the attention of the committee to lines 29-32 and explained that this was at the request of the State Historical Advisory Board. He pointed out that this allows transfer of any records to the State Archives. Line 17 on page 2, *"Temporary records shall be retained for not*

*less than two (2) years, but in no event shall financial records be destroyed until completion of the city's financial audit as provided in section 67-450b, Idaho Code.*" He added that some cities are on a bi-annual cycle. He stated that this also requires written notice to the State Historical Society before a semi-permanent record is destroyed as well as the adoption of a records retention schedule for each city by January 1, 2007.

**Mr. Ruen** explained that on line 13, page 3, "50-909. *Retention of City records using photographic and digital media.*" Clarifies the original records process and if the record is permanent, it must be kept.

**Senator Davis** asked if they had checked with the courts to see if 50-909 satisfies the rules of evidence. **Mr. Ruen** replied that this stays the same. **Senator Davis** asked if under 50-907 were there any that moved from permanent to semi permanent. **Mr. Ruen** replied that the election records do. **Senator Davis** pointed out line 41 on page 1 regarding contracts and noted that he is part of a series of lawsuits with references to contracts back to the early 60s. **Mr. Ruen** answered that it depends on each participating city. **Ms. Annette Mooney** explained that the contracts go through with the resolutions and would be considered permanent. **Senator Davis** asked if a resolution refers to the contract, but isn't attached to the contract, or if the contract is still retained. **Ms. Mooney** replied that Boise City always keep the contracts as an attachment. **Mr. Ruen** added that they can include in their retention manual to keep the contracts as an attachment. **Senator Davis** encouraged that this be added to the retention manual.

**Senator Stennett** commented about a variance of the City of Ketchum allowing the encroachment on space between a neighbor's property and where would this variance be found. **Ms. Mooney** answered that variances in planning and zoning are considered permanent documents.

**MOTION:** **Senator Davis** made a motion to send H 48 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Darrington** seconded the motion.

**DISCUSSION:** **Senator Darrington** stated that this has been a while coming and added that it is necessary to clarify the statutes and get the documents into the hands of the archives.

**VOTE:** The motion carried by unanimous voice vote. Senator Darrington will carry on the floor.

**S 1125:** **Relating to Administrative Rules, to require that an agency include in a notice of proposed rulemaking a citation to the specific section of the Idaho Code that has occasioned the rulemaking and a specific description, if applicable, of any negative fiscal impact on the State General Fund greater than \$10,000 during the fiscal year when the pending rule will become effective and to provide that the absence or accuracy of a fiscal impact statement shall not affect the validity or the enforceability of the rule; and declaring an emergency.**

**Senator Tim Corder** explained that this requires a statement of occasion, the authority for rulemaking, the report of fiscal impact, and an emergency

clause so that agencies who have already begun writing rules may be in compliance next session. He then explained S 1161.

**S 1161:** **Relating to Administrative Rules, to provide that no pending rule or portion thereof which has specified in its notice of proposed rulemaking that the rule would have a negative fiscal impact on the State General Fund greater than \$10,000 during the fiscal year when the pending rule will become effective, shall become final and effective until it has been approved by concurrent resolution.**

**Senator Tim Corder** stated that this adds the administrative changes in addressing the way pending rules and notices are published. He explained that this restates the fiscal impact to the general fund requirement of S 1125, restates the exclusion or access by collateral action, and affirms the approval of both houses for rules to go into effect.

**Senator Davis** stated that several agencies operate on dedicated funds and asked why he was proposing to limit this to only the impact on the general fund and not also require a fiscal impact as it relates to any impact on a department or agency. **Senator Corder** answered that his first intent did not have the clause and added that the Food Producers asked questions. He added that it is his intent in the next session or two to broaden this out and include all of the other agencies. He further added that this will give them time to live with these changes. **Mr. Carl Bianchi** with Legislative Services explained that this came about as a result of a problem with an agency wanting JFAC to appropriate general funds for things that were established in rules.

**Senator Davis** commented that this committee was interested in protecting the *Meade v. Arnell* Supreme Court decision. He asked if we weigh in, will it be tough to undo this later on. He asked them to give him comfort and assurance and to address his reluctance regarding the Meade case. **Mr. Bianchi** answered that he couldn't guarantee what the Idaho Supreme Court would do since the problem was first raised in 1993 with *Meade v. Arnell* and amending rules. He stated that this case was about the separation of powers and marking out areas of the three branches. He stated that it is within the power of the Legislature to reject a rule with the Court approval as the final word. He added that this cut the Governor out kind of like adopting a bill without the Governor's signature. He explained that when we approve a bill, then the agency does something to evoke the power of the Legislature. He stated that the court is faced with the Legislature approving the rules when they are required to appropriate funds and added that this would be a narrow exercise of the Legislature trying to protect the purse. He stated that there is a chance that this will be upheld and added that it is worth taking the chance. He pointed out that there is a serious problem with agencies adopting rules with JFAC having to appropriate the funds. **Senator Davis** noted Judge Strickland's decision on the Open Meeting Law in 1992 or 1993 with regard to the Senate's intent. He stated that it was thrown out because the bill had nothing to do with Legislative Intent and also that the Legislature did not have the right to impose on predecessors legislative intent. He pointed out that S 1125 has no severability clause in 67-5221 (a) and asked if there was a subtlety clause with the intent of this bill. He concluded that at least we haven't gone backwards with *Meade v. Arnell*.

**Mr. Bianchi** stated that he can't adequately discuss the concerns with the severability since this has the approval of both houses and the intent language. He stated that he doesn't feel that this would improve the legislation and added that he would be more comfortable with this fairly narrow act. **Senator Davis** commented that the Senate would be running a resolution to repeal a rule not rejected by prior legislation and asked if the court would have concerns about this. **Mr. Bianchi** replied that he was not sure if this legislation would be bound by prior Legislatures. He stated that in *Meade v. Arnell*, the Legislature forgot to say that the rule violated Legislative Intent. He pointed out that the rule rejected had been around for a while and added that the Legislature can provide intent as of today to reject a rule by statute. **Senator Davis** noted that we can't express Legislative Intent to a statute, but can if it is a rule. He added that we also can't, after the fact, add Legislative Intent to a prior rule. **Mr. Bianchi** replied that a statute adopted goes to the Governor and then to the book. He pointed out that rules are different, they go into effect, times change, and then a rule is changed by asking the agency to change it. He then posed, "Should the Legislature be able to look at a rule and reject it?" **Senator Davis** commented that it may have been the *State of Idaho v. Thorne* case, and that he may have misstated the reference.

**Senator Stennett** posed that say the Legislature passes a statute where the fiscal note becomes the intent at \$0 and an agency later develops a rule with fiscal impact of \$10,000. He asked what is the intent of the Legislature whether the fiscal note was by the Senate, the House or through agency rule. **Mr. Bianchi** noted that an agency could attempt to thwart the Legislature and stated that just because an agency places a fiscal note over \$10,000, with the Legislature not rejecting it, it is considered just a notice. He then shared that the process is: the Legislature passes a bill; the agency adopts it; the agency proposes a rule with an impact over \$10,000; the Germane Joint Subcommittee has a question at the point the rule was proposed or adopted as pending; questions for the agency at committee hearing and final adoption or rejection of that rule. **Senator Stennett** asked if the fiscal note is \$10,000 and JFAC refuses to fund it, who hold the trump card. **Mr. Bianchi** replied that the Legislature does, like with any statute, and added that JFAC can decide to fund it or not. **Senator Stennett** asked if an agency promises something and JFAC doesn't fund it, is there a potential problem. **Mr. Bianchi** answered that sometimes we find out about entitlement funding after the fact and added that this would provide a bright light on a rule in the middle of a big stack. **Senator Stennett** asked if the Education committee chooses to accept or reject a rule, can JFAC then accept or reject the funding and added that this is two different committees with two different situations. **Mr. Bianchi** explained that right now they only need one committee to let that rule go into effect unless it is rejected by both houses. He added that this legislation makes both sides approve the rule to get it adopted if the fiscal impact costs the state money.

**Senator Darrington** asked if we have a \$10,000 rule, we need wiggle room, since we don't want this same question to go to the Supreme Court again and noted absence or accuracy.

**Mr. Bianchi** thanked Senator Davis for pointing out the need.

**MOTION:** **Senator McKenzie** made a motion to send both S 1125 and S 1161 to the Floor with a **DO PASS RECOMMENDATION**. There was no second.

**Chairman Burtenshaw** asked Senator Darrington if a chairman can second a motion. **Senator Darrington** replied that he can't quote Mason's rules. **Senator Davis** added that Mason's believes that the process of a second is archaic but stated that the practice of the Senate is that the Chairman doesn't second a motion.

**Senator Malepeai** seconded the motion.

**VOTE:** The motion carried by roll call vote 6-1-2. Senator Corder to carry on the floor.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 10:12 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

MINUTES

**SENATE STATE AFFAIRS COMMITTEE**

- DATE:** Monday, February 28, 2005
- TIME:** 8:00 a.m.
- PLACE:** Room 437
- MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, Malepeai.
- ABSENT/  
EXCUSED:** None.
- GUESTS:** See attached sign in sheet.
- CONVENE:** Chairman Burtenshaw called the meeting to order at 8:04 a.m.
- APPROVAL OF  
MINUTES  
2/18/05:** **Senator McKenzie** made a motion to approve the minutes dated February 18<sup>th</sup>. **Senator Stennett seconded the motion.**  
**The motion carried by unanimous voice vote.**
- APPROVAL OF  
MINUTES  
2/21/05:** **Senator McKenzie** made a motion to approve the minutes dated February 21<sup>st</sup>. **Senator Darrington seconded the motion.**  
**The motion carried by unanimous voice vote.**
- APPROVAL OF  
MINUTES  
2/23/05:** **Senator McKenzie** made a motion to approve the minutes dated February 23<sup>rd</sup>. **Senator Darrington seconded the motion.**  
**The motion carried by unanimous voice vote.**
- RS 15038:** **Relating to practices governing Ore processing by cyanidation; to further define terms and to make a technical correction; to specify requirements for a permit from the Director of the Department of Environmental Quality for a facility to conduct ore processing by cyanidation and to govern application of provisions during transition; to include closure of cyanidation facilities within purposes of the chapter and to make a technical correction; to specify scope of the chapter; to include closure activities of a cyanidation facility within duties of the Board of Land Commissioners; to enumerate duties of a cyanidation facility operator; to govern approval or rejection of a permanent closure plan; to govern submission of an amended or supplemental plan, to provide application of closure requirements; to govern submission of a bond; to provide forfeiture of bond and penalties for operator's failure to comply with permanent closure plan of a cyanidation facility, to provide for review and revision of plans; to provide for appeal from an order; to specify requirements for conduct of a cyanidation facility; to govern application of the chapter and to provide a correct code reference.**

**Mr. Jack Lyman** with the Idaho Mining Association explained that this RS shows changes made to S 1095 and when printed will substitute that bill. He pointed out that on page 12, line 54, where it reads, “up to 30 days” should read, “up to 60 days” and asked the committee to include this change when the RS is sent to print.

**Senator Davis** asked if he believed that this would resolve any additional changes. **Mr. Lyman** responded that Senators Stennett and Little convened interested parties and added that there may be a trailer bill that will be introduced in the House.

**MOTION:** **Senator Davis** made a motion to send RS 15038 **TO PRINT WITH CHANGES**. **Senator Geddes** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**RS 15062:** **Relating to Prosecuting Attorneys; to provide that an attorney who has contracted with the Board of County Commissioners to be Prosecuting Attorney shall not be considered to hold the office of Prosecuting Attorney, for the county with which the contract exists; and declaring an emergency.**

**Senator Stennett** asked the committee to print this and added that it likely will be returned to Judiciary and Rules for hearing. He explained that Camas County doesn't have a local Prosecuting Attorney and added that the only one they could find was one in Gooding County.

**Senator Darrington** noted that both the descriptions on the agenda and on the top of the bill show “not be considered to hold the office”. **Senator Stennett** added that this was correct since they hold the office in another county.

**Senator Little** asked if this doesn't already exist now. **Senator Stennett** stated that they contract with another attorney, but don't currently with a sitting Prosecuting Attorney.

**MOTION:** **Senator Darrington** made a motion to send RS 15062 **TO PRINT**. **Senator Malepeai** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**RS 15060:** **Certification of Teachers, to adopt requirements for supervised teaching experience prior to certification in Idaho and to make technical corrections.**

**Chairman Burtenshaw** suggested that we skip this one for now because the sponsors were not present.

**S 1126:** **Highway District Board of Commissioners - Repeals existing law relating to open meetings and executive sessions of highway district boards of commissioners.**

**Mr. Stuart Davis** explained that this relates to Title 40, Chapter 13. He stated that Title 67 is where the more general open meetings laws are

stored and added that the Highway Districts are the only taxing authority with their own meeting laws. He pointed out that other taxing agencies change Title 67 and stated that to change both Titles is duplicitous.

**Senator Davis** stated that he understood that Mr. Davis would bring a chart of comparison between the two Titles to the members of the committee. **Mr. Davis** replied that he brought that up to Senator Davis' office but that he didn't have any with him today. **Senator Davis** asked him to make sure that each committee member had a copy of this before it was considered on the floor.

**MOTION:** **Senator Davis** made a motion to send S 1126 to the Floor **WITHOUT RECOMMENDATION**. **Senator McKenzie** seconded the motion.

**VOTE:** The motion carried by voice vote with Senator Stennett voting in opposition until he sees the chart.

**RS 15052:** **GARVEE Bonding: Transportation Project Financing.**

**Senator Stegner** explained that this is the GARVEE Bond RS as proposed by the Governor in his State of the State Address. He assumed that the committee was familiar with the projects lists since there have been extensive presentations in several committees regarding this. He pointed out that there were several representatives present from the Governor's Office, Idaho Department of Transportation, Cities, Idaho Housing and Finance.

**Senator Stegner** explained that this is straightforward and not complicated. He pointed out that it puts into process the bonding capability of the Department of Transportation to issue bonds for the construction of projects in the state. He then shared with the committee the "Connecting Idaho" bond document provided to the committee by the Transportation Department at the presentation last week. He further added that we will be subject to one more presentation of this document.

**MOTION:** **Senator Stegner** made a motion to send RS 15052 **TO PRINT**. **Senator Malepeai** seconded the motion.

**DISCUSSION:** **Senator Little** asked where were the numbers of the percent of federal funds we can bond for and is there a cap in this document. **Senator Stegner** answered that there are no numbers, and also that the total dollar figure is also not in here. **Senator Little** asked where are the sideboards for this blank check.

**Senator Davis** asked about Section 3 and the definition of projects on page 2. **Senator Stegner** stated that Section 3 is the Powers and Duties and the authority of the Department to approve projects. He added that there is no language dealing with specific caps. **Senator Little** noted that there is no limitation on how much debt the Department can take on.

**Mr. Chuck Winder**, Director of the Board of Transportation noted that they will have to come back to the Legislature every year to justify their process and the funds for each project that is chosen for that year. He added that they will also have to identify for the Legislature which projects

will be addressed each year. He further added that JFAC has control of the amounts and if the projects will move forward.

**Senator Little** noted that we used to building buildings and roads with cash and are now moving to building them with debt.

**Senator Stennett** stated that he didn't see a ten-year cap or a cap on the amount of money in this legislation.

**Mr. Winder** replied that there are also no guarantees that any project will be built. He pointed out that they used a 9-year period for projections to come back to JFAC each year. He reported that Indian Valley is one of the toughest and added that it may be a five to six year process with NEPA. He further stated that the bridge near Twin Falls is another one that is later on in the process.

**Senator Stennett** asked if there was a sunset. **Mr. Winder** replied that there is since it can be stopped any year as decided upon by the Legislature and JFAC.

**Senator Geddes** commented that the former Director of DEQ was concerned with the need to obtain attainment or we would lose federal funding and asked how the Department can ensure this. **Mr. Dave Ekern** noted that the general form of non-attainment would make us lose the Federal Highway Administration funding. He added that the stream of payment would continue because the process that monitors attainment would bring COMPASS and ITD in prior to losing attainment. **Senator Geddes** asked if there was a risk that the Federal Government may make it more difficult for us to maintain that funding stream. **Mr. Ekern** replied that there isn't a risk. **Senator Geddes** asked if there was a risk of losing other funding. **Mr. Ekern** stated that he couldn't answer that.

**Senator Little** asked where does the enforcement of clean air fall. **Mr. Ekern** answered that there are a two-to-one and a three-to-one ratio and added that there is still a cushion before the federal government can levy sanctions. **Senator Little** asked what leverage they had to make us maintain. **Mr. Ekern** replied 48%.

**Senator Stegner** noted that this was sounding like a hearing on the bill and stated that the state is not about to issue all sorts of debt and bonds based on just the printing of an RS. **Senator Davis** commented that he has heard whispers that there is a percent of the budget that exceeds 33% which will impact the state's credit rating downward and asked if anyone knew of the voracity of this. **Mr. Gerald Hunter** answered that under the two-to-one or the three-to-one ratio, the coverage ranges from 33% to 50%. He stated that if we are at 50% the rating would affect the interest on the GARVEE bonds, but not affect the state's credit rating. **Mr. Winder** added that in the projections provided in the bound document, they have showed the percentage throughout the process.

**VOTE:** The motion carried by unanimous roll call vote.

**RS 15060:** **Chairman Burtenshaw** noted that no one was here to present this RS.

**Senator Davis** commented that normally we don't print an RS unless it is brought by unanimous request of the committee that it will be referred back to or the chairman of that committee.

**Chairman Burtenshaw** asked unanimous consent to hold this bill until he had spoken with the Education Committee Chairman. There was no objection.

**OTHER  
COMMITTEE  
DISCUSSION:**

The committee discussed the manner in which to address the Water Agreement Legislation once it was brought from the House. Discussion was given based on the committee hearing location and logistics of the meeting.

**ADJOURN:**

There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 8:43 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

MINUTES

**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** March 2, 2005

**TIME:** 8:00 a.m.

**PLACE:** Room 437

**MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Davis, Stegner, Little, Malepeai.

**ABSENT/  
EXCUSED:** Geddes and Stennett.

**GUESTS:** See attached sign in sheet.

**CONVENE:** Chairman Burtenshaw called the meeting to order at 8:06 a.m.

**RS 15060:** **Certification of Teachers, to adopt requirements for supervised teaching experience prior to certification in Idaho and to make technical corrections.**

**Senator Gannon** apologized for not being here the other day and commented that the system moves faster than he does. He gave some background that legislation passed last year allowing teachers to get certified on line by passing a test and then they take those test results to the Department of Education to get a teaching certificate. He stated that since then, they have decided that they should have to have some classroom experience and added that this would make classroom experience required.

**Senator Little** asked about a mom volunteering in her daughter's classroom and if there was definition of supervised teaching experience or internship. **Senator Gannon** replied that there is not and added that this gives the State Board the ability to interpret.

**MOTION:** **Senator Darrington** made a motion **TO PRINT** RS 15060. **Senator Stegner** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**RS 15065:** **Relating to Sick and other leave; to require that the entitlement to one full day of sick leave for each month of service in which a certificated or noncertificated employee of a school district or charter school works a majority of that month be limited to certificated and noncertificated employees of a school district or charter school who regularly work twenty hours or more per week.**

**Senator Gannon** explained that this is a result of a court case. He stated that any part time employee is entitled to accrue sick leave and added that the Code is poorly written. He stated that this would require an employee to work a minimum 20 hour work week before they are entitled

to sick leave and added that this is right in line with the current entitlement to benefits.

**Chairman Burtenshaw** asked if this pertains to non-certified employees. **Senator Gannon** replied that it applies to both.

**Senator Little** noted that some businesses have conditions in place regarding 32 hour work weeks and asked if the state has 20 hours. **Senator Gannon** answered that the state shows 20, but was not sure about private enterprise. **Senator Little** asked if there was any positive or negative impact over the district status quo. **Senator Gannon** replied that it would be positive impact.

**Senator McKenzie** asked if the Districts pay for unused sick leave. **Senator Gannon** answered that the sick leave goes away, but that they pay for unused vacation time.

**Senator Davis** asked for the name of the Supreme Court Case. **Senator Gannon** explained that there was a copy in his folder showing Porter et al. v. Board of Trustees, Preston School District No. 201.

**MOTION:** **Senator Malepeai** made a motion **TO PRINT** RS 15060. **Senator McKenzie** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**RS 15032C2:** **Relating to the State Campaign Finance and Reporting Law; to provide a definition of "Electioneering Communication", to provide requirements for persons who conduct or transmit any electioneering communication and to provide requirements for statements filed with the Secretary of State; to provide civil penalties and misdemeanor penalties for failing to report electioneering communications in compliance with law, to provide a correct statutory reference.**

**Senator Little** stated that he would defer to the Secretary of State and added that this is about a fairness issue with campaign financing. He pointed out that if a person gives \$50, and a corporation or group gives \$10,000 there aren't any names included in that \$10,000. He added that this is not the intent of the sunshine law.

**Secretary of State Ben Ysursa** explained that this gives more disclosure and is in line with what is included in the new terminology of the Federal Campaign Finance regarding ads. He added that this is an attempt to bring more disclosure and relates to "Electioneering Communication" but not to advocacy ads. He pointed out that this has been upheld on the federal level and is as far as we can go with the Supreme Court and their decision on the McConnell case. He stated that this doesn't prohibit but gets disclosure and more responsible campaigning.

**Senator Davis** asked if by changing the definition of electioneering, would it also apply down to the county and city races. **Secretary Ysursa** replied that it would. **Senator Davis** asked if this would apply to the Judiciary as well. **Secretary Ysursa** answered that it would also include

the new Magistrate in Idaho Falls.

**Senator McKenzie** directed the attention of the committee to page 2, line 26, subsection f, section 1i: *“Unambiguously refers to any candidate or ballot measure;”* and asked if we needed to add ballot measure elsewhere to parallel. **Secretary Ysursa** responded that the words “ballot measure” should be stricken and cited McIntyre vs. Ohio. He explained that this was because a kindly old lady took out an ad on a bond issue. He further explained that we would also need to strike those same words anywhere else on the bill. He pointed out that the Federal Election Campaign Act doesn’t include ballot measures and stated that this should just be about candidates. **Senator McKenzie** remarked that this would then be consistent with lines 32 and 33.

**Senator Little** asked if there should be a severability clause on this. **Secretary Ysursa** replied that it would simply be a warm fuzzy and not necessary. He pointed out that the Electioneering Communication is the guts of the bill.

**MOTION:** **Senator Little** made a motion **TO PRINT RS 15060**. **Senator Stegner** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**GUBERNATORIAL APPOINTMENT:** **Idaho Commission on Human Rights Esperanza Gerhardt of Burley. Serving a term commencing January 12, 2005 and expiring July 1, 2007.**

**Mrs. Gerhardt** shared with the committee that she was born in Washington but has been in Idaho for over 40 years. She explained that she has 3 children and 4 grandchildren. She stated that she has worked with South Central Head Start as a Teacher’s Aid, Teacher, Head Teacher, and Director; the Migrant Council and Immigration.

**Senator McKenzie** noted that she had on her information that she had worked with the Department of Labor. **Mrs. Gerhardt** answered that she was there as a job consultant regarding outreach, wage per hour complaints and placement.

**Senator Darrington** asked her if she was able to do this assignment based on finances. **Mrs. Gerhardt** replied that she has no problems with finances at this time. **Senator Darrington** noted that the Human Rights Commission doesn’t have subpoena power and asked her if she could do this work without that power. **Mrs. Gerhardt** answered that she could.

**Chairman Burtenshaw** thanked her for coming before the committee and stated that the committee would vote at the next meeting.

**H 150:** **Relating to Idaho Grape Growers and Wine Producers; to provide that Commission members currently serving shall continue to serve until reappointed or a new member is appointed, to provide for taxation of grape juice purchased from producers outside the state.**

**Mr. Bob Corbell** testified that some commissioner’s appointments come

up at the same time. He pointed out that line 32 allows them to serve up until they are reappointed or someone else is appointed.

He then explained that the rest of the bill relates to juice since they are seeing a lot of juice transported instead of grapes being picked. He stated that some of this juice is 60-90 days past harvest. **Mr. Corbell** pointed out that 167 gallons of juice equal one ton of grapes and further pointed out that this would increase the tax for a ton of grapes from \$5 to \$25. He added that this brings us in line with Washington. He reported that Ste. Chappell does import Washington juice for blending.

**Senator Davis** asked him how he got this out of the House without problems with the single subject rule. **Mr. Corbell** replied that it passed with only one negative vote. **Senator Davis** stated that he has no problem with the content, but noted that it violates the one subject rule in the Constitution. **Mr. Corbell** replied that he had him and stated that at first it only addressed the members of the Commission.

**Senator McKenzie** noted that we might be setting a precedence with allowing two subjects.

**Chairman Burtenshaw** commented that this should have been two separate bills.

**Senator Darrington** stated that this in the shady gray with the single subject rule and added that he was not sure that it is a violation.

**Senator Davis** commented that he was willing to have the Attorney General write an opinion and hold on to the bill for a few days while waiting for that opinion.

**Chairman Burtenshaw** asked what would be wrong with holding the bill, having Mr. Corbell split the two issues and bring back two separate bills. **Mr. Corbell** commented that there was no problem in the House.

**Senator Darrington** suggested waiting a few days for the Attorney General's opinion.

**Senator Stegner** asked if section 2 dealt with the tax payable to the Commission. **Mr. Corbell** answered that it did. **Senator Stegner** further asked if this tax was in the home of origin. **Mr. Corbell** replied that it does not. He stated that it only goes back and forth with Washington and added that Spokane has a big industry. **Senator Stegner** asked if this was consistent with other commodity taxes. **Mr. Corbell** answered that it was. **Senator Stegner** noted that this is a tax bill that would have to start in the House and wondered if there was a better course of action to split this. He then posed sending this to the 14<sup>th</sup> Order to strip the top portion and keep as a tax bill and have Mr. Corbell bring another one to address the Commission.

**Senator Davis** stated that putting a House tax bill on the 14<sup>th</sup> Order was fine with him and added that in the meantime, when the Attorney General's opinion arrives, they can take it out of the 14<sup>th</sup> Order.

**MOTION:** **Senator Stegner** made a motion to send H 150 to the **14<sup>th</sup> Order**. **Senator Davis** seconded the motion.

**DISCUSSION:** **Mr. Corbell** commented that Senator McGee was going to carry this on the floor. **Senator Stegner** offered to take this discussion to Senator McGee for him. **Mr. Corbell** stated that the juice part is the most important part and added that he could bring another RS to the committee regarding the Commission.

**Senator Davis** asked if the Attorney General had the information, or would we need to do a letter. **Mr. Brian Kane**, Deputy Attorney General, replied that he has that it regards H 150 and the possible violation of the single subject law. **Senator Davis** asked Mr. Kane to provide a copy of that letter to Mr. Corbell.

**VOTE:** The motion passed by unanimous voice vote.

**S 1012:** **Relating to Public Employees and conflicts of interest. To Define terms, provide prohibited acts, provide remedies and penalties.**

**Senator Gary Schroder** explained that this will amend Title 18 of the crime and punishment code. He provided the committee with a handout.

He then stated that he wanted to ensure that when a person is paid by the public, they are doing what is in the public's interest and added that this was written to prevent a public employee from representing their own personal interests. He added that this would prevent a nexus of influence. He then explained the bill part by part. He pointed out that page 2, line 17 relates to preventing people from lobbying their own Department after they quit their job.

**Senator Davis** asked if this suggested that he would be barred from practicing law if he brought a case that was ruled by a bill that he brought about. **Senator Schroeder** replied that he didn't know. **Senator Davis** asked if he had thought of this. **Senator Schroeder** stated that you can't be a legislator and lobby an issue. He then explained lines 8-15 regarding confidential information and added that "proper authority" was included. He described a situation where an agency who uses a computer system to manage a warehouse, then discards it, and someone from that agency starts a new job and gets written authority to use it.

**Senator Stegner** asked if University personnel are included in this. **Senator Schroeder** replied that it applies to all public employees, but especially to those with state jobs who turn around and lobby using their expertise. **Senator Stegner** pointed out that lines 8-15 on page 2, "*use for his benefit.*" may have unintended consequences with a University professor being barred from leaving a job and starting his own company using his expertise. **Senator Schroeder** replied that this relates to confidential information only. **Senator Stegner** asked if this would also apply to University personnel. **Senator Schroeder** answered that it would with respect to confidential information.

**Chairman Burtenshaw** asked how this would affect people hired at a University for writing grants. **Senator Schroeder** answered that he didn't

think this would affect it and added that if they write a grant together, it wouldn't apply. **Chairman Burtenshaw** explained that the University of Idaho had some professors that were hired due to their expertise in writing big money grants. He pointed out that their salary was set based on their ability to do that and added that if they have to wait two years to do that job for someone else, how would this legislation affect that.

**Senator Schroeder** stated that research is patented and added that if any University had a problem with this, he would have heard about it by now. He then explained that lines 28-31 outline violations as misdemeanor with fines under \$5,000. He stated that a state legislator and a superintendent signed with an out of state group on the Charter Schools. He shared that someone in the State Board's Academic Office left to work for a company who built the program. He stated that this is trying to prevent someone in a position of trust to exchange that position for a better job. He further pointed out that this states that they can't come back for one year and lobby and added that this is right along with other states. He further added that confidential information is two years.

**Senator McKenzie** stated that he is concerned with how broad this applies. He pointed out that law school grads clerk then work on Appeals, go to the Prosecutor's Office and then work for Defense. He stated that on page 2, lines 3-7 the limits may not effectively deal with this. **Senator Schroeder** stated that he thinks this is strict language and added that intent is a big thing in law. **Senator McKenzie** stated that he is concerned that this will make a new standard. **Senator Schroeder** explained that Mike Nugent in Legislative Services wrote this and added that he knows the legal profession has standards. He further added that if Senator McKenzie would be comfortable having the Attorney General weigh in on this, that would be o.k. **Senator McKenzie** replied that he would appreciate that. **Senator Schroeder** said that he could do that.

**Senator Little** pointed out the remedies on line 17 and stated that this is a gray area in defining participation. **Senator Schroeder** replied that if a person was convicted of a prohibited act under 18-1364, then the agency could void the contract. **Senator Little** asked if the language was operable in other states. **Senator Schroeder** replied that the remedy section was suggested by Mike Nugent.

**Senator Darrington** asked if he went back to teaching and then came back and lobbied to benefit a class, would that be under this. **Senator Schroeder** answered that he would fall under this if he received a pecuniary benefit. **Senator Darrington** asked if he returned home and went to work on his dairy farm, then came back would this prevent him from testifying at rulemaking. **Senator Schroeder** directed his attention to page 1, lines 25-27, *"(1) Benefit means gain, or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity whose welfare he is interested."*

**Senator Davis** asked what is the abuse that Senator Schroeder was trying to target, or the problem that he is trying to resolve. **Senator Schroeder** replied that he is trying to prevent people who are employed by the State of Idaho from using their position to work against the public interest to get a new job and use those contacts. He added that this will prevent someone from bringing in programs to us and getting a reward

with a new job.

**Senator Malepeai** commented that after listening to the debate and the concerns with the universities and others, he still thinks that perception is everything. He stated that we have to rise to a level where perception is real and that we need to put up a 3 or 4 foot cedar-rail fence and added that this builds that fence. He further added that this tells those in the public eye what the barrier is and stated that he does believe we do need something.

**MOTION:** **Senator Malepeai** made a motion to send S 1012 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Stegner** seconded the motion.

**DISCUSSION:** **Senator Davis** spoke against the motion because Idaho is a small state with a citizen Legislature and added that he thinks we want to encourage citizen Legislators. He pointed out that other states also want citizen Legislators. He stated that the federal model is the antithesis of what it should be and suggested that the large state models should also not be the target.

**Senator Stegner** stated that this is an admirable attempt to foster the highest ethical level we can achieve. He added that this modestly addresses with the modest sideboards and stated that he will support the motion.

**Senator Little** stated that we want the perception that the State is operated from the Executive and Judicial branch and added that this is addressing a problem that has already happened. He is concerned with the unintended consequences and added that once the bribery part was included, instead of judgement, he could no longer support.

**VOTE:** The motion failed. 2-5-2.

**S 1044:** **Relating to Public Contracts; to prohibit public servants from engaging in certain acts and to specify the penalties for violations; to prohibit public officers from engaging in certain acts and to specify the penalties for violations; to clarify that designated penalties apply unless otherwise provided.**

**Senator Gary Schroeder** provided a handout for the committee on S 1309 and one regarding Title 67-5726. He explained that S 1309 was passed in this committee and the Senate last year and added that this is identical. He further explained that 18-1351 is the definition of a public servant. He then explained the bill line by line.

**Senator Davis** asked if the target of the language in subpart "f" was to have it apply to the various boards and commissions whether or not they meet the definition of employee. **Senator Schroeder** pointed out that the referencing language in 67-5726 is being added to Title 18 and is not expanding it. **Senator Davis** pointed out the news article handout and asked if Senator Schroeder's intent was for those board members to be included. **Senator Schroeder** replied that it does. **Senator Davis** asked if his intent in this language was to apply to the State Electrical Board. **Senator Schroeder** replied that he doesn't know of all the parts of

government, but stated that this is not adding or subtracting. **Senator Davis** commented that he has a kid brother on the State Electrical Board and asked if it was Senator Schroeder's intent to target each board member or commission serving gratis. **Brian Kane** with the Attorney General's office stated that the question is to non-compensated individuals and pointed out that 18-1361a is an exception that applies to them. He added that this is why there is additional language.

**Senator Little** asked if he was referencing 1361a and if those on the handout would be exempt. **Senator Schroeder** stated he didn't know if those board members were compensated. **Senator Little** stated that he supported this last year and added that it makes ethics laws easier.

**Senator Davis** asked for help in understanding the definition of compensation, if \$25 or \$50 to attend a board meeting would preclude the use of 18-1361a. **Mr. Kane** replied that each section uses different language regarding honorarium or compensation. **Senator Davis** pointed out that some may be subject to criminal prosecution and others may not be. **Mr. Kane** answered that there are a lot of subtleties. **Senator Davis** commented that this legislation doesn't drag a fine toothed comb through the intent. He added that individuals in the prosecution realm will drag that comb through it and added that this continues troubling him today. **Mr. Kane** replied that the inclusion of additional language incorporates all the exceptions so that they aren't unduly penalizing.

**Senator Little** asked if the difference between honorarium and gas money was that the honorarium was like compensation. **Mr. Kane** answered that he was right on track.

**Senator Schroeder** stated that this is trying to tell the public that we do have concerns with ethics in government and want to do the right thing. He pointed out that if someone is in a position of trust and use their position to get rewards, that is wrong. He concluded that this is the right message to send.

**MOTION:** **Senator Little** made a motion to send S 1044 to the 14<sup>th</sup> ORDER. **Senator Stegner** seconded the motion.

**DISCUSSION:** **Senator Davis** commented that he will support the motion. He stated that he wants an opportunity to visit with Mr. Kane to get increased confidence and agrees with the target.

**Senator McKenzie** stated that he is in a similar position and added that this one may not have its intended consequences. He added that clarification is always good in ethics.

**RS 15032C2:** **Senator Little** stated that Secretary of State Ysursa asked to include Section 6 22-20 to add in Magistrate.

**MOTION:** **Senator Darrington** made a motion to add this section. **Senator Davis** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**VOTE:** The motion carried 7-0-2.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 9:47 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

MINUTES

**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Friday, March 4, 2005

**TIME:** 8:00 a.m.

**PLACE:** Room 437

**MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett.

**ABSENT/  
EXCUSED:** Malepeai.

**GUESTS:** See attached sign in sheet.

**CONVENE:** Chairman Burtenshaw called the meeting to order at 8:27 a.m.

**GUBERNATORIAL  
APPOINTMENT  
VOTE:** **Gubernatorial Appointment**  
**Idaho Commission on Human Rights**  
**Esperanza Gerhardt of Burley. Serving a term commencing January 12, 2005 and expiring July 1, 2007.**

**Senator Darrington** explained that he knows the family and has taught some of her kids in school. He pointed out that she is representative of that area.

**MOTION:** **Senator Darrington** made a motion to recommend the confirmation of this appointment. **Senator Little** seconded the motion.

**RS 15083:** **Relating to Motorcycles; to provide that six dollars of each annual registration fee for a motorcycle shall be credited to the Motorcycle Safety Program Fund; to increase the registration fee for motorcycles from nine dollars to fifteen dollars and to provide for deposit of the increase to the Motorcycle Safety Program Fund.**

**Senator Skip Brandt** explained that this deals with the Motorcycle Safety Program that was created in 1996. He stated that it has increased 22% each year and is currently funded with \$1.00 from each driver's license fee. He added that it is running out of money and that this proposal is calling on the motorcycle riders to pay.

**Senator Stegner** asked if this is a registration fee or a tax and added that if it is a tax, should this be sent through this body. **Senator Brandt** replied that he doesn't consider it a tax.

**Senator Darrington** noted that there are many fees that we mess with with frequent debate on the floor. He stated that this may be a tax, but added that we do this all the time and remarked that he didn't think this was a tax.

**Senator Brandt** stated that they wanted to start this in the House but some wires got crossed. He added that this is important and that we

need to keep the program going.

**Senator Davis** stated that he agrees with Senator Darrington but added that a Chairman on the House side may not.

**MOTION:** **Senator Stegner** made a motion **TO PRINT RS 15083**. **Senator Davis** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**RS 15091:** **A Joint Memorial to the family of Morley Nelson recognizing his many accomplishments and expressing condolences on the occasion of his death.**

**Senator Stennett** stated that he met Morley several times, usually with an eagle on his arm and commented on what he has done for eagles, raptors and conservation. He pointed out the profound effect his work has had on conservation and his world wide renown.

**MOTION:** **Senator Little** made a motion **TO PRINT RS 15091**. **Senator Stegner** seconded the motion.

**VOTE:** The motion passed by unanimous voice vote.

**RS 14494:** **Relating to Special Motor Vehicle License Plates: to extend the final date to apply for Special Idaho Capitol Commission plates in lieu of regular license plates to December 31, 2012, and to extend the date after which the Department shall not issue new Capitol Commission plates to January 1, 2013.**

**Mr. Carl Bianchi** with Legislative Services explained that this is not for a new license plate, but for the Capitol license plate created in 2001. He reported that over 1,500 are sold each year with over \$30,000 each year being deposited into the Capitol Restoration Income Fund. He pointed out that this changes the date and extends the life since originally, we would have finished the Capitol restoration this summer but put it off for financial reasons. He stated that this will extend this six years and added that we need to additional funds.

**MOTION:** **Senator Stegner** made a motion **TO PRINT RS 14494**. **Senator Stennett** seconded the motion.

**DISCUSSION:** **Senator Darrington** stated that it is so refreshing to see a plate change and added that he is pleased to see a nice new design.

**VOTE:** The motion carried by unanimous voice vote.

**Gubernatorial Appointment:** **Superintendent to the Idaho State Liquor Dispensary. Michael "Dyke" Nally of Boise. Serving** a term commencing January 4, 2005 and expiring January 4, 2008.

**Mr. Nally** thanked the committee for all the help and support given to the Liquor Dispensary. He stated that Idaho is one of 19 controlled jurisdictions that was set up following Prohibition in 1933 where the

government gave the states the ability to control alcohol. He added that Maine is close to giving back that authority.

He gave the committee his background by saying that he was raised in Caldwell on farms and ranches. In 1963 he attended Boise Junior College. Six years later, he joined the Air National Guard and served with them for six years. Following his service, he went back to Boise State and the Monday following graduation, he began a new job as the Director of the Student Union. He also held the post of Director of Alumni Relations for 27 years. In 1995, Governor Batt appointed him to the State Liquor Dispensary. He shared that he has a great team and noted that in their first audit, they had an audit as big as the Boise phone book. He pointed out that Senator Hal Bunderson was very helpful and thanked him profusely.

**Mr. Nally** explained that the Dispensary handles the sale of alcohol in the best way because the employees are trained and the money goes back to the citizens. He explained that in 1995 they collected \$55 million and reported that for this fiscal year they expect to collect \$90 to \$95 million with \$31 million of that going back to the citizens of Idaho. He reported that 60-80% of all alcohol related incidents are as a result of beer.

**Mr. Nally** explained that they have modernized some with customer friendly stores, better selection, and more profit to the state. He reported that Idaho is 37<sup>th</sup> in the Nation in consumption. He pointed out that consumers are drinking less but added that we are receiving better profit because the prices have gone up, not consumption. He explained that where people used to pay \$10 for vodka, they now pay \$30 and added that profit has increased 37%, while consumption is up only 17%. He reported that there are 152 stores with 230 employees and an employee ratio of 8.2%, which is very low.

**Senator Stennett** asked how the Sunday sales are going. **Mr. Nally** replied that Sunday is the second largest shopping day and added that 28 other states had Sunday sales. He pointed out that they supported this idea to help the small contract stores and added that there are 100 of these stores in little communities, which are mainly tourist areas. He pointed out that this is an all county option with 18 counties currently participating. He reported that they opened three test stores in Coeur d'Alene, Ketchum and McCall that are all doing well and are thinking of opening more. **Senator Stennett** asked if they are limited to hours of operation. **Mr. Nally** answered that they operate regular hours on Sunday.

**Senator Darrington** thanked him for the annual report and commended him for the colorful, easy to use thumbnail reference.

**NEZ PERCE  
QUESTION AND  
ANSWER:**

*The following is taken verbatim from the meeting tape.*

**Chairman Burtenshaw:** Skip, don't you have your big map there?

**Senator Brandt:** I do.

**Chairman Burtenshaw:** You know, I don't know whether the committee

knows the boundaries of the 1855 Reservation and the 1863, so can everybody see if we put it on that wall?

*Taping of the map to the North wall.*

**Chairman Burtenshaw:** One of the things we've got to decide as a committee, and I'm just going to hold this general discussion here, is we've got a meeting coming up, and if the Majority Leader agrees, we're going to try to do it on Wednesday at the City Building.

**Senator Little:** This coming Wednesday, Mr. Chairman? What time?

**Senator Davis:** Well, that has yet to be determined. But probably around 10:00.

**Chairman Burtenshaw:** Clive, can you kind of show us what we are talking about?

**Clive Strong:** Mr. Chairman, members of the committee, we don't have the 1855 boundaries on this map. But generally, it encompasses areas covering this area around here. And then, the 1863 Reservation boundary is right here. That little checkerboard area.

**Chairman Burtenshaw:** That's the little map that you've got in your water books.

**Clive Strong:** And I passed this out to the committee, last time, that shows basically, the shape of the 1863 boundaries.

**Chairman Burtenshaw:** One of the reasons that I wanted to talk about it was this is ceded area and there's a lot of misunderstanding on what the ceded area is and what the smaller 1863 is.

**Clive Strong:** Mr. Chairman, members of the committee, basically, there are two issues that are raising what we will call "Jurisdictional Issues". One deals with the Springs and Fountains and the other deals with the Jurisdiction of the Tribe in the 1863 boundaries. The easier one to answer, first, is the one that deals with the Springs and Fountains claims. When the 1855 Reservation Boundaries was reduced, and what they did in 1855, was to open those lands outside this area here, to non-Indian settlement. In that 1863 Treaty, there was a provision that expressly provided that the Tribe reserve the right to use springs and fountains on the ceded lands. And ceded lands are these areas out here. The springs and fountains,

**Senator Davis:** Mr Chairman, if I could just...

**Chairman Burtenshaw:** Go ahead.

**Senator Davis:** Clive, yesterday, Senator Brandt sicked the Nez Perce...

**Senator Brandt:** Sho Ban.

**Senator Davis:** The Sho Bans on Leadership, for which I am eternally

grateful. We'll visit about that another time, but they assert that aboriginal fishing rights, that their aboriginal fishing rights are part of what you are showing here, that ICC determinations, reflect that and that you, in the Settlement agreement are providing for the payment to the Nez Perce dollars attributed to Sho Ban aboriginal fishing rights. Would you like to speak to that?

**Clive Strong:** Certainly, Mr. Chairman.

**Chairman Burtenshaw:** Mr. Strong.

**Clive Strong:** Senator Davis, the issue of the aboriginal territory of the Shoshone Bannock Tribes and the Nez Perce Tribe is a historical plight. This has been going on for years and years, infact, every year, we have continuing conflict between the two tribes about where the extent of their off-reservation hunting and fishing rights are. And most of that fight centers in the Salmon River Basin. The Lemhi Tribe, which is consolidated with the Shoshone Bannock Tribe, traditionally had fishing rights up in this area here. And the Nez Perce Tribe have historically claimed fishing rights that extend all the way from the Salmon River up into here. And there is this overlapping area in here. We've had historians look at that and frankly, it's uncertain and I can't remember the exact year, but wrote a letter to the Department of Interior asking the Department of Interior to try to resolve those aboriginal boundaries between the two tribes so that we could get out of the middle of the treaty fishing rights issues. The bottom line is it is uncertain as to what the scope of both their aboriginal territories may be. It's in question of federal law in which the Department of Interior has jurisdiction, not one that the State has jurisdiction over. And right now, to the best of my recollection, and I can confirm that later, the United States recognizes the Nez Perce Tribe's fishing rights as extending into the Salmon River Basin and they recognize the Shoshone Bannock Tribe's fishing rights extending up in the upper parts of the Salmon River Basin and that the basic dividing line is the south fork of the Salmon.

**Senator Davis:** Follow up, Mr. Chairman.

**Chairman Burtenshaw:** Senator Davis:

**Senator Davis:** Thank you, Clive, of course we heard a singular point of view that didn't sound too uncertain. And they asserted that the dispute had been resolved by (inaudible) and that he was able to, with a protractor and a number two pencil, easily define the various streams. Are you suggesting that that statement by Mr. Bacon maybe a bit of an overstatement on the certainty issue.

**Clive Strong:** Mr. Chairman, Senator Davis, I am certain from the tribe's perspective, the Shoshone Bannock Tribe's perspective, they are advocating what they believe to be their boundaries. I am also certain if you talk with the Nez Perce Tribe, they would advocate an opposite point of view. And if you talk to the United States' side, they would probably dance between both sides.

**Senator Davis:** Well, Mr. Chairman, one last....

**Chairman Burtenshaw:** Senator Davis.

**Senator Davis:** I've heard some pretty good dancing in response to my question. Has the Federal Government previously, as the Sho Bans assert, reached, or asserted, that these are the aboriginal fishing rights. We were told, or at least that is what I heard, other Leadership can speak if they desire, I heard them suggest that there was no uncertainty and that the Federal Government had weighed in and drawn it's magic line fixing the rights at a given point in time earlier in the 20<sup>th</sup> Century. Is that an incorrect statement?

**Clive Strong:** Mr. Chairman, Senator, there are decisions in the ICC that suggest what the boundaries of the aboriginal territory may or may not be between the two tribes. That is correct. What the United States does in terms of recognition of those boundaries is not as clear. For example, the Shoshone Bannock Tribe has made federal reserved instream flow water right claims throughout the Salmon River Basin. And the United States refused to assert those claims on behalf of the Shoshone Bannock Tribe asserting they now have a basis for those types of claims based upon the treaty provisions. The Shoshone Bannock tribes sued the federal government in Federal District Court in the District of Columbia and received an adverse decision when they tried to have the Attorney General assert claims on their behalf. So in terms of the water rights issues that are attached to any of the treaty water rights, that issue was resolved adversely to the Shoshone Bannock Tribes in that litigation.

**Senator Davis:** One last follow up. I would like Clive...

**Chairman Burtenshaw:** Senator Davis:

**Senator Davis:** Was that issue ever appealed by them. Do we have a final decision? If so, who entered that order? How do I get a copy of that order? Dot, dot, dot.

**Clive Strong:** Mr. Chairman, Senator Davis, it was finally resolved by the District Court of Appeals, Circuit Court of Appeals in the District of Columbia, and I can make a copy of that.

**Senator Davis:** I appreciate that, thank you, Clive. Thank you Mr. Chairman.

**Senator Little:** Mr. Chairman.

**Chairman Burtenshaw:** Senator Little.

**Senator Little:** Clive, I want to go back and talk about the South Fork. You said the South Fork of the Salmon is a boundary of what?

**Clive Strong:** Mr. Chairman, Senator Little, historically, when we have fisheries in the South Fork of the Salmon River, we'll open up the fisheries, the Tribes will open up the fisheries and the Nez Perce Tribes and the Shoshone Bannock Tribes both assert fishing rights within that South Fork area. Which is the area of uncertainty. I think, clearly, up in this area, the United States recognizes the Shoshone Bannock Tribe's

hunting and fishing rights, and clearly up in this area they do as well. Where the problem comes...

**Senator Little:** The Nez Perce and not the Sho Ban.

**Clive Strong:** Sho Ban, excuse me. It's in here, where the uncertainty becomes...

**Senator Little:** At South Fork...South Fork.

**Clive Strong:** ...overlap and an impassable barrier that we generally use.

**Senator Little:** You don't show any of the Payette River Drainage in this map. That's all the Salmon River Drainage.

**Clive Strong:** That's correct.

**Senator Little:** But the 1855 line was clear down to Garden Valley according to them, so when you are talking about ceded, the Payette River Drainage is not in any way included in the ceded ground. Is that correct?

**Clive Strong:** Mr. Chairman, I cannot assert to that, probably the best way to get the most accurate information for you is for me to produce a map for you that would show you the 1855 boundaries and the 1863 boundaries.

**Senator Little:** I would like to have that. Thank you.

**Clive Strong:** That is certainly doable.

**Chairman Burtenshaw:** Clive, how many acres was in the ceded area? Do you know?

**Clive Strong:** It was millions of acres, Mr. Chairman. I'm not certain of the exact number. Within this area here, within the current, or the claimed, I should say, the claimed reservation boundaries is 750,000 acres approximately.

**Chairman Burtenshaw:** And how much of that is owned by the Nez Perce?

**Clive Strong:** Approximately 110,000 acres are in tribal ownership or subject to restrictions.

**Chairman Burtenshaw:** So 750,000 acres they actually have, and is this 110,000 diminished down to their reservation size?

**Clive Strong:** That, Mr. Chairman, that is the position the State of Idaho has taken in litigation that we believe based upon the 1894 Act of Congress which opened non-Indian Reservations to settlement. That the Nez Perce Reservation boundaries of 1863 be diminished. That is the position we took before the SRBA District Court and we still believe that to be the appropriate conclusion.

**Chairman Burtenshaw:** So the springs and fountains that they are giving their rights up for, are in the 1863 boundary, within the boundary?

**Clive Strong:** No, that's, Mr. Chairman, let me clarify, what I was trying to get to when we started off on some of these other questions was what the springs and fountains are. The springs and fountains were reserved in these areas that are outside of the 1863 boundaries. So within this 1863 boundary, there are no springs and fountains claims. You think of this as a doughnut, there are no springs and fountains. All the springs and fountains claims are in this area outside the Reservation boundaries. And as you will recall, I provided the committee this map that shows where those springs and fountains claims are, in fact, this probably gives you a pretty good idea where those 1855 boundaries were. And of those, we have approximately 600 springs and fountains claims that you can see in that outside the 1863 boundary.

**Chairman Burtenshaw:** And that is the ones that they are keeping?

**Clive Strong:** Those are the ones that they are keeping. There are about a little over 1200 claims that are on State and private land that relate.

**Chairman Burtenshaw:** So I guess the other question that came up in this outside of the boundary there, those, are they allottees and how come they want to keep those out there.

**Clive Strong:** Mr. Chairman, there are not a lot, the term "allottee" becomes confusing because it is used on two different contexts. Using as the Indian law context, it means that you are a tribal member who received lands as part of the process of opening the Reservation to non-Indian settlement, and when the Reservation was opened, the Indians would be allotted a certain amount of land on which to create a farming homestead. So that when we talk about allottees in that context, we're talking about an Indian who received lands as part of the allotment process and has a restriction on alienation. I probably should step back, the tribal lands are not owned by the tribe itself, they are owned by the Federal Government in trust for the benefit of the tribe. And so that is why the United States is involved in the litigation as a trustee for the benefit of the Tribe and so when we talk about "Indian lands", we talk about lands owned by the Federal Government for the benefit of the Tribe or lands that were allotted to non-tribal members. One of the concerns was when the Reservations opened for non-Indian settlement, the Indians were allotted lands the Indians would be cheated out of the lands to which they had been allotted. And so, the Federal Government put a restriction on their ability to transfer those lands in order to protect them against overreaching.

**Chairman Burtenshaw:** So there are no allottees outside of the...

**Clive Strong:** The allottees, where it becomes confusing is where you have a federal grazing permit, you have an allotment. So it's that "allotment/allottee" issue that is getting confused. So when you are talking about allotment, you are talking about the lands that are part of your federal grazing permit.

**Chairman Burtenshaw:** So there is still some members of the tribe who have "allotments" outside of that boundary?

**Clive Strong:** Mr. Chairman, not to my knowledge, I don't know if they do or don't have an allotment. If they have an allotment, it would be pursuant to a federal permit, not as to tribal ownership of any lands. The only allottees on the allotted lands would have to be within this 1863 boundary.

**Senator Darrington:** Mr. Chairman, Clive, when you held up that little map, you said that we all had copies of that. I have everything here that was handed out to us and I have the priority streams and the BLM lands map, but I can't find that particular map.

**Clive Strong:** Senator Little has requested a copy of that map be provided to the committee, but I can provide you another copy.

**Senator Darrington:** Maybe I'll find it as we go along.

**Senator Little:** It might have been in the Resource Committee.

**Clive Strong:** Mr. Chairman, I'll just simply make the maps available. That's the easiest way to do it.

**Senator Darrington:** Thank you.

**Clive Strong:** So in terms of the springs and fountains, when that question comes up, we are talking about them being in this area here. Generally, from top of the Clearwater drainage down into the New Meadows area. They can be scattered throughout that area of this map. We'll show you where those are located.

**Senator Stennett:** Mr. Chairman.

**Chairman Burtenshaw:** Senator Stennett.

**Senator Stennett:** Clive, obviously everyone knows what a spring is, what is a fountain?

**Clive Strong:** Mr. Chairman, Senator Stennett, if you will give me a second, I can actually read the language to you.

**Senator Stennett:** And while you are doing that, give me the sense of what, it's on federal land, looks like mostly wilderness area, what is the right to the springs and fountains? What is the entitlement?

**Clive Strong:** Mr. Chairman, Senator Stennett, in the treaty, Article 8 of the Nez Perce Treaty of 1863, it says, *"the United States also agreed to reserve all springs and fountains not adjacent to, or directly connected with, the streams or rivers within the lands nearby relinquished and to keep back from settlement, or entry, so much of the surrounding land as maybe necessary to prevent the said springs and fountains being enclosed. And further to preserve the protectural right of way to and from the same as a watering place for use in common of both whites and*

*Indians.*” That is the actual language, and so a spring or fountain is a water source that is not tributary to any live river or stream. If it is connected, it cannot be a spring or fountain. So it is treated more like a water hole where cattle can go and obtain water, generally probably a depression or some emission from the ground of water that is a result of snow melt.

**Senator Stennett:** Mr. Chairman, Clive, what is that entitlement? What does that give you? You can’t graze on wilderness area. What can you do with a spring or fountain?

**Clive Strong:** Mr. Chairman, Senator Stennett, when you talk about not being able to graze, you have to look at it in two different contexts: one the Indian, and the other is the non-Indian context. In 1863, the United States, pursuant to this Treaty, affirmed that it would protect these springs and fountains for tribal use in common with the citizens of the territory. And so, whether they can be grazed by tribal members turns on the treaty, not on other existing federal law. Whether it can be grazed by a non-Indian, then turns on the land status and management authorities that may or may not exist in respect to those lands.

**Senator Stennett:** Well, Mr. Chairman, I guess the question begs that the Tribal members could actually use wilderness area to graze in if they had access to water, obviously.

**Clive Strong:** Mr. Chairman, Senator Stennett, they could assert the right to graze if that was in their aboriginal territory as a spring or fountain, that definition, and they could assert that right and the United States, as a trustee, would have to determine what access and what conditions they would provide the tribe to use those springs and fountains.

**Senator Stennett:** Mr. Chairman, final question. As the tribe is acquiring new ground, are they then providing federal government money to buy that land or are they buying it directly, I mean, you originally said the federal government owns the land (inaudible) and is whatever the source, are they then, how are they doing that, and how does that title help (inaudible) that ground in the (inaudible).

**Chairman Burtenshaw:** Mr. Strong.

**Clive Strong:** Mr. Chairman, Senator Stennett, there are basically several different ways the tribe acquires lands: one, the tribe, through it’s own money sources, could acquire land, and if it does so acquire those lands, if it is outside the Reservation, it would be subject to State jurisdiction just like any other lands; if it is within the Reservation, then they could potentially take it into trust pursuant to federal regulations through the Department of the Interior and take it into trust that would then not be subject to taxation. So that basically there’s two different types of ownership: fee ownership or trust ownership. If it remains in fee ownership, then there is issues, conflicting issues, about what jurisdiction the State may or may not be with regard to taxing and authorizing (inaudible).

**Senator Stennett:** Mr. Chairman, as a practical matter, land is being

acquired today, currently, last year or even recently, by the Nez Perce Tribe, is that acquired vis-a-vis the trust aspect, or untaxable.

**Clive Strong:** Mr. Chairman Senator Stennett, I suspect that it is probably both. Typically, when tribes acquire land, they like to do it under trusts because of benefits and protection against taxation.

**Chairman Burtenshaw:** Are there any other questions?

**Clive Strong:** Mr. Chairman, if I could just conclude on springs and fountains. Basic issue here on the springs and fountains is the United States, in this language, has reserved or is required to preserve the springs and fountains. The issue of Reservations, what is really at the heart of this controversy is those claims. The tribe would argue that the word "reserved" means an expressed reserved water right for the benefit of the tribe and that therefore they are entitled to a water right for this claim. The only parallel litigation we have on that is the Public Water Reserves 107, you may be familiar with that litigation that has gone to the Snake River Basin Adjudication Board and in that case, the Federal Government in a similar kind of situation where the United States is required to reserve lands, the State Supreme Court has found that the United States is entitled to reserve water right for those watering holes. Mr. Chairman, the one question that you asked me that I haven't had the chance to get to is the issue of this 1863 boundary. What that really entails is a question about what the effect of 1894 Legislation that opened the Reservations to non-Indian settlement and in 1894, the lands were allotted, about 110,000 acres remained in tribal ownership and the other lands were ceded to the non-Indians through the Homestead Act and so then they now have title to those lands. There are two lines of authority that deal with this issue: one line of authority, which is one that the State of Idaho argued; the Yankton Sioux line of authority, the United States Supreme Court has said, "in the event when these lands are opened up for non-Indian settlement, the tribe quit claims on all right and title interest to the land, and they are paid a sum certain. When you have those two elements combined together, that is deemed to be equivalent of a diminishment of a Reservation. The effect of that would be that you would erase these boundary lines here around the Reservation and the Reservation would now exist of the checkerboarded land. So instead of the Reservation being 750,000 acres it would now be about 110,000. And the importance of that issue is the question of jurisdiction. If the 1863 boundaries remain in place, then pursuant to Federal law, the Tribe would continue to have retained authority to regulate activities on those non-Indian lands. And the State jurisdiction would be constrained. If the 1863 boundaries don't exist today, as we contend in our litigation, then the State's jurisdiction would extend to those non-Indian lands and the Tribe's jurisdiction would diminish them to the trust lands. Sorry that this was pretty complicated legal background, but that's the way it works. The importance, and I think the opponents of the agreement, the important thing to point out is that the Yankton Sioux case dealt with the 1894 Act on the Yankton Sioux Reservation, but as part of that same act, the Nez Perce Reservation was included in that statute. So, from their perspective, they believe that the Yankton Sioux line of reasoning is controlling. Now, I said there were two ways this has an effect: if there wasn't a payment of a sum certain, or a quit claim right title of interest, then the Reservation boundaries would remain in place and that's

basically what we understand to be the condition of the Coeur d'Alene Reservation, which like the Nez Perce Indian Reservation, is open to non-Indian settlement and many of the lands passed into non-Indian ownership. We don't find those same elements in the Coeur d'Alene Reservation situation as we do the Nez Perce Reservation situation.

**Chairman Burtenshaw:** Now, in Judge Wood's case, on the diminishment, is there a problem with this agreement going forward?

**Clive Strong:** Mr. Chairman, Judge Wood's decision is one that he adopted the position that we as a State of Idaho advocated for the District Court. We believed that there is a reason to be proactive in that case. The effect of the settlement on Judge Wood's decision would be that it would just simply be a decision of the District Court and would not be appealed to the Idaho Supreme Court and the U.S. Supreme Court. So, no, it doesn't take Judge Wood's decision off the books, it leaves it on the books, but it doesn't resolve the issue of the jurisdiction because the District Court case there will be arguments about whether that has final effect on the tribe and the other parties.

**Chairman Burtenshaw:** Thank you. One of the reasons that I wanted Clive, Skip and Judy to be here is that we need to set up an agenda for our meeting and Senator Brandt, do you have any thing that you want to add to your map and appreciate you bringing that down here.

**Senator Brandt:** Thank you Mr. Chairman, I would like to just mention one thing. Right now we have Judge Wood's decision placed before the Idaho Supreme Court, if it's based on a water issue, it will stay in Idaho Supreme Court. He stands that this whole issue dealing with the Sho Ban Tribe, dealing with the Nez Perce Tribe, dealing with the Coeur d'Alene Tribe, is no issue because their only claim can be within their Reservation boundary. If we accept this agreement, we are going to miss the opportunity to once and for all, and I evidence that there is a slight chance that Idaho Supreme Court could say that the Tribes own all the water in the state of Idaho, they'd have ramifications going through because it would go to the U.S. Supreme Court and it would be standing for the rest of the states. So we could lose all of our water. Common sense, that can't happen, number one. Number two, if we keep it in our court system, we have the best opportunity to settle these cases. Judge Wood's decision even goes a little bit further in putting to rest another issue of the 1863 boundary that says that the Tribe only has jurisdiction over the chunks of ground that it has title to. If the Sho Bans, and that is why I set up the meeting yesterday, if the Sho Bans have any other issue that comes up dealing with the tribes, that is no longer going to be in Idaho Supreme Court. Now we are going to the 9<sup>th</sup> Circuit. We will be in Federal Court on all these other conflicts and claims.

**Senator Davis:** On that very point, and Skip, I think that's what Clive was saying at the end of his comments, was that if the effect of the settlement agreement is to leave Judge Wood's holding still in effect with the benefit of res judicata as it relates to the Nez Perce Tribe and any conflict that would exist from that point perspective, would be the conflict between the two tribes, not necessarily one that would substantially involve the State of Idaho. Did I mishear what Clive was saying?

**Clive Strong:** Mr. Chairman, that is correct. I think we've got to be careful to sort out the issues. This issue of the aboriginal territory between the Shoshone Bannock Tribe and the Nez Perce Tribe will not be resolved in the Snake River Basin Adjudication, regardless. That is an issue of Federal law that deals with the extent and scope of their treaty rights. Certainly, each side looks at it as an opportunity to advance their cause. The Shoshone Bannock Tribe I would look at from the standpoint of saying, if I've got a diminished Reservation, it means their rights are less, and make that argument. But it doesn't answer the question. The only question that could really be answered is, in my mind, is this issue as to whether this 1863 boundary still continues to exist or not. And that would resolve jurisdictional conflicts over the non-Indian lands. It would not, in the end of the day, resolve all conflicts though, because there is still the issue of those checkboarded ownerships and how the Indian relationships of those rights occur. So in part, I agree with Senator Brandt, but in part it's not the panacea that is going to resolve all issues for us. It would resolve one very significant issue.

**Senator Brandt:** The obvious difference is between a District decision upholding from Judge Wood's decision and a Supreme Court decision setting the law of the land.

**Senator Davis:** I appreciate that tutorial. Thank you Senator Brandt.

**Clive Strong:** Mr. Chairman, that is correct. The difference here is really some fight over the forum issue because we do have, in order to lay the issue on hold, we do have an adverse decision decided by Judge Lodge in reference to the United States case that found that the Reservation was not diminished and that was appealed to the 9<sup>th</sup> Circuit Court of Appeals and affirmed. So we've got the 9<sup>th</sup> Circuit Court of Appeals presently concludes that this Reservation's 1863 boundaries exist. The opportunity that exists in the SRBA is to litigate this issue in the State Court and if you have conflicting decisions within the State Supreme Court, and the 9<sup>th</sup> District Court of Appeals, that is the traditional basis for granting certiorari in the United States Supreme Court, when two highest courts are in conflict. So that is basically the issue, I think you might (inaudible) jurisdictional issue, it is a forum issue.

**Senator Stennett:** I guess I would think that the State Supreme Court would affirm Judge Wood's decision. The real gap or opportunity is at the Supreme Court level and that's the next forum, it's not the 9<sup>th</sup> Circuit.

**Clive Strong:** I think that that's the real important point from Senator Brandt's point of view, is that this provides a forum to get these two courts in conflict with one another providing the basis for them making petition for certiorari in the United States Supreme Court.

**Senator Davis:** Mr. Chairman.

**Chairman Burtenshaw:** Senator Davis.

**Senator Davis:** That's an interesting question, Senator Stennett,

**SIDE TWO:**

**Clive Strong:** Mr. Chairman, there is a separate basis upon which the United State Supreme Court could grant cert, or the federal question. Typically that is not a grounds that is used in current jurisprudence, generally the Supreme Court only takes court cases where there is conflict between the circuits and the courts.

**Senator Davis:** Well, Mr. Chairman, if I might.

**Chairman Burtenshaw:** Senator Davis.

**Senator Davis:** If I might ask, Senator Brandt. Is one of the purposes of your protest or objection to the Nez Perce Settlement Agreement, that you'd like to force this split ultimately and see the U.S. Supreme Court ultimately resolve the issue between the Nez Perce Tribe and the Sho Bans? Or at least the Tribal.

**Senator Brandt:** Mr. Chairman, Senator Davis. It behooves the state, to go down that road where reviewing the gas tax issues, we're dealing with gaming issues, the whole gamut is open and if we don't get to a settlement and decide once and for all who has what jurisdiction, it's just going to be continuing.

**Senator Davis:** Well, if I could ask one last follow up.

**Chairman Burtenshaw:** Senator Davis.

**Senator Davis:** Thanks you. Skip, I appreciate your candor on this. On a scale of 1 to 10, ten being your most powerful argument in opposition to the Term Sheet. Is this number ten or is this a lower priority to you? I mean in relationship to some of the other arguments I've heard about the worry over BLM or whatever the permits were. Is this your big argument? Is this your big concern?

**Senator Brandt:** I think there are many concerns.

**Senator Davis:** I sent you a softball. I'm sorry, Mr. Chairman. I'll withdraw the question.

**Chairman Burtenshaw:** You don't want to answer that. (Laughs).

**Senator Brandt:** I'd have to look at my list, Mr. Chairman, of all the concerns. (Laughs).

**Senator McKenzie:** Clive, do you have a copy of the Webb v, U.S. decision and if there was a published or unpublished decision from the 9<sup>th</sup> Circuit.

**Clive Strong:** It was a published decision and I can provide you a copy of that.

**Chairman Burtenshaw:** Senator Stennett.

**Senator Stennett:** Mr. Chairman, I appreciate Senator Brandt's effort to try to give an answer, but is there a different forum where you might get

an answer rather than putting the water rights of the Snake River at risk? Is there another way to move forward to a decision that would get a U.S. Supreme Court decision?

**Senator Brandt:** I'm not an attorney. I know that there is a group of twenty-two public entities that are within this boundary: school districts, highway districts, counties, cities, that have bonded together and pooled funds to try to get this issue addressed. They filed a brief in the Webb case. However, anything dealing with the Tribes go to the Federal courts, where we lose. We can't, no entity can, take the tribe to court. We all have to sit back and wait for a case to bring forth and then all (inaudible).

**Senator Stennett:** I understand. Because, Mr. Chairman, it's a water rights case and the State Supreme Court has ultimate jurisdiction.

**Senator Brandt:** Mr. Chairman, we will never have the opportunity, I don't see, from people that I have talked to, will never have an opportunity like this again.

**Chairman Burtenshaw:** Mr. Strong, do you have anything to say to that?

**Clive Strong:** Mr. Chairman, I don't disagree with the comment. I mean that this is basically what the issue is. It is a forum issue.

**Chairman Burtenshaw:** I guess my question is, is there any other way to do it?

**Clive Strong:** Certainly, Mr. Chairman. There are other avenues that have litigated this issue and the state would pursue those avenues, but the real question is that this is perceived as being the best forum in which to do it because of the ability to get the certain decisions, and that is a legitimate conclusion.

**Chairman Burtenshaw:** Mr. Strong, I'm really dense with it so my question would be, if the agreement goes through, is there a process that they could address this issue that Senator Brandt has?

**Clive Strong:** Mr. Chairman, again, I would say that yes, there are mechanisms that Senator Brandt has pointed out because of the sovereignty of the Tribe, those mechanisms you have to wait for the right opportunity to be presented in order to litigate.

**Chairman Burtenshaw:** Just following up. Then in your estimation, is there another opportunity anywhere that you can see?

**Clive Strong:** Mr. Chairman, there most certainly will be other opportunities and what those are, I can't tell you today, but there will be other opportunities. But again, as Senator Brandt has pointed out, those opportunities probably won't be in state court.

**Chairman Burtenshaw:** You know, I've tried to get both sides of this involved in what we need to do is set up an agenda for this meeting for Wednesday and our time is running short. And Clive, and Skip and Judy have offered to come to Clive's office at noon today and see if we can

work on that. We'd invite any of the committee who would like to be a part of that, especially you, Mr. ProTem, if you could. Any of you that could give us a hand with that. What we are going to try to do is work with Leadership and get that date so that we might, can address most of this issue on that date and get it behind us. Did the Farm Bureau have anything, Judy, that they wanted to say? Skip, anything else?

**Senator Brandt:** Mr. Chairman, thank you for the opportunity to have a fair hearing over on this side.

**Chairman Burtenshaw:** We want it to be because it is the right thing. You know. Any other questions or comments from the committee? One reason that we pulled this off at the last minute is because the GARVEE issue didn't come through. That is why we had the extra time.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 9:39 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

MINUTES

**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Monday, March 7, 2005

**TIME:** 8:00 a.m.

**PLACE:** Room 437

**MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, Malepeai.

**ABSENT/  
EXCUSED:** None.

**GUESTS:** See attached sign in sheet.

**CONVENE:** Chairman Burtenshaw called the meeting to order at 8:06 a.m.

**COMMITTEE  
VOTE:** **Superintendent to the Idaho State Liquor Dispensary Michael "Dyke" Nally of Boise. Serving a term commencing January 4, 2005 and expiring January 4, 2008.**

**MOTION:** **Senator Little** made a motion to recommend the confirmation of this appointment. **Senator Malepeai** seconded the motion.

The motion passed by unanimous voice vote.

**Gubernatorial  
Appointment:** **Idaho Commission on Human Rights Andrea Wassner of Boise. Serving a term commencing February 1, 2005 and expiring July 1, 2006.**

**Ms. Wassner** works for the Social Security Administration and is a member of the American Federation of Government Employees. She was recently appointed as a board member of the Idaho AFLCIO. Ms. Wassner's background is in social work. She has been doing legislative work for the past 8-9 years and is proud to be a nominee for this position.

**Senator Darrington** asked if she was confident that she could work in the ICHR with the absence of subpoena power. **Ms. Wassner** responded she is.

There was a discussion about whether the Idaho Commission on Human Rights is a commission requiring a balance of political affiliations and would therefore require Ms. Wassner to declare her affiliation. It was determined that this commission did not require this declaration.

**Chairman Burtenshaw** thanked Ms. Wassner for appearing and announced that the committee would be voting on her appointment at the next meeting.

**Gubernatorial  
Appointment:** **Idaho Commission on Human Rights Clarisse Maxwell of Boise. Serving a term commencing July 1, 2004**

**and expiring July 1, 2007.**

**Ms. Maxwell** is a native of Macon, Georgia and has been in Boise since 1980. She has served on the commission since 1988. Her work on the commission has been very rewarding, and she believes it is a worthwhile commission serving the citizens of this state.

**Chairman Burtenshaw** asked Ms. Maxwell if she could describe types of cases and how many she handles each year. **Ms. Maxwell** replied she handles about 500 cases per year, and the range includes age and race discrimination, a few religious discrimination, and sexual harassment cases.

**Senator Malepeai** asked if there are any particular issues that are concerning for the state. **Ms. Maxwell** responded there are many cases of sexual harassment and race discrimination. She noted the commission does not travel through out the state and holds their meetings in Boise. **Senator Malepeai** asked if they coordinated their activities with other commissions and agencies. **Leslie Goddard**, the Director of the Human Rights Commission, answered that the main obstacle is the travel expense, and they try to coordinate as much as possible within their limitations.

**Senator Davis** requested Ms. Maxwell highlight one of her successes from her work on the commission. **Ms. Maxwell** spoke the satisfaction in cases where an employer is receptive to and asks for assistance from the commission in correcting their policies and practices.

**Chairman Burtenshaw** inquired regarding the authority of the commission to reach the consummation of a case or a hearing. **Ms. Maxwell** explained the commission conducts an investigation and reviews the merits of the cases, then they try to bring the parties together to reach a resolution.

**Chairman Burtenshaw** thanked Ms. Maxwell for appearing and announced that the committee would be voting on her appointment at the next meeting.

**RS 15104: Stating Legislative Findings and approving and extending Temporary rules reviewed by the Legislature, with exceptions.**

**Mr. Carl Bianchi**, Director of Legislative Services, explained that this is the end process for the rules review for this session. These two resolutions (RS 15104 and RS 15105) relate to temporary and fee rules. RS 15104 would extend all the temporary rules which have not been rejected by any of the legislative committees. This is done by omnibus resolution for reasons of economy.

**MOTION: Senator Darrington** made a motion to print RS 15104 and send it to the 10<sup>th</sup> order. **Senator Stennett** seconded the motion.

The motion passed by unanimous voice vote.

**RS 15105 Stating Legislative Findings and approving Administrative Rules that**

**impose a fee or charge, with exceptions, and rejecting certain agency rules that are not approved.**

**Mr. Bianchi** also presented RS 15105, the companion omnibus bill to RS 15104. This would approve all the rules that have a fee or charge which have not been rejected by any legislative committee. Fee rules must be approved by both bodies of the legislature.

**Senator Little** inquired regarding Senator Corder's bills with respect to fiscal impact, and their potential affect on this resolution next year **Mr. Bianchi** explained a fiscal impact will only appear when occasioned by the rule itself. The fiscal impact would be detailed in the rule before it is published. It will not change the process.

**MOTION:** **Senator Stegner** made a motion **TO PRINT** RS 15105 and send it to the **10<sup>th</sup> ORDER**. **Senator Malepeai** seconded the motion.

The motion passed by unanimous voice vote.

**RS 15121** **GARVEE Bonding - Transportation Project Financing**

**Senator Stegner** presented RS 15121, which is the second attempt at a GARVEE bond financing bill. An RS from a couple weeks ago needed to be modified to ensure there was no pledge of state funds. The primary change is on page 3 line 38 of the bill, reinserted language stating federal funds to pay for bonds. Section 5 was changed to clarify the transfer of funds from the State Controller is not a mandatory transfer. Language in Section 10 was deleted to be consistent with Section 3. The final change was removing the emergency clause in Section 12.

**MOTION:** **Senator Stegner** made a motion **TO PRINT** RS 15121. **Senator Stennett** seconded the motion.

**DISCUSSION:** There was a discussion regarding the obligation of the state to match a portion of the federal funds. It was determined that the state is obligated to provide a 10% match on the income flow of federal monies every year, whether it is used on bond or not. **Senator Little** expressed concerns that Idaho would be one of the highest leveraged states as far as GARVEE bonds. **Mr. Chuck Winder** explained that it is a process, and they are asking simply for authorization to proceed, not a dedication of funds. The wording in the legislation is "may;" they are not pledging the faith and credit of Idaho. **Senator Stegner** stated that the legislature has control over how far the project goes.

**VOTE:** The motion passed by unanimous voice vote.

**H 84** **Horse Racing - Amends existing law relating to horse racing to provide for distribution of certain gross daily receipts to owners and breeders of racing Appendix horses.**

**Representative Lenore Barrett** presented H 84. She explained she was contacted by her constituent Kathy Hatch who is President of the American Appendix Horse Association (AAHA). AAHA met with the Idaho Racing Commission to approve Appendix Breed horses (combination of

thoroughbred and quarter horses) as race horses. This legislation would allow Appendix horses to race. This will generate additional revenue for the race tracks and for the state since the AAHA is headquartered in Idaho. Other states have established American Appendix racing. She presented a letter from a breeder in Wyoming who would send his stock to Idaho for training and to race in Idaho if this legislation passes.

**Senator Darrington** inquired as to the distance these horses run, because a quarter horse runs sprints and a thoroughbred runs distances. **Ms. Hatch** explained these horses can run longer races. A horse that is 15/16 thoroughbred cannot register in the Thoroughbred Association or as a quarter horse either. **Chairman Burtenshaw** asked for clarification regarding registration as a thoroughbred and as a quarter horse. **Ms. Hatch** explained it has to do with bloodlines, registration for shows, and affects the price of the animal and breeding costs.

**Senator Stegner** asked if a member of the Idaho Racing Commission was in attendance. **Jaclyn Livengood** arose. **Senator Stegner** inquired as to the definition of "handle" on page 2 lines 10-11 "payment by the commission...to the handle generated by each horse breed." **Ms. Livengood** explained a handle is the amount bet on the races with respect to breed and is distributed every quarter. **Senator Stegner** clarified that without the recognition of the Appendix breed in this bill, Appendix can't participate. **Ms. Livengood** confirmed this. **Senator Stegner** followed up asking if this reduces or diminishes the amount going to the other breeds already listed. **Ms. Livengood** said it did. **Senator Stegner** asked if this generated any opposition to the bill. She replied that the Idaho Quarter Horse Association expressed some concern.

There was further discussion describing Registry of Merit (ROM) and the generation and distribution of revenues.

**Earl Lilley** a horse breeder representing the Idaho Horse Council testified against H 84. He objected to the qualification of an Appendix as a racing horse, and the American Appendix Horse Association receiving any racing revenues. He argued that a quarter horse-thoroughbred mix is able to race with an American Quarter Horse Association number.

**Clayton Russell**, the Vice President of Racing for Idaho, was concerned about the distribution of monies. He stated the AAHA is a splinter group of quarter horses. This can cause confusion about which horses qualify as quarter vs appendix, and how the monies are distributed accordingly.

**Duayne Diderickson**, testified against H 84. He said appendix horses are already permitted to race. He raised concerns about double registration and who will track this making the distinctions between breeds. He also is concerned no other state recognizes the appendix breed as a separate racing breed.

**Senator Davis** said there seemed to be a conflict in the industry and did not want to do anything to hurt the industry.

**Chairman Burtenshaw** recognized **Kathy Hatch** to give additional

explanation and clarification.

**Ms. Hatch** spoke regarding DNA, ROM, and breeding.

**Senator Stegner** said legislative committees get put in these “turf wars” which are difficult for legislators without the expertise in these fields to sort out. They encourage all interested parties to negotiate and work out the differences. **Ms. Hatch** expressed her concern that the Quarter Horse Association would not understand the difference between appendix and quarter horse as so far as needing the benefits of their own association.

**Ms. Livengood** responded the Racing Commission does not condone dual registry, and the funds would be diminished because there would be a greater number of breeds over which to distribute revenue.

**Senator Little** asked about the amount of money in question. **Ms. Livengood** said that would depend on the number of horses racing and how many run as an appendix. Currently the Quarter Horse Association revenues are around \$15,000 per year. **Mr. Russell** said they also take in purse money of over half a million.

**Mr. Russell** and **Mr. Lilley** said they would be happy to talk to **Ms. Hatch** but were not given the opportunity.

**Representative Barrett** expressed her surprise with the discussion and debate concerning money and “turf” on a matter which would bring revenues to the race tracks. It isn’t a threat to any horse organization, and adding a new hybrid to the industry deserves consideration.

**MOTION:**

**Senator Davis** made a motion to send H 84 to the Floor **WITHOUT RECOMMENDATION**. The motion died for lack of second.

**Senator Little** said they have a responsibility to commerce and this is not the mass of the racing industry in Idaho. If it is a good idea, it will come up again next year.

**SUBSTITUTE MOTION:**

**Senator Little** made a motion to **HOLD** H 84 in committee. **Senator Stegner** seconded the motion.

**VOTE:**

7-2 in favor of the motion. Davis and Burtenshaw in opposition.

**Senator Davis** asked to be excused.

**S 1150**

**Relating to contracts by governmental entities; by the addition of a new section to provide additional requirements for persons or entities entering into contracts with the state, to prohibit the state from awarding a contract to a contractor or subcontractor who performs the work at a site outside of the United States, to provide exception, for damages and civil penalties.**

**Senator Stennett** presented S 1150 and asked to send it to the 14<sup>th</sup> Order for amendment. He explained that the draft of the bill needs to focus on services, in response to **Senator Stegner’s** concerns during the print hearing.

Currently the state pays citizens of India to answer calls regarding the food stamp program. Health and Welfare is a member of a group contracting with JP Morgan to handle the calls.

The cost to have those calls answered in the United States would be \$124,700 to the general fund and \$142,900 from federal funds. This cost does not take into account the fiscal benefits of allocating state monies to the United States residents who would perform those jobs. Any vendor who misleads the state about being a sole-source provider can be assessed a civil penalty, not in excess of \$50,000.

**Senator Stennett** referenced a letter from the Attorney General's office stating this bill has "no constitutional difficulties and little likelihood of statutory prohibitions."

There are two other services currently performed out of state, which will not be affected by the passage of this bill. They are the British Columbia Ministry of Air and Land doing some tracking for Fish and Game, and Idaho Transportation Department has some Scale and Motion services at certain ports. This sets a policy to do business within the state of Idaho unless the service is unique such as the ones he referenced.

**Senator McKenzie** was concerned that taxpayer dollars are being used to subsidize higher costs in the United States. He asked about an overriding policy, over free trade principles, at the least expense to the taxpayers. **Senator Stennett** replied it is not to seek the lowest dollar, but to create a higher common wealth.

**Senator Little** expressed concerns about the extent to which they can be applied. **Senator Stennett** replied he had worked with the Department of Administration to identify any situations this could adversely effect. The result were the two services referenced earlier. **Senator Little** introduced a scenario where under this legislation, if a unique service becomes available in the United States or Idaho, but at an outrageous rate, is there a breaking point to override this legislation. He is against outsourcing, but is concerned about the potential economic consequences.

**Chairman Burtenshaw** inquired regarding the Fiscal Impact. **Senator Stennett** explained the fiscal impact reflects the cost of the current contract. Bids would need to be fielded for doing the work in the U.S. to know the exact difference in cost between the outsourcing and insourcing.

**MOTION:**

**Senator Malepeai** made a motion to send S 1150 to the **14th ORDER**. **Senator Stennett** seconded the motion.

**DISCUSSION:**

**Senator McKenzie** supports the motion. The legislation is a good principle, but he can't support an absolute prohibition. It is worthwhile to allow the state to consider this when making a decision. The lowest cost dollar isn't always the best deal.

**Senator Stennett** expressed his willingness to amend the legislation to include a cap regarding the percent increase of the cost of the contract within the state or country.

**VOTE:** 5-3-1 in favor of the motion. Darrington, Geddes and Little in opposition.  
Davis excused.

**ADJOURN:** There being no further business before the committee, Chairman  
Burtenshaw adjourned the meeting at 9:56 a.m.

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Senator Don Burtenshaw  
Chairman

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Joan MacMillan for Lisa Lalliss-Skogsberg  
Secretary

## MINUTES

### SENATE STATE AFFAIRS COMMITTEE

- DATE:** Wednesday, March 9, 2005
- TIME:** 8:00 a.m.
- PLACE:** Boise City Hall - City Council Chambers
- MEMBERS:** State Affairs Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, Malepeai.
- Resources and Environment Chairman Schroeder, Vice Chairman Pearce, Senators Cameron, Williams, Brandt, Langhorst.
- ABSENT/  
EXCUSED:** None.
- GUESTS:** See attached sign in sheets.
- CONVENE:** Chairman Burtenshaw called the meeting to order at 9:16 a.m.
- H 152:** **Snake River Rights Agreement:** Approve, ratify and confirm the Snake River Water Rights Agreement of 2004.
- H 153:** **Water Rental - Flow Augmentation:** Amend Idaho Code 42-1763B to authorize rental of water by the Bureau of Reclamation consistent with the term of the Snake River Water Rights Agreement of 2004.
- H 154:** **Minimum Stream Flow:** Establish minimum flow water rights provided for in the Snake River Water Rights Agreement of 2004.

**OPENING INTRODUCTION: Mr. Clive Strong**, Deputy Attorney General from the Office of the Attorney General, read the Mediator's Term Sheet and provided an overview of the Nez Perce Tribal components. He explained that this contains five parts: 50,000 acre/feet of consumptive use water; \$50 million in a trust fund for multiple-use water and fisheries; \$23 million fund for domestic water and sewer systems for tribal communities on the reservation; \$10.1 million in lieu of payments for the 30-year rental value of 45,000 AF of uncontracted storage space in the Payette River system; and \$13 million for the Salmon/Clearwater Habitat Trust to be used for conducting habitat activities in the Salmon/Clearwater Basin by the tribe. He explained that all federal money is appropriated by Congress. He further explained that this agreement includes holding 200,000 AF of water in the Dworshak Reservoir to provide recreational and fisheries benefits; the transfer of management, but not ownership, control of the Kooski Hatchery and joint management of the Federal Dworshak Hatchery, 11,000 acres of BLM lands from the former reservation boundaries, recognition of 600 springs and fountains on federal lands that are outside the exterior boundaries of the 1863 Reservation as well as a \$200,000 lump sum mitigation payment in lieu of tax payments.

**Mr. Strong** provided an overview of the Salmon/Clearwater component by stating that this includes three elements: an instream flow program consisting of 205 instream flows established pursuant to state law and

held by the Idaho Water Resource Board that will be subordinated to water rights existing on or before the date of this agreement and to future domestic, commercial, industrial and municipal water rights; cooperative agreements pursuant to the Endangered Species Act and will provide for voluntary instream flow habitat program, voluntary forestry program and voluntary habitat improvement program; the Federal legislation provides for \$25 million in funding for the state to implement those voluntary programs; and the Snake River flow component to establish a continuation and existing flow augmentation program under 42-1763B with modifications. Those modifications include a 30-year period, will also provide for the release of power head water in drought years, like this year, in Palisades and Anderson Ranch Dam, and allow the Federal government to acquire 60,000 AF flow water rights below Milner and above Swan Falls and run through the state water main for flow augmentation purposes. The key provisions are dismissal with prejudice, which means that they are gone now and forever of all tribal instream flow claims, both on and off the reservation, dismissal with prejudice for all streams and fountains claims on private and state lands, implementation of a 30-year biological opinion for the operation of the Upper Snake River Projects, and a biological opinion for the Salmon/ Clearwater cooperative agreements. Finally a remanded case in District Court for implementation of the agreement. He explained that the key elements for implementation of this agreement include Congressional approval, which has occurred; State approval, which is in the process; Tribal approval and the issuance of the biological opinions.

**H 152:**

**Mr. Strong** explained that this bill would call for ratification of the Snake River Water Rights Agreement of 2004. It finds the agreement as being the Mediator's Term Sheet and incorporates the federal legislation that is part of that approval process. It provides for approval and ratification of the agreement in Section 2. Section 3 authorizes the Governor to take those actions necessary to implement the agreement. Section 4 provides that the act will only become effective upon certification by the Governor through a proclamation that all conditions of the effectiveness of the agreement have been satisfied as required by the agreement.

**H 153:**

**Mr. Strong** explained that this bill implements the Snake River Flow component of the Mediator's Term Sheet. Specifically, Section 1 would amend existing Idaho Code Section 42-1763B to permit the release of up to 427,000 acre feet of storage water and lease or purchase 60,000 acre feet of water rights below Milner and above Swan Falls for flow augmentation below Hells Canyon Dam. He added that this authorization would continue through December 31, 2034 unless terminated as provided below. Section 2 provides that all water for storage or natural flow must be ran through the water bank operated by the Idaho Water Resource Board or through the local committees. Section 3 requires the state to pursue a shaping agreement for flow releases from Lake Cascade. He reported that the concern here is that flow releases could have potentially adverse effects on Clean Water Act issues and on the recreational activities on Lake Cascade. Through the shaping agreement, we will try to minimize those concerns. In addition, this section requires releases from all storage facilities be consistent with Clean Water Acts so that we don't incur new problems in terms of implementation. Finally, this requires that all releases be consistent with the Snake River Water Rights

Agreement of 2004. Section 4 disclaims any interpretation that by approval of this program, we deem flow augmentation necessary for other species. Section 5 provides that the existing Bureau of Reclamation transfer proceedings must be withdrawn or held in abeyance while this act is in effect. He reminded the committee that a few years back, the Bureau of Reclamation proposed to transfer portions of its water rights for use of flow augmentation. Finally, Section 6 provides for expiration of the Act upon termination of the Snake River Water Rights Agreement of 2004, and added that this can occur either through the natural termination of the agreement after 30 years as to the ESA portions of the agreement, or if the biological opinion is withdrawn, or other determinations found.

**H 154:**

**Mr. Strong** explained that this bill implements the Salmon/Clearwater component of the Snake River Water Rights Agreement of 2004. He stated that this provides for the state's establishment of minimum stream flows pursuant to state law on 205 streams in the Salmon and Clearwater Basin. These flows will be subordinate to future domestic, commercial, municipal, and industrial uses with additional minimum flows also subordinated with a certain amount of water for other future use for agricultural purposes and other needs. He added that this includes 182 streams on the "A" list and 23 streams are on the "B" list. He explained that the "B" list streams are those in which there are flow indications presently with instream flows satisfied through the establishment of market based mechanisms. There would be no impact on the "B" list streams existing rights.

He stated that prior to the change in the minimum stream flows, pursuant to the agreement, the State will consult with the Nez Perce Tribe and following that consultation, it would be within the state's prerogative to modify or terminate any of those minimum stream flows. Finally, this provides effectiveness only upon the certification by the Governor, that the Snake River Water Agreement of 2004 is implemented.

**COMMITTEE  
QUESTIONS:**

**Chairman Burtenshaw** asked him to address the shaping agreement on the Dworshak. **Mr. Strong** explained that the intent is a memorandum between the Tribe, the State, and the Federal Fish and Wildlife agencies on how the flow out of the Dworshak would be affected by the 200,000 acre/foot water augmentation. Previously, the Corps of Engineers has gone, pursuant to their authorities under the Commerce Clause, to release that water without input or the ability for the State or Tribe to have significant input on those releases, but the agreement provides such input.

**Senator Little** asked about the shaping agreement at Cascade and the enforceability of how that works. **Mr. Strong** replied that what typically happens is that water is needed in the earlier part of the season for flow augmentation through May and June. Under this agreement, they would exchange with the Idaho Power Company to release the water and then call for a release from Lake Cascade later in the season. He explained that we've had that agreement in the past, but it has expired. He stated that this provision will reimplement that agreement. He reported that the terms of enforcement, once the agreement is in place, will be the relicensing part of the Hells Canyon projects. Enforcement will also be through the Clean Water Act.

**Chairman Burtenshaw** asked about the transfer of management of the Kooski Hatchery and the co-management of the Dworshak Hatchery. **Mr. Strong** responded that most of the hatcheries in the west are mitigation hatcheries that are part of the compensation plan with the Corps of Engineer projects along the Columbia and Snake Rivers. He reported that they are typically owned by the Federal Government and managed by the states and Tribes. He stated that the Tribe will assume management of these facilities. He pointed out that the management of these facilities is governed by a provision in the *United States v. Oregon* Comprehensive Plan that requires all parties to bring on a management plan for production from those hatcheries.

**Senator McKenzie** asked what happens under current law if we don't extend the time in H 153. **Mr. Strong** explained that upon expiration, the federal agencies are required to enter into consultation with the Fish and Wildlife Service and the National Marine Fisheries Service to determine the discretionary operation of those projects. He stated that we don't know what that injunction would look like, but do know that it is a violation of the Endangered Species Act without the biological opinion. **Senator McKenzie** asked if this requires us to have some type of flow augmentation after this expires. **Mr. Strong** answered that someone could bring an action saying that the projects had not gone through the proper consultation process. The court would then likely issue an injunction requiring the agency to take certain acts and would likely mean that we will have some flow augmentation.

**Senator Williams** asked him to explain "dismissed with prejudice". **Mr. Strong** stated that this is a legal term meaning "final decision" on those issues in court and added that this cannot be resurrected in the future. **Senator Williams** asked if there are any loopholes so that they can sue again. **Mr. Strong** replied that this is a clear order of the court as a final determination.

**Senator Langhorst** asked under the federal rules regarding the management of the hatcheries, was there a requirement that the adipose fins be clipped prior to release. **Mr. Strong** noted that under *United States v. Oregon*, regarding the process for those fishes, this is part of that process.

**Senator Geddes** noted that a lot of the correspondence that he has received has focused on the definition of fountains and springs and asked him to please explain the term in the original and modified boundary. **Mr. Strong** answered that Article 8 of the Nez Perce Treaty of 1868, "*The United States also agrees to reserve all springs and fountains not adjacent to or directly connected with the streams or rivers to the lands hereby relinquished.*" He added that it cannot be a water source that is tributary to any live stream or river such as artesian sources or other isolated sources with no connection to any water supply. **Senator Geddes** asked if the definition was secure and being interpreted by all individuals and parties in the same way. **Mr. Strong** replied that in order for it to be a spring or fountain, it has to be more than a quarter mile distance from any live stream or spring. **Senator Geddes** asked if these that are granted are outside the boundaries of the reservation. **Mr. Strong** answered that this is correct. In 1855, a larger reservation was

created for the Nez Perce Tribe. In 1863, that reservation was reduced in size, so lands outside that reservation were ceded to non-Indian use. Those lands that were relinquished in 1863 are those lands that this applies to. He added that there are no springs and fountains claims on those lands outside of the 1863 reservation.

**Senator Stegner** concentrated on the 11,000 acres of BLM that will transfer to the Tribe within the boundaries of the existing reservation. He asked about the county roads that transverse through property lines and what will be the status of those roads. **Mr. Strong** replied that these are subject to all existing easements and added that those roads should be unaffected. **Senator Stegner** asked if this will also include traditional roads or non-county or private access roads. **Mr. Strong** answered that RS 2477-type roads that have not been officially dedicated or reserved are not an issue, but legally, those will apply as well due to existing easements.

**Senator Little** stated that there is no right-of-way-by-use on federal land. Those RS 2477 lands show a "V" for vacant at the title companies. They also don't show an easement recording on them. The purchaser of the parcel can shut down the county road. He asked what will happen in this instance. **Mr. Strong** stated that this is getting into an issue of federal law that he wasn't comfortable responding to. He chose to defer to the federal member and get the response back to the committee. But there was no federal official present so he offered to provide that information at a later date.

**Senator Stennett** referred to the maps in the handout regarding the BLM land and asked if there was an actual map of those lands that have been selected in a size where we could see the roads and the other things referred to here. **Mr. Strong** referred him to the 8 ½ by 11 map, but offered to show him one that is a much larger scale.

**Senator Pearce** asked him to respond to a quote about Judge Wood's decision as adequate back in 1999 or 2000. **Mr. Strong** replied that the state's position has been that Judge Wood's decision was correct and added that they believe it will be supported on the appeal. He added that it does not address the on-reservation or consumptive-use claims or the springs and fountains claims which remain to be litigated.

**Mr. Strong** obtained a copy of the map from a member of the audience.

***Written copies of the following testimonies are included in the permanent record in the committee minute book located in the Legislative Library in the basement of the State Capitol. Following are excerpts of these testimonies.***

**Mr. Michael Bogert**, Office of the Governor, testified that the agreement is the result of a very difficult and long negotiation and compromise. This agreement was announced over nine months ago and has gone to Congress for ratification, to the Oval Office for the President's signature and back to this committee for review. He added that he, along with Mr. Strong, briefed the committee last summer during the interim. He explained the role of the Governor during these negotiations. He stated

that the Governor's position is clear and has protected this state's sovereignty, provided a long term certainty for Idaho's agriculture interests and provided a future opportunity for Idaho's stakeholders to chart their own destiny under the Endangered Species Act and the Clean Water Act. He offered that it is important to agree to this settlement rather than to put the state's interests in jeopardy with a judge or several judges in state court. He submitted for the permanent record a copy of the Governor's January 6, 2005 remarks to the Idaho Water Users Convention as well as the prepared testimony for the United States Senate Committee on Indian Affairs this past July. He remarked that the Governor believes that this agreement benefits the great state of Idaho.

**Senator Brandt** commented that Mr. Bogert reported that this was approved by Congress, but stated that this was just tacked on to a 1500 page document at the end of session. He asked him to elaborate upon that process and procedure. **Mr. Bogert** reported that they had a full policy hearing and a full mark up in the U.S. Senate on S 2605. He added that there was testimony, a full committee report and a committee record. He explained that there was testimony for some environmental groups, and members of other sovereign Indian Tribes. He provided a full transcript of the committee hearing, oral and written testimonies, and committee reports on the intent and understanding of this agreement for the record. He stated that they briefed members of each Congressional staff and were able to find a place in the Omnibus Legislation in order to get it to the President's desk. He added that this was part of the public record. **Senator Brandt** asked if he was saying that all the members of our Congressional delegation fully support this agreement. **Mr. Bogert** answered that he could not speak for the delegation, but did say that as a matter of consensus, their work was undertaken to poise the agreement for consideration and ratification by the Idaho State Legislature. **Senator Brandt** noted that in the House hearing, Mr. Bogert suggested that the Sho-Ban Tribe were not a part of this agreement. He reported that in the last few days, he had received two documents of intended lawsuits and asked Mr. Bogert to touch upon that and reply as to if there was any validity to those lawsuits. **Mr. Bogert** replied that the Governor has great respect for the Sho-Ban Tribe. He pointed out a couple of key documents. Mr. Bogert mentioned a letter by Mr. Mecham, with the Department of Interior from June 2004 during his visit to the Sho-Ban Tribe at Fort Hall. He showed a copy of a letter dated July 7<sup>th</sup> from Nancy Marrillo indicating the Trust responsibilities and that there were specific provisions in the agreement and the federal ratification legislation that did not impact the Tribe's claim. He provided a copy of a letter sent by the Sho-Ban Tribe dated July 9<sup>th</sup> written to the Senate Co-Chairs Campbell and Inouye indicating that neither the Agreement, nor the Act would have an affect on the Sho-Ban Tribe's 1990 agreement (the Fort Hall Agreement) with regards to water rental rates, the reserved hunting, fishing and gathering rights, and added that this was submitted as part of the U.S. Senate committee record on July 29<sup>th</sup>. He also mentioned a memo from the Sho-Ban Tribe's fish coordinator, Dan Israel, dated July 30<sup>th</sup> indicated a willingness to engage in dialog with irrigators in the Salmon-Lemhi areas to seek an additional \$75 million through Senate bill 2605 for the purpose of providing suggestions and guidance in conjunction with the State and Federal government, and the Sho-Ban and Nez Perce Tribes to assure that money spent through the federal

legislation would enhance native fish. He pointed out that they were following the legislation up until that point and added that he is perplexed at this time that these two documents of intended litigation have recently come out.

**Senator Stennett** remarked that he would like a copy of that information. **Mr. Bogert** replied that he had a copy of all these documents and would like for them to be part of the committee record.

**Senator McKenzie** commented that it seemed like this settlement bill is out of proportion. He asked Mr. Bogert why this is a good solution for State and Federal taxpayers when what we transfer is likely more than what would be given out of litigation. **Mr. Bogert** answered that the state authorized flow augmentation to the Bureau of Reclamation in the amount of 427 acre feet. He added that the federal government was part of this agreement. He stated that there is no such thing in our country as a 30-year biological protection. He mentioned the 30-year ESA agreement and added that he cannot give a dollar value on these assurances. He concluded that there isn't an agreement in this nation that has the protections under the Endangered Species Act or under the Clean Water Act for people in a state where 2/3 of our state is owned by the federal government.

**Senator Geddes** noted that Mr. Bogert indicated in his statement that this would be a significant benefit to the irrigators of South Eastern Idaho and asked if it wouldn't also be for the entire state. **Mr. Bogert** replied that this is a unique moment because of the suggestions that South East Idaho must give up the water for those four lower Snake River dams to remain in place. He pointed out that the Bush Administration's most recent biological plan, which includes that 427 acre feet plus 60, as a cap coming out of the Upper Snake, said that in order to remove those dams, you have to go to Capitol Hill. He pointed out that the dams aren't being leveraged for more water out of South Eastern Idaho.

**Senator Pearce** asked if this agreement will protect us from any lawsuits regarding endangered species and also protect the Snake River Dams. He further asked if this will stop those claims for 30 years. **Mr. Bogert** answered that it will not, but added that he expects litigation from environmental groups out of Seattle and Portland who don't like caps on flow augmentation, the 30-year protection, or the timber piece. **Senator Pearce** noted that he didn't address the dams. **Mr. Bogert** replied that in December of 2004, the new Federal biological opinion was released by NOAA Fisheries and stated that the ESA, Section 7 consultation only goes to those matters that are under the agency discretion. He pointed out that there is no discretion to operate the four Lower Snake River dams other than for the purposes that Congress authorized, such as irrigation, hydropower, and the transportation for Lewiston. He added that the federal government has to leave them in place. Congress would have to discuss to take them out.

**Senator Stennett** pointed out that on April 15, 2002, there was a letter by the Governor saying that he was prepared to sign the settlement offer. He added that this offer was not signed. He asked him to explain what transpired between when that letter was signed and when it fell off track.

**Mr. Bogert** replied that it was an enclosed offer and was an effort to put forward a proposal. He added that there was also a letter from the Tribe dated April 15, 2002 and stated that this all goes back to contracts and the need to have acceptance on the other side. He added that this acceptance was not forthcoming. **Senator Stennett** stated that the letter indicated there appeared to be an imminent decision about to be made and asked when that fell off track. **Mr. Bogert** answered that he was not part of that but stated that they were not able to achieve the support of the water users.

**Senator Darrington** asked if the “dismissal with prejudice” would also apply to state courts and if there was any chance that it would not apply to federal courts. **Mr. Bogert** replied that the Governor can’t categorically waive sovereignty and added that this won’t degrade the Tribes or prohibit other future claims.

**Senator Malepeai** asked about the Sho-Ban issue and the dispute on aboriginal areas. He asked what this meant. **Mr. Bogert** gave the committee a map of the areas. He explained that this dispute arose from the Fort Bridger Treaty. **Senator Malepeai** stated that he believed that some of the Nez Perce claimed water rights were in clear dispute of the water rights that the Sho-Ban were claiming and asked if there was anywhere that the aboriginal area was clearly defined. **Mr. Bogert** replied that he wanted to avoid the Governor’s perspective on what appears to be a disagreement between two tribal governments and added that he didn’t believe that this agreement invaded the rights or tribal sovereignty of either the Sho-Ban or Nez Perce Tribes.

**Senator Davis** stated that there seems to be a conflict with ICC and asked if the Nez Perce Tribe is doing nothing more than quit-claiming whatever right, title and interest they may have and further asked if the dollars that they are being paid are not aboriginal dollars. He further asked why is this inaccurate. **Mr. Bogert** stated that he didn’t believe that this was a contractual agreement. He added that in the past 48 hours, they believe that there was adequate dialog with the Sho-Ban Tribe and remarked that they look forward to further discussions.

**Mr. Mark Pollot**, with the Water Rights Coalition, gave a personal background. He explained that this practice is primarily federal with the bulk Constitutional. He started as the Special Assistant to the Assistant Attorney General in charge of the Land and Natural Resources Division of the Department of Justice, now called the Environment and Natural Resources Division. He has worked with the Vice President’s Task Force on Regulatory Relief. He drafted Executive Order 12630 for President Reagan, and the Attorney General’s Implementing Guidelines. He has dealt with private property rights issues, constitutional issues, federal jurisdictional issues as well as other issues throughout his career. He reported that he was the lead attorney on *Hage v. U.S.* **Senator Davis** asked him a number of questions and admonished him for his lack of protocol. **Mr. Pollot** replied that he was here because he was asked his opinion, but not specifically his legal opinion. He added that he was here because he was asked to sit in on this negotiation on behalf of the Water Rights Coalition.

**Senator Stennett** asked who was the Water Rights Coalition. **Mr. Pollot** replied that they are a group of water users who have interests in the water rights. He explained that the purposes of this settlement are to: end litigation; achieve certainty; and conserve resources. He stated that it is also to keep this issue out of the 9<sup>th</sup> Circuit. He pointed out that it won't do that based upon the two documents from the Sho-Ban Tribe and added that this will go from the Idaho Supreme Court to the U.S. Supreme Court. He commented that certainty doesn't exist and added that the boundaries that will be used are the 1863 boundaries and not the 1855 ones. He remarked that the 30-year biological opinion is a guarantee unless something bad happens. **Mr. Pollot** reported that Congress could amend the Endangered Species Act and list a new species, which this agreement would not affect. He added that this agreement was negotiated under a protective order and reported that he was not able to see it until last May.

**Senator Davis** asked when he rendered his opinion for the Coalition, was he paid. **Mr. Pollot** replied that he was, but added that it was separate from his appearance here. **Senator Davis** asked if his opinion was submitted for the record. **Mr. Pollot** answered that it has been reworked for this very reason. **Senator Davis** suggested that maybe he should pay the \$10 to be listed as a registered lobbyist in the state. **Mr. Pollot** responded that he would take that into advisement.

**Mr. Roger Ling**, with the Federal Claims Coalition, testified that he became involved in the Snake River Basin Adjudication shortly after it started on November 19, 1987. He listed some of the parties at the table which included irrigation districts, canal companies, and nine attorneys. He stated that the Tribe agreed to waive all of their water rights claims down to Hells Canyon. He explained that the negotiations began in 1994, but the Administration changed in 1995. He reported that the agreement was announced on April 20, 2004. He pointed out that this can't trump the ESA and added that we have the right to walk away from any part of the agreement at any time.

**Senator Geddes** asked him to explain why people have placed a lot of confidence in Judge Wood's decision on the off reservation water rights claims. He also asked him to describe the value and scope of this decision with respect to the entire settlement. **Mr. Ling** replied that they wanted to resolve this issue on a statewide basis and added that the decision was very narrow regarding the instream flow claims on the Snake River. He stated that the Tribe had the right to use half of the water on the federal lands if they waived their claims on other lands. He reported that in 1999, they rejected removing 4 dams.

**Senator Davis** noted the badges that people in the audience were wearing to uphold Wood's decision. He asked if the Supreme Court addresses and agrees with Judge Wood, and added that the holding would not be the same ammo in Oregon as the settlement would. **Mr. Ling** replied that the decision is narrow, but significant. **Senator Davis** noted that we still get all of the benefits of Judge Wood's decision plus another series of rights and partners, and their claims as pursuant to litigation in Oregon. He pointed out that the decision is not vacated but binding and based on *res judicata*. **Mr. Ling** replied that this will not be

dismissed and added that the claims are part of the SRBA complaint. He explained that once the claims are gone, they cannot be resurrected.

**Senator Brandt** asked what is the difference between that decision and setting aside the Wood decision. **Mr. Ling** answered that the U.S. Supreme Court is the final decision but added that we will not go there if this Agreement is signed. He explained that this is open to litigation and added that this is the water rights settlement and not the tribal rights.

**Senator Brandt** asked if this is fair to all parts of the state. **Mr. Ling** responded that it is not everything that we wanted. He didn't admit that the 427,000 acre feet is necessary, but added that we can walk away or litigate if necessary. He pointed out that he understood that Northern Idaho has concerns with lands with the Tribe and added that the lands expand, but not the boundary.

**Senator Pearce** asked if this was a new agreement and what was the difference with the one written in 1999. **Mr. Ling** replied that this is close to the one from 1999. He reported that we weren't going beyond the 427,000 acre feet in stored water. He explained that we wanted a 30-year agreement and added that they were only going to agree to five years. He pointed out that there was a change in Administration, so we had to back off. **Senator Pearce** asked if money was in the earlier agreement and if so, what was it back then. **Mr. Ling** answered that they had settled with the Sho-Ban Tribe and added that money was an issue. He reported that the Bureau of Indian Affairs and other offices said what they could provide. He stated that the specifics were provided by the US and added that we demanded \$200,000 and set the \$2 million national flow. He stated that he couldn't say they had agreements with the Tribal fund.

**Mr. Dan Johnson**, with the North Idaho Jurisdictional Alliance, testified that his group is opposed to this. He explained that Judge Wood was correct that the Nez Perce are not entitled to off reservation water claims. He stated that there was no other (15-20) settlement and added that the Tribe obtained money or lands. He pointed out that litigation is not expected to end.

**Mr. Steve Moore**, attorney with the Nez Perce Tribe testified that he has been part of this since 1995. He provided a copy of Ms. Rebecca Miles' testimony for the permanent record. He also introduced Jack Bell and Greg Haller. He reported that he has represented the Indian Tribes for 25 years, primarily with water matters. He explained that there are two dozen Indian water settlements across the western states. He stated that this settlement does solve the complex matters and will dismiss forever with prejudice these claims. He explained that there are 1200 springs claims that will be dismissed and will benefit North Idaho. He pointed out that the money will bring an infusion into North Idaho, will provide a benefit to fisheries, and \$23 million to improve sewer and water in Kamiah and Lapwai. He reported that the Nez Perce have also been confused with the Sho-Ban view recently.

**Senator McKenzie** asked about the \$50 million the Tribe gets to acquire land and about the concerns that property will be passing out of the local tax base and how this will affect the area. **Mr. Moore** responded that they own the lands in Trust and Fee. He explained that "Fee" lands pay

property taxes. He pointed out that Idaho, Nez Perce and Lewis Counties receive \$80,000 on lands in the 1863 Reservation. He added that they want to pay a fee for services such as fire protection and law enforcement. He stated that they are willing to negotiate a fee for service since they can't pay taxes under federal law. He reported that the federal government pays for each Indian student in public schools. **Senator McKenzie** asked what the Tribe will do with the money. **Mr. Moore** answered that there are departments proposing plans and submitting them. He reported that there are eight purposes in the agreement which include: land, economic development, fisheries, cultural, etc. He reported that they then have to submit these to the Secretary of the Interior.

**Chairman Burtenshaw** noted that the money was not a lump sum, but disbursed over time. **Mr. Moore** added that it will be appropriated over a seven-year period of time between 2007 and 2013.

**Senator Langhorst** mentioned the adipose fins that are clipped at the fishery hatchery. **Mr. Moore** answered that the decision to clip is in the confines of the Oregon litigation. He pointed out that in most circumstances, they are clipped, but not always. He stated that this is subject to the District Court in Portland.

**Senator Brandt** stated that he believed the Nez Perce Tribe was obligated to follow the federal guidelines with the hatcheries. **Mr. Moore** replied that they are.

**Mr. Martin Thompson**, with the Idaho Lewis Cattle Association testified that they oppose this. He pointed out the reservation boundaries and the 1863 boundaries with ceded lands. He stated that the springs and fountains are under the 1855 boundary. He explained that in 1871 there were no more treaties allowed to pass in Congress. He explained the Section 15 grazing preferences and the 1934 Tailor Grazing as well as the Title 25, Chapter 9, regarding Tailor Grazing Preferences. He stated that these preferences are attached to the base property.

**Chairman Burtenshaw** asked if all grazing permits run in common. **Mr. Thompson** replied that they do not. He explained that there is land locked in pieces of BLM land that may be transferred to the Tribe. He stated that his family has a BLM lease that is fenced grazing. **Chairman Burtenshaw** asked what is being done about common grazing. **Mr. Thompson** replied that the Tribe is not running any cattle on 11,000 acres. He added that Grazing preference becomes a property right that only goes to the lease holder and no one else. He explained that ranchers on the ceded BLM grounds in the 1855 area have stringent rules that include developing springs and fountains and taking care of the land. **Chairman Burtenshaw** asked what if his lease with the BLM comes up and someone outbids him. **Mr. Thompson** answered that it goes back to the base property. He added that if it transfers to the Tribe, then it will be renegotiated. He reported that the price for AUM is \$2 and added that the Tribal price is \$18. He admitted that it would not be practical for him to stay in business if this happens. He added that he may not have the opportunity to extend that lease in 2014.

**Senator Little** looked at the map with the isolated parcels that are

surrounded by deeded land and asked how the Tribe can get to it. He noted all the area in the “herded district” and added that if the Tribe gets 80, then a fence will cost more than the grass is worth. **Mr. Thompson** answered that some areas or in down places with some having no roads. He added that he didn’t know how this would be worked out. He remarked that a scattered 40 with a BLM easement and added that if this transfers to the Tribe, then the Tribe doesn’t have to honor the easement. **Senator Little** asked if it was all fenced area in the herd district. **Mr. Thompson** replied that inside the 1863 reservation is not a herd district and added that the requirement of fencing lies with the permit holder. **Senator Little** asked if there was private ground in the herd district. **Mr. Thompson** replied that it is outside.

**Senator Stennett** asked him to comment on springs and fountains. **Mr. Thompson** replied that he was not sure. He reported that he owns property in the ceded area and added that claims in that 1863 area are being dropped . He understood that the claims are being given to them and added that a home well would be part of that.

**Mr. Moore** explained the areas in the 1863 Reservation and stated that the Tribe did not file claims to the springs and fountains and added that they were not filed before the SRBA deadline.

**Senator Stennett** commented that the Tribe may have a claim on his home well. **Mr. Moore** replied that the wells on non-Indian homeowners are not part of the agreement.

**Senator Williams** asked what are the concerns with sharing these lands with the Tribe. **Mr. Thompson** answered that their concerns were with the county. He stated that the ceded lands in the 1863 Reservation are where the Tribe is declaring 50% use. He pointed out that the ranchers have improved the water sources and added that if 50% of the water disappears, then the ability to keep the animal out will be diminished. **Senator Williams** asked if he was concerned with reduced grazing and water rights. **Mr. Thompson** replied that he was.

**Chairman Burtenshaw** asked if the Idaho Cattle Association talked to him about this. **Mr. Thompson** replied that they had and added that other members expressed similar concerns. **Chairman Burtenshaw** noted that with the agreement with the Tribe, the leases would be extended 10 years. **Mr. Thompson** replied that this lies with the Tribal Council and added that there are no guarantees about the leases.

**Ms. Sheryl Zwang**, with the BLM explained that there were 43 leases at the time of the House Committee hearing. She added that these were 7,500 acres of the 11,000 that are involved in the transfer. She added that two allotments enacted 230 acres or 20 AUMs. She explained that those permits included eight issued for ten or more years under the current fee and terms and conditions, sixteen with two to five years left, six with six to eight years left, and seventeen with nine years left.

**Mr. Jack Bell** with the Nez Perce Tribe explained that the leases will be honored until they expire.

**Senator Little** noted the checkerboard map and asked about the policy of the Tribe regarding fifty cents an acre for 40 acres. He asked if there was any policy to trade these lands since they can't use these parcels. **Mr Bell** replied that the Tribe does not have a consolidation policy for trading lands. He explained that they manage 50,000 acres of grazing, 600 leases, with 100 of those leases without access. He reported that these are held in Trust under the Bureau of Indian Affairs. He explained that they have 90 days to negotiate to get legal access to properties that are land locked.

**Senator Stennett** asked what is the average typical lease of the AUM and any timber. **Mr. Bell** replied that the annual rental appraisal is \$9 currently on up to \$18 per acre. He added that they may lease for less, but stated that they will attempt to lease at \$9.

**Chairman Burtenshaw** declared that the committee would recess for lunch until 1:30 p.m.

**AFTERNOON  
SESSION:**

**Mr. Jim Riley**, with the Intermountain Forest Association testified that the real cost comes from investments not made over time. He explained that his association presented fully in the mediations that produced this agreement and added that all of their work was done in a collaborative conjunction with the Idaho Department of Lands working to the same end. He quoted from his testimony, *"Nothing in this document shall be read as an admission or determination by the parties that any of the actions anticipated by this document are necessarily required in order to comply with the Endangered Species Act. Nothing in this document shall be interpreted as suggesting that the FPA standards as they presently exist are sufficient to avoid take of listed species."* He reported that this agreement is all about providing a voluntary, incentive-based program for forest owners who wish to provide additional support for listed fish species, beyond the minimums required by law.

**Mr. Riley** explained the four essential elements of the forestry program: it is voluntary; the inclusion of specifically articulated voluntary standards for forestry operations in riparian areas, and road construction, particularly for stream crossings; recognition of established processes for assessing existing forest facilities and infrastructures that are potentially limiting fish productivity (such as perch), and mechanisms to replace or improve these limiting conditions where identified; and an adaptive management process to continuously improve both our collective understanding of the interaction between forestry and fisheries, and to improve the application of the management practices.

**Mr. Riley** explained that this is voluntary and addressed recent concerns that this program is mandatory. He explained that in no case has any of these programs evolved into mandatory regulation.

**Chairman Burtenshaw** asked if a widening of the channel of a creek was considered a "taking". **Mr. Riley** replied that the program is entirely voluntary. He explained that many landowners would not have to change what they already do and further added that they could harvest over time. He added that they will be enrolling only the lands in the Clearwater and Salmon River Basin, and not statewide. He remarked that this will allow

us to avoid litigation.

**Ms. Judy Bartlett**, with Idaho Farm Bureau Federation testified that this has served to divide the citizens of Idaho and added that nearly every organization has dissensions within, with even the Tribes opposing each other. She pointed out that attorneys who were not part of the negotiations believe that this agreement has Constitutional problems with violations of due process, equal protection, private property, and separation of powers. She explained that if this is ratified, it will force the state to comply with the National Environmental Policy Act. **Ms. Bartlett** pointed out that this will not stop any third party lawsuits under ESA and no true protection. She further pointed out that the 30-year biological assessment can be reopened in five years if the temperature issues are not addressed at Idaho Power's Hells Canyon dams and reopened as soon as next year if sufficient water from the 487,000 acre feet of fish flush causes BOR to deviate from required actions. She commented that the voluntary forestry programs place a higher standard which signals that the current FPA is insufficient. She stated that this could expand the no harvest and buffer zones in the most productive forested areas. She also addressed the 43 ranchers with leases. She concluded by asking the committee to let Judge Wood's decision to move forward to settle many issues and to not allow the unintended consequences to become Idaho's legacy.

**Senator Brandt** asked her to touch on the Congressional approval. **Ms. Bartlett** explained that at the Congressional level, there are huge bills of 1500 to 3000 pages and added that while working for Congresswoman Chenoweth, sometimes the members are not allowed to see the bills. She reported that sometimes there are no hearings and added that some items are placed in a budget bill where the President does not have a line item veto.

**Senator Geddes** asked about the position the Sho-Bans took with the press release and what was Farm Bureau's development in that press release. **Ms. Bartlett** replied that she allowed them to sit in her office and walked their lawyer over to the Capitol since she had other business there that day. **Senator Geddes** asked if it was developed in Farm Bureau's office. **Ms. Bartlett** answered that she didn't know.

**Senator Darrington** asked what were the open-ended parts. **Ms. Bartlett** responded that these are the Dworshak, Section 6, Forestry components, and another five or six. She added that grazing seems uncertain as well as the questions of the boundaries and the springs and fountains. She pointed out that if things are not black and white, it is left up for a judge to decide.

**Senator Davis** pointed out that the document by the Sho-Ban attorney shows that it was created by Farm Bureau and asked if the Farm Bureau was working with the Sho-Bans and ginned them up. **Ms. Bartlett** replied that they didn't "gin" them up. **Senator Davis** asked if she knew that anything was created at the Farm Bureau offices. **Ms. Bartlett** answered that it is possible that they used one of their computers to change something.

**Ms. Nancy Eschief Murrillo**, with the Sho-Ban Tribe explained to the committee what would happen if this bill passes the Legislature. She pointed out that the objections filed under the Nez Perce water claims in 1997 are still pending. She added that if they prevail on even one of their many pending objections, this agreement will be void. She reported that they were not part of closed-door sessions with the Nez Perce and the state. She explained the various water rights and agreements the Tribe has with the federal government. She concluded that they have no intention of waiving their pending objections in the Nez Perce water rights case and added that they will file a 9<sup>th</sup> Circuit injunction preventing implementation of this agreement that will include the state of Idaho, and the Nez Perce Tribe as co-managers. She further added that they will also file another federal venue in the 9<sup>th</sup> Circuit for violation of the pending federal court order.

**Senator Davis** asked about the intent letter to Congress. **Ms. Murrillo** answered that this was written on their behalf and added that this does affect their aboriginal treaty rights.

**Senator Pearce** asked what do they expect to get out of the lawsuit and what would make them happy. **Ms. Murrillo** replied that they want no infringement on aboriginal territory and added that the language in the letter was provided by Mr. Moore. She reported that this letter stated this won't affect their aboriginal rights, but remarked that it does. **Senator Pearce** asked her if they only wanted to protect their rights. **Ms. Murrillo** replied that this was correct.

**Senator Little** asked about the line between aboriginal rights between the two Tribes and if she felt the state should settle this or the courts. **Ms. Murrillo** responded that it should be the courts. **Senator Little** asked her if she was aware that the germane committee in the U.S. Senate was the Indian Affairs Committee. **Ms. Murrillo** replied that she was aware, but was not happy about it. **Senator Little** pointed out that no water has been ceded, only the water in the Clearwater Basin. **Mr. Bill Bacon**, attorney for the Sho-Ban Tribe replied that they know that, but added that some other water is.

***The following testimonies are public testimonies. Written copies are included in the permanent record in the Legislative Library in the basement of the Idaho State Capitol. Below is a listing of testimonies followed by committee questions.***

**10. Rex Barrie** - General Manager of the South Board of Control in Homedale - Pro. He reported that he is Vice President of the Idaho Water Users Association which represent over 300 canal companies, irrigation districts, public and municipal water providers, ground water districts, agri-business and individuals. He added that this membership stretches from the irrigation districts on the Rathdrum Prairie and Lewiston Orchards in the North, as well as across Southern and Eastern Idaho. He reported that the convention last year supported this agreement with a unanimous vote from the 300 people in attendance. He pointed out that without this agreement, there is no way that we can solve our problems regarding conjunctive management of surface and ground water and added that the alternative is years of litigation. He stated that this agreement settles the

Tribal claims, gives us an ESA coverage, and provides an essential building block for solving the conjunctive management crisis that is looming. He urged the committee to support this agreement.

**11. Frank Priestly** - President of the Idaho Farm Bureau Federation - Con. He explained how Farm Bureau policies are established. He stated that the IFBF members studied over 30 documents, several non-biased legal opinions, held workshops to hear from proponents of the Agreement, and debated the issue for six months before voting in December by a three to one margin to oppose the Agreement. He explained that they firmly believe that this is flawed both Constitutionally and morally and added that money spent will only be a drop in the bucket compared to the future lawsuits that will arise if this Agreement is ratified. He pointed out that all discussions of this must start with the SRBA summary judgement in 1999 by Judge Wood that held that the Nez Perce Tribe has no off-reservation water rights. He stated that non-biased attorneys have advised the IFBF that this Agreement provides for continued third party lawsuits, will allow future litigation by the Tribe and many others. He concluded that the IFBF firmly believes this Agreement is too riddled with holes to hold Idaho sovereignty. It has the ability to change the face of Idaho forever. For a few, it looks like a 30 year agreement, but the truth is that it will be in perpetuity. He urged the committee to vote no.

**Senator Stennett** asked if only six counties dissent why are they opposing this. **Mr. Priestly** responded that there were six districts. He added that if a policy develops in the state, they have 60 days to dissent and stated that these six did so formally.

**12. Wesley Edmo** - The Shoshone-Bannock Tribe - Opposition. **Senator Little** asked if they claim aboriginal rights in the Clearwater Basin. **Mr. Edmo** replied that they do. **Senator Little** commented that this protects the flows and not who has access. He stated that he doesn't understand the concern since there is no water being given away and we are protecting the minimum stream flows. **Mr. Edmo** replied that they are not just talking Idaho, but the entire Northwest.

**Senator Stennett** noted the letter by Ms. Murrillo about Campbell and Inouye. **Mr. Edmo** responded that they requested their rights be protected in that letter.

**13. Laird Noh** - former State Senator - commented on one troubling aspect: closed meetings. He explained that there was a reason that the court closed the proceedings and added that these meetings were a determination of private property rights that were closed to only those private properties. He reported that the only way to trigger the non-federal or non-Indian rights is through the McCarran Amendment and added that they have to bring all the water rights together at the same time.

**Senator Stegner** asked him to provide a brief estimate of the downsides and the risk to the state if this is not approved. **Mr. Noh** replied that the water rights are at risk from the actions under the ESA and listed the owners of timber in the Salmon and Clearwater Basin and the irrigators in the Upper Salmon. He explained that under the ESA, each property

owner can enter and consult with an individual of the federal agencies. He pointed out that this brings a group consultation with the state. He then explained that each party under the McCarran Act must be treated fairly. He added that they could also move out of the state courts and into the federal courts if there was any violation of the consent order.

**14. Doyle Teton** - waived his time to Bill Bacon and added that the letter by Ms. Murrillo was before the term sheet was public.

**Mr. Bill Bacon** - representing the Sho-Ban Tribe - Con. He did not provide a written testimony.

**Senator Geddes** asked Mr. Bacon if he prepared the press release. **Mr. Bacon** answered that he prepared it at home and used Ms. Bartlett's computer to make changes.

**Senator Stennett** asked if between the middle of May to the end of July, they did not receive the Term Sheet. **Mr. Bacon** replied that he did not receive it. He added that he got it off the Internet. **Senator Stennett** asked if the letter was written without the Term Sheet. **Mr. Bacon** replied that he had not reviewed it.

**15. Vincent Corrao** - President of Northwest Management, Inc, of Moscow - Pro. He testified that the feedback and comments from the 12 landowners within the settlement area was positive and the response by most was that many of the requirements of the SRBA were already being implemented.

**16. Lynn Stedman** - Vice President of Farm Bureau - Con. He did not provide a written testimony.

**17. Dick Rush** - Idaho Association of Commerce and Industry - Pro. He testified that over the past months, he has become even more convinced that the agreement is truly a historic document and one that has been written to benefit the state of Idaho, from north to south and east to west. He added that IACI looks at this legislation from a business standpoint and is a smart decision. He reported that \$193 million in federal funds will head to Idaho, half for the Tribe and the remainder to state and local governments. He further reported that 68 businesses, chambers, business and farm organizations, and canal companies support this agreement.

**18. Betty Deveny** - Riggins - Con. Ms. Deveny pointed out that this agreement is irreversible and cannot be undone or corrected if it doesn't work out as planned. She asked why there were no references made to the 1893 agreement which supercedes both treaties of 1863 and 1855. She then read, *The said Nez Perce Indians hereby cede, sell, relinquish, and convey to the United States all their claim, right, title, and interest in and to all the unallotted lands within the limits of said reservation, saving and excepting...* She reported that for this concession, the Tribe received \$1,626,022 and two portable steam sawmills and added that this current agreement seems to be buying again what was previously bought and paid for. She concluded that the Tribe is getting, by agreement, what they cannot get in court and added that this agreement and the federal law

serves to federalize Idaho's water rather than protect Idaho's sovereignty over it's water.

**19. Roger Batt** - Executive Director of Idaho Eastern Oregon Seed Association - Pro. He explained that the basis for their support is "certainty" because the industry needs the certainty of water and the seed companies need the certainty that seed crops will be produced. He stated that this agreement has two levels of certainty: the Tribe waiving instream flows forever; and the 30-year biological opinion.

**20. Mark Jackson** - member of the Water Rights Coalition - Con. He explained that he lives in Woodland, which is within the boundaries of the 1863 Treaty. He pointed out that not all parties were invited to participate. He pointed out that this settlement gives up many of the principles that our ancestors fought so hard to attain. He explained that the Constitution and statutes of the state of Idaho declare that all of the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state, and ground waters of the state, to be public waters. He commented on Senate bill 2605 and the Dawes Act of 1887. He urged the committee to vote against this settlement and to protect the sovereignty of the state of Idaho.

**21. Drew Eggers** - 4<sup>th</sup> generation farmer in Meridian - Pro. He explained how important it is to irrigated agriculture in this state to implement the Idaho-Nez Perce Agreement. He added that Idaho irrigated agriculture cannot afford to take a chance on not having this agreement in place.

**22. Mardell Edwards** - President of the Idaho County Property Owners Association - Grangeville - Con. He testified that this agreement will result in a cloud on every land title in the area and pointed out that federal law S2605 takes precedence over the agreement. He explained that this federal law requires that before any claim can be asserted against the United States, remedies must be exhausted in Tribal court under Tribal Water Code. He asked why the Tribal timberlands were exempt from the harvest restrictions. He asked why there was no provision in the agreement to compensate the private property owners who will lose their water rights. He provided a copy of their resolution for the permanent record.

**Senator McKenzie** commented that Tribal Court only applies to the 50,000 acre feet of water and also only to the Tribe. **Mr. Steve Moore** added that it only has jurisdiction over the members of the Tribe and tribal lands. He then provided an definition of "allottee". **Senator McKenzie** asked if any of that 50,000 passes to non-tribal, would the court apply to that non-tribal. **Mr. Moore** replied that it would take a three-year period to write the water code.

**23. Dale Rockwood** - of Idaho Falls - Pro. He did not provide a written testimony. He explained that he has been a member of the Committee of Nine since 1984 and a member of Farm Bureau since 1948. He stated that negotiated settlements are better than having a court decide. He then asked why there were no women on this Senate committee.

**24. Clay Baker** - of Kamiah - Con. He did not provide a written

testimony. He reported that he is a member of the Water Rights Coalition and asked why the rights of one citizen outweigh the rights of thousands.

**25. Paul Berggren** - A member of the Committee of Nine - Pro. He did not provide a written testimony. He reported that he recently closed a small feed lot near Blackfoot and urged the committee to support this agreement.

**26. Shorty Arnzen** - President of the Water Rights Coalition from Cottonwood - Con. He reported that his grandparents both moved to Idaho in 1882 and 1884. He stated that he is certain that any "in stream flow" will only assure our water going out of the state of Idaho and added that the states of Washington and Oregon are already preparing to file water rights. He pointed out that the flow has been determined without any baseline studies or good science and has hastily been decreed in order to meet the requirements of this agreement. He reported that the "flow augmentation" has not been beneficial and has no impact since the fish runs are in excess of those in history.

**27. Don Roberts** - from the City of Lewiston - Pro. He reported that there is \$25 million earmarked for local governments; ESA protection for the local timber interests; the waiving of tribal claims; and certainty. He reported that the instream flows will hold a priority date of April 2005. He concluded that his bedroom has a view of the Snake River right before it leaves Idaho. He urged the committee to support this agreement.

**28. Grandpa John Brandt** - of Kooski - Con. He explained that he is the father of State Senator Skip Brandt and provided some cartoons for the permanent record. He stated that he is representing 10 3/4 grandchildren and is 75 years old. He asked how anyone could give away something that he bought with sweat and tears. He pointed out that each treaty shows how big the reservations are. He concluded that "if you sold something, it is no longer yours." He did not provide a written testimony.

**29. Lynn Tominaga** - Idaho Ground Water Appropriations, Inc - Pro. He did not provide a written testimony, but did provide a copy of a resolution dated January 14, 2005 in support of this agreement.

**30. Stan Leach** - Commissioner for Clear Water County - Con. He did not provide a written testimony. He urged the committee to vote against the agreement.

**Chairman Burtenshaw** called a 10 minute break.

**31. Dennis Heaps** - Manager of the Black Canyon Irrigation District - Pro. He explained that his project began in 1918 as part of the Arrow Rock Division of the Boise Project and was completed in 1948. He reported that they serve 61,000 acres through 2,600 farm units between Caldwell and Emmett and from Middleton to the Snake River at Ontario, Oregon. He stated that his Board is in support of this agreement.

**Senator Little** asked about the Shaping agreement at Cascade and the leverage of when the water drops. **Mr. Heaps** replied that this will be handled by the downstream authorities.

**32. Laren McGuigan** - of Kooski - Con. He did not provide a written testimony. He explained that he is a transplant of Arizona and urged the committee to vote against this agreement.

**33. Truman Kohtz** - Representing Harris Moran Seed Company and the Past President of the Idaho Eastern Oregon Seed Association - Pro. He reported that he lives in Nampa and explained that his area has a special climate for growing more than 30 varieties of seed crops. He stated that this agreement supports irrigated agriculture by waiving the claims of the Nez Perce Tribe forever. He urged passage of this settlement agreement.

**34. Bill Stillman** - North Highway District of Nez Perce - Con. He explained the loss of tax base; prescriptive of the use of rights-of-way; and BLM land transfer to the Tribe. He reported that until the meeting on Friday, February 11<sup>th</sup>, he was not aware of the BLM parcels that would be transferred. He concluded that this will bring much conflict and litigation before the issues are resolved and asked the committee to reject the agreement. He and his wife, Carol, provided a large packet of detailed information for the permanent record.

**35. Brian Murdock** - of Blackfoot - Pro. He explained that this agreement marks the beginning of the end of this long adjudication process. He stated that water is a precious item and added that he had faith in the lawyers to find the necessary loopholes to protect the personal rights of those who might be unknowingly injured. He further added that no agreement is 100% lawyer-proof. He concluded that if this agreement allows the state to retain more control of the water and parcel those water rights to individuals for the benefit of all, then this is a good agreement.

**36. Rogers Hardy** - of Harrison - Con. He explained that he and his wife, Toni, object to the agreement for the following reasons: the gag order and secrecy; the NEPA public meeting and Environmental Impact Statement requirements will not be met; the taking of private property rights; the almost \$12 million contributed by the state of Idaho; the potentially negative effects on county revenues; the BLM lands transfer; and the precedence that this will set with the impact of unsettled land, water, jurisdiction, and control issues. He reported that this agreement will exacerbate unequal treatment where non-tribal citizens have no voice, no vote, and no representation. He concluded that rectifying past inequities to Native Americans by creating inequities for other groups is not fair and equal treatment.

**37. Robert Murdock** - of Blackfoot - Pro. He explained that this family has been in Blackfoot for 116 years and that he and his brother have been running a farm for 26 years. He reported that the 30-year biological opinion is important to him and added that this will help prolong his survival.

**Senator Brandt** commented that the opposition wants to go to the 9<sup>th</sup> Circuit in San Francisco. **Mr. Murdock** replied that San Francisco has not been good to the farmers. **Senator Brandt** remarked that if this is approved, the Sho-Bans will take this to San Francisco, but if it is rejected, it would go to the Idaho Supreme Court.

**38. Toni Hardy** - of Harrison - Con. She added to her husband's testimony that they need to base the agreements on legal decisions and not on secret negotiations.

**39. Vernon Case** - Director of the Wilder Irrigation District - Pro. He did not provide a written testimony.

**40. Carroll Keith** - Lewis County Commissioner - Con. She explained that water is a finite resource and needs to be properly managed. She pointed out that the Nez Perce Tribe owes us \$250,000 in back taxes and \$17,000 in penalties and interest.

**41. Joe Oheda** - of Wilder - Pro. He did not provide a written testimony.

**42. Tom Simmons** - of the Water Rights Coalition - Con. He explained that he believes that the Idaho Supreme Court would uphold Judge Wood's decision. He pointed out that the Nez Perce Tribe owns 1% of the state land. He reported that in 1894, they sold their lands for \$1.7 million. He added that in 1863, the reservation was 750,000 acres. He concluded that there are over 100 entities opposing this agreement.

**43. Don Hale** - of Blackfoot and a member of the Committee of Nine - Pro. He reported that he helped negotiate this agreement. He explained the steps that were taken to reach this agreement. He also explained the hurdles and concerns that were addressed and negotiated. He urged the committee to support this settlement.

**44. Linda Kelly Simmons** - Kamiah with the Water Rights Coalition - Con. She did not provide a written testimony.

**45. Karen Williams** - Idaho Cattle Association - Pro. She explained that at the 2004 convention, no one of the 300 people present understood the agreement. So a resolution was drafted directing the President to appoint a task force to study the issue and recommend a position to the Executive Committee. She reported that this task force recommended that the ICA support the agreement. She provided a letter to the committee demanding attention to issues specific to the transfer of BLM lands and permit concerns. She concluded that the ICA expect the Nez Perce Tribe to continue to be good stewards of the land and to recognize the importance of grazing in the management of lands under their control. She urged the committee to support this agreement.

**46. Darlene Malone** - with the Water Rights Coalition - Con. She explained that she is from Woodland, just outside of Kamiah. She testified that the loose ends are deeply troubling and mentioned that there are many components of this Term Sheet that are undetermined and clearly undefined. She listed: BLM land leases honored following transfer to the Tribe; future litigation and that the agreement is not conclusive; a possible impasse or gridlock with determination of the minimum instream flow amount; and the monitoring program and method of compliance for the instream flow program. She likened this to signing for a loan at the bank where the interest rate would be determined later, and that the monthly payment could be changed at any time by the bank, as well as agreeing later if there would be a penalty for early payoff of the loan. She

urged the committee to vote no.

**47. Mark Duffin** - Executive Director of the Idaho Sugar Beet Growers Association - Pro. He explained that he represents 775 sugar beet farmers from Magic Valley and Southeastern Idaho. He stated that they support this agreement and added that it is in our best interest to have this agreement ratified and implemented.

**48. Almon Manes** - of the Water Rights Coalition - from Kooski - Con. He did not provide a written testimony. He reported that he knows Senator Brandt. He stated that his land is a half of a mile from the 1863 boundary, but within the 1855 boundary. He urged the committee to vote against this agreement.

**49. Wayne Hurst** - Vice President of the Idaho Grain Producers Association - Pro. He reported that he is a row crop farmer near Burley and added that his organization supports this settlement because the Tribe forever gives up their water claims; and the 30-year memorandum of agreement on the ESA. He stated that this agreement puts Idaho's water firmly in the hands of the Department of Water Resources; and provides for a "willing seller, willing buyer" scenario for fish recovery. He concluded that this agreement provides needed security and stability to our agricultural lenders and their borrowers. He believes that this is a compromise that will provide needed protection from shifting political tides and policies and urged the committee's support.

**50. Virginia Manes** - of Kooski - Con. She did not provide a written testimony but added to her husband's testimony by saying that this will not benefit her area at all and urged the committee to vote against it.

**51. Jon Iverson** - Pro. He explained that he is a third generation farmer in the Treasure Valley and that he is currently the Field Production Manager for a local vegetable seed company. He testified on behalf of the Eastern Oregon Seed Association. He shared that Idaho is one of three locations worldwide that produces high quality seed. He concluded that this protects Idaho's water supplies and insures seed production in the state of Idaho.

**52. Marge Arnzen** - Independent Miner's Association of Cottonwood - Con. She did not provide a written testimony. She pointed out that there is no mention of mining in this agreement.

**53. Fred Sarceda** - Wilder - Pro. He did not provide a written testimony.

**54. Rick Laam** - City of Orofino - Con. He testified that this truly represents the spirit of democracy. He asked each of the committee members to explore the individual courage it will take to stand up against their friends, colleagues, leaders, and themselves since the number one objective of an elected official is to get re-elected. He pointed out that the Term Sheet is open-ended and requires future legislation for implementation. He stated that this is one of the most complicated water issues in the country and is about trading a problem in Southern Idaho for another in North Central Idaho. He pointed out that the majority of the Term Sheet was negotiated in secret; money is the catalyst for mediation;

and that the ratification of this agreement will create litigation. He mentioned the dams and the impending troubles with the Tribes over these dams. He pointed out some issues that were not addressed, or fully explained in the House committee meeting in February: grazing rights; property taxes; Dworshak Dam; flow augmentation; PILT Payments; who would be the new Water Master; Hatchery operations; and the Sho-Ban impending litigation. He urged the committee to oppose this agreement.

**55. Rick Waitley** - Executive Director of the Food Producers of Idaho - Pro. He stated that he represents 37 agriculture commodity groups, farm organizations and agribusinesses as well as 52 non-voting memberships. He reported that their annual meeting was held on December 15<sup>th</sup> and stated that the membership agreed to not take a vote until January 19<sup>th</sup> in order to allow more time for the members to study the issue before casting a vote. He reported that the Idaho Farm Bureau asked to be recorded as voting against the motion to endorse the agreement. He added that at the time of the vote, the Idaho Bankers Association and the Nez Perce Prairie Grass Growers abstained since their organizations had not taken a formal position. He concluded that they urged the committee to support this agreement.

**56. Pam Secord** - of Santa - Con. She represented the North Idaho Citizens Alliance with a membership of 250 plus members. She stated that they believe that this legislation is dangerous and wrong for Idaho. She further stated that the SRBA is legal plundering of some citizens for the benefit of the few. She remarked that the Tribe did not have a valid case and added that this should be decided in the Supreme Court because Idaho has a winning case. She urged the committee to let the citizens have their day in court, not plunder the north for the south and to read Judge Wood's decision.

**57. Ty Iverson** - Administrative Assistant to the Food Producers of Idaho - Pro. He testified that this agreement is not perfect and does not have everything for everyone in the contents, but added that it protects our water rights and our agricultural economy. He reported that Idaho takes many angles from irrigation in the south to the need for navigation on waterways for our commodities in the northern part of the state. He concluded that Idaho's agriculture needs the agreement for two important reasons: tribal claims are waived forever; and the certainty of having a 30-year biological opinion. He urged the committee to support this settlement.

**58. Carol Stillman** - Con. She did not provide a written testimony. She explained that she has a hundred year old ranch that is inside the 1863 boundary and leases three areas from the BLM that are landlocked. She urged the committee to vote against this legislation. She concluded that we should be making laws that treat all men alike, bring peace, and added that treating them differently brings chaos.

**Senator Little** asked about the Bureau of Indian Affairs. **Ms. Stillman** replied that the BIA only takes part of the financial and added that the Tribe decides if the leases are renewed. **Senator Little** asked if the lands are owned or in trust. **Mr. Michael Bogert** commented that all permits

are grandfathered and added that the BIA handle all permits until the permits expire. He pointed out that the BIA will be the intermediary until the BLM lands are transferred.

**59. Albert Baker** - Pro. He did not provide a written testimony. He pointed out that 17,000 acres of land is equivalent to 50,000 acre feet of water. He remarked that in future legislation, they can change or modify the stream flows.

**Senator McKenzie** remarked that if it is changed, we would lose the value of the 30-year biological opinion. **Mr. Baker** stated that under federal law, the federal government can determine if a new consultation under the ESA needs to be done. He added that if they reconsider consultations, we can withdraw from the deal.

**Senator Stennett** asked him to expand on Judge Burdick's decision and the deal between the state and the Sho-Ban Tribe. He also asked him why it was sent back unenforceable. **Mr. Baker** replied that it was a draft and added that the Sho-Ban Tribe objected to the agreement since there were too many contingencies in it. He added that if we withdraw, it would be with prejudice.

**Senator Pearce** asked him who he represented. **Mr. Baker** answered that he represented the Federal Claims Coalition, who is a group that objected to the Nez Perce instream flow claims.

**60. Renee Farmer** - of White Bird - Con. She testified that this is not a final settlement. She pointed out that it may resolve one issue for half of the state, but it also raises questions for the other half and stated that this is nebulous and far-reaching with many things yet to be decided, more than likely by a judge in some court since, there are so many open issues. She reported that she moved here twelve years ago. She stated that the uncertainties far outweigh the certainties and concluded that this agreement should not be passed.

**61. Jim Chmelik** - of the Water Rights Coalition - Cottonwood - Con. He asked to enclose a large packet of petitions signed by people in his area with a letter requesting open meetings with the ProTem, the Speaker, and Legislators of Idaho. He commented that the importance of our water and the rights that go with it should be discussed openly with the citizens of our state. He pointed out that many stakeholders in this agreement were left out of the negotiations and were never invited. He added that equal representation was not present and consequently, rights of others were given away by those who had no rights or authority to give them away. He urged the committee to vote against this agreement.

**62. Chuck Cuddy** - lifetime resident of Clearwater County - Con. He discussed various parts of the legislation that remain unfinished or inequitably resolved: the transfer of 11,000 acres of BLM land and the right of permanent access; the parameters for the discretionary use of the 200,000 acre feet of water taken from the Dworshak dam with no local representation on the decision; and the undefined but stipulated minimum stream flows. He urged the committee to take the additional time necessary to complete all the negotiations and provide for adequate

public discussion of those issues that remain incomplete at this date.

**63. Geary Morgan** - Kooskia - Con. He quoted Patrick Henry, *"I have but one lamp of which my feet are guided and that is the lamp of experience. I know of no other way of judging the future, but the past."* He stated that this is just another example of catering to one group or special interest at the expense of another. He concluded that those who bear the consequences will surely look back and cringe at the thought, "When will we ever learn?".

**64. Lawrence Mills** - Kamiah - Con. He gave a brief background of his company Hatchco. He asked the committee to give careful consideration of this water agreement, not only for today's ramifications, but for the future as well. He urged the committee to not rush to judgement. He pointed out that modern times require changes and updates reflecting current conditions. He stated that we are going backwards to treaties and agreements in the 1800s, and asked shouldn't we consider all past agreements, laws, and judicial decisions. He remarked that this proposed agreement took five years of secret negotiations and was surprised that the Legislators were expected to understand it in a just a few weeks. He asked if all the secret details and side agreements had been disclosed to the committee and about the future negotiations in 30 years or less. He concluded that this will impact the whole state, but the effects for North Idaho will be disastrous. He urged the committee to vote no.

**65. Donna Lake** - Midvale - Con. She used the definition of Fountains and Springs from Websters Dictionary 1828. She pointed out that the state would be entering into Section 6 Cooperative Agreements to satisfy the requirements of Section 7 (a) 2 of the Endangered Species Act. She further pointed out that all of the provisions of the Mediation Term Sheet will allow for more federal regulation of the state's land and water and added that nowhere is there a protection of vested water rights. She urged the committee to vote no.

**66. Alfred Holden** - Con. He explained that specific provisions of the agreement are based on "false science" He pointed out that valid science must meet these tests: it must be reasonable with a valid scientific basis; it must be directly related to the problems stated; and it must be proportionate where the solution must be in proportion to the problem it is attempting to solve. He asked how the closed meeting prior to February 22<sup>nd</sup> reach this conclusion and why we were not party to their talking points. He further asked why are we looking at fixed numbers when long-term climate and solar systemic changes do not guarantee a stable climate predictability model and concluded that evidence must meet due process and that this bill should be killed in committee so that we can look to the courts for remedy.

**67. Aaron Romrell** - Howe - Con. He pointed out that this will affect the rights of a few, but stated that if the committee was not willing to stand up for the rights of those few, then they are not standing up for all of us. He believed that the special rights given to the Nez Perce will give and set a dangerous precedent to other groups who will use the Endangered Species Act to corrode all of our property rights. He urged the committee to vote against this agreement.

**68. Welton Ward** - Malad - Con. He did not provide a written testimony. He explained that he was part of the Oneida County Farm Bureau and the Bear River Drainage. He stated that he was concerned with the precedent this would set with the North Shoshone Tribe and added that there is no price in the Term Sheet. He urged the committee to vote no.

**69. Carol Guthrie** - Inkom - Con. She testified that this sets the stage for years of litigation and is not the end, but the beginning. She explained that this agreement has taken individual's property and property rights without their knowledge and consent. She concluded that this is open ended and will lead to unintentional negative consequences. She urged the committee to vote no.

**70. Carol Mills** - Kamiah - Con. She asked why there was no statute of limitations and noted that certain entities are going back to treaties of 1855 and 1863 that have been superceded by later and recent agreements. She asked if this was allowed, then why can't Idaho go back to 1863 when it covered three states: Idaho, Montana, and most of Wyoming. She asked why the senators were willing to give up more land and water rights to another entity. She further asked if any of them would relocate to an area where water rights and perhaps land ownership are under a cloud. She pointed out that once they give up Northern Idaho, it can never be undone. She concluded that we are celebrating the bicentennial of Lewis and Clark, who were extraordinary men with great courage and asked the senators to also be extraordinary and with great courage and vote against this.

**71. James Guthrie** - Inkom - Con. He testified that his family's property is on the traditional aboriginal territory of the Shoshone-Bannock Tribe and stated that he is concerned that this will set a precedent that will be followed by all Tribes in the United States. He also stated concerns that the water rights of the Shoshone-Bannock Tribe have been threatened. He pointed out that this agreement recognizes the 1855 Treaty boundaries and expands the existing reservation. He concluded that he is also concerned about the open-ended nature of this agreement and the potential unforeseen circumstances.

**72. Tim Lowry** - Owyhee County - Con. He focused on the transfer of BLM lands to the Tribe and commented that this will result in a loss of private property rights inherent in the grazing preference rights without due process or just compensation. He pointed out that having grazing preference rights replaced by mere grazing leases is similar to what was attempted by former Secretary of the Interior, Bruce Babbitt, in 1995. He quoted some of Judge Brimmer's decision in *Public Lands Council v. Babbitt*. He pointed out that Chapter 9 provides that grazing preferences are appurtenant to base property under Idaho Code 25-901 with a continuing right to a grazing preference under Idaho Code 25-902, and penalties for interference under Idaho Code 25-903. He concluded that there can be no question that the grazing preference rights that will be lost are property rights. He urged the senators to not give approval to this unconstitutional taking of private property.

**73. David Stillman** - Nampa - Con. He did not provide a written testimony. He testified that he is a computer programmer in New

Plymouth. He was very animated and told a story about selling something that is not yours. He said that if doing this was o.k., then he would have sold his neighbor's cat. He reported that in his programming, he asks his mother to find the bugs in his projects and suggested that the committee undertake a "BETA" test before agreeing to this settlement. He urged the committee to vote against these pieces of legislation.

**74. Dave Veselka** - Washington County - Con. He did not provide a written testimony. He explained that there will be litigation either way and noted Forestry, ESA, Nez Perce Lands, and rights.

**VOTE:** **Chairman Burtenshaw** thanked everyone for coming and stated that the committee would be addressing the vote on these bills at our next meeting on Friday.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 6:08 p.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

MINUTES

**SENATE STATE AFFAIRS COMMITTEE**

- DATE:** Friday, March 11, 2005
- TIME:** 8:00 a.m.
- PLACE:** Room 437
- MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Malepeai.
- ABSENT/  
EXCUSED:** None.
- GUESTS:** See attached sign in sheet.
- CONVENE:** Chairman Burtenshaw called the meeting to order at 8:04 a.m.
- RS 15125:** **Relating to Fish and Game; to authorize the Fish and Game Commission to establish procedures and fees relating to the purchase of controlled hunt bonus or preference points, to revise vendor issuance fee provisions, to revise the schedule of license fees.**
- Mr. Steve Huffaker**, Director of the Fish and Game testified that this will increase the cost of tags 10%. He explained that with inflation, this increase will catch the Department up.
- MOTION:** **Senator Stegner** made a motion **TO PRINT** RS 15125. **Senator Little** seconded the motion.
- VOTE:** The motion passed by unanimous voice vote.
- RS 14977:** **Relating to the Idaho Energy Resources Authority Act; to provide further declaration of necessity and purpose, define terms and to make a technical correction, additional powers to Idaho Energy Resources Authority, to authorize the Idaho Energy Resources Authority to undertake any renewable energy project for the benefit of one or more independent power producers and issues its bonds to finance the cost thereof and to provide application to an independent power producer.**
- Senator Stegner** explained that this expands the recently passed legislation to include renewables and allows for a broadened authority.
- MOTION:** **Senator Stegner** made a motion **TO PRINT** RS 14977. **Senator Geddes** seconded the motion.
- VOTE:** The motion passed by unanimous voice vote.
- H 222:** **Relating to Public Records, to provide that records of a County Assessor containing information showing the income and expenses**

**of a taxpayer, shall be exempt from disclosure and to make a technical correction; and declaring an emergency.**

**Mr. Mark Benson**, Director of Public Affairs for the Potlatch Corporation explains that this exempts certain information and directed the attention of the committee to line 38 on page 3 regarding the amendment and the emergency clause. He stated that there are two ways to assess a value: the cost approach and the income approach. He explained that the income approach requires that information be inputted into formulas of income and expenses. He stated that their desires are to give clarity and for the county to use this information. He reported that without this, they can't provide this information to the Assessors for determination on value. He added that Mr. Dan Chadwick has promised the support of the cities.

**Senator Little** asked if this was exclusive to this industry or if others were asked to provide the K1 information. **Mr. Benson** replied that this applies to anyone who pays taxes and added that this would be voluntary.

**Senator Stennett** asked if there was anyone present from the counties. There was no one in the audience representing the counties.

**MOTION:** **Senator Little** made a motion to send H 222 to the floor with a **DO PASS RECOMMENDATION**. **Senator Stennett** seconded the motion.

**VOTE:** The motion passed by unanimous voice vote.

**H 152:** **Snake River Rights Agreement.**

**H 153:** **Water Rental - Flow Augmentation.**

**H 154:** **Minimum Stream Flow.**

**Chairman Burtenshaw** thanked Boise State and the City of Boise for coming forward and allowing the Legislature to use their facilities for the hearings on these three bills. He also thanked the Pages and the Committee Secretary for their work.

**Senator Geddes** commended the Chairman for the manner in which we heard the bills and commented that everyone had a chance to speak. He then reported that some had suggested sending these to the floor without recommendation, but added that he was not sure how to do that. He noted that if we send them with a Do Pass, he would encourage the members to vote how their conscience tells them too.

**MOTION:** **Senator Geddes** made a motion to send H 152, H 153, and H 154 to the floor with a **DO PASS RECOMMENDATION**. **Senator Stennett** seconded the motion.

**DISCUSSION:** **Senator Malepeai** stated that he will support taking all to the floor. He remarked that the hearings were very revealing with the documents provided and the ability to see the small pictures. He does support this motion with some reservations.

**Senator Stennett** stated that he is concerned by the movement of the Sho Bans and the possibility that they were not brought in. He pointed out that there was value in having the Governor's Office and the agencies

present during the hearings to flush out that issue since it is not really solid.

**Senator Davis** joined the Minority Leader in his observations and requested the Attorney General to look at these issues. He promised that he would provide a copy of that letter to the committee. He pointed out that the Attorney General's current assertions were perhaps beyond the stretch of legal authority and added that the timeliness of the matter was quite late.

**Senator McKenzie** explained that his vote sits on a razor's edge since this is a different issue for him. He noted that the hearings were conducted fairly for both sides and stated that there is a lot of basis on the 30-year biological opinion. He pointed out that the ranchers and local government are feeling like their rights are being handed over. He asked if a benefit to the state in general justifies and outweighs the rights of the few. He pointed out the 4<sup>th</sup> Amendment with regard to the rights of a single person outweighing the interest of society and added that this is the most troubling part of this agreement. He pointed out that there will be oral arguments in May in the Supreme Court with a likely opinion in the Fall. He stated that he thinks the Court will uphold Judge Wood's findings and concluded that he cannot support the motion. He stated that this has been one of the hardest votes in his time in the Legislature.

**Senator Darrington** reported that back in 1983-85 there was an issue before the Senate regarding the subordination of Swan Falls. He pointed out that it passed the House but lost in the Senate by one vote. He explained that nothing rises to the level of water and added that it is our life blood. He remarked that he will support the motion because this is our best chance to get certainty.

**Senator Little** shared Senator McKenzie's concerns with the prejudice against those in North Idaho. He stated that he thinks the uncertainty with water rights in the tribal area and the reduced reservation was a negotiated settlement. He pointed out that the certainty for water rights outweighs even though it is unfair to some. He noted that this is the final line in the sand and concluded that we need to take this negotiated settlement and legislate. He then expressed his thanks to Chairman Burtenshaw for the fair hearing.

**VOTE:** The motion carried by roll call vote. Senator McKenzie voted in opposition.

**S 1183:** **GARVEE Bonding -TRANSPORTATION INFRASTRUCTURE - FINANCE - Adds to and amends existing law to provide for financing such state transportation infrastructure projects as determined by the Idaho Transportation Board by the issuance of bonds or notes by the Idaho Housing and Finance Association; and to provide for payment of debt service and other bond related expenses with future federal aid highway apportionments.**

**Senator Stegner** explained that this pledges a stream of future payments to authorize projects for roads. He then introduced Chuck Winder, Director of the Board of Transportation.

**Mr. Winder** thanked the committee for their courtesies and stated that this is one way to build projects without raising taxes. He explained that this does not pledge the faith or the credit of the state. He reported that the Department conducted a number of outreach sessions over the last year.

**Mr. Winder** reported that there are adequate sideboards with an annual review done by line item and taken to JFAC for approval. He stated that this legislation is only a request for the use of portions of the funds. He directed the attention of the committee to the flow charts in the package provided by the Department and explained that Mr. Dave Ekern would explain that handout.

**Mr. Ekern** explained the five key elements which included modifying Titles 40 and 67 as shown on pages 3 and 4. He then explained that GARVEE stands for Grant Anticipation Revenue Bonds that would establish two unique funds: the GARVEE Debt Service Fund, which receives the funds and provides the payments; and the GARVEE Project Fund, which is the payment tool for consultants and contractors. He pointed out the flow chart on page 22 regarding the tentative time line. He explained that if this legislation passes, the Department would bring the identified projects and propose those to the Board in July with a request for the money needed. He explained that the Board would then consider that proposal and act on it in October. Following that, they would then submit it to the Federal Government.

**Senator Davis** commented that as we look at the North/South Corridor, he applauds the inclusion of those projects as well as the Treasure Valley needs, but asked about Highway 20 from Idaho Falls to the National Lab. He explained that this stretch of road is the number one safety concern for the employees at the Lab and pointed out that if the Board traveled that stretch on a work day, they would understand the safety concerns. He mentioned hearing the Governor talk about need and safety issues and asked the Department to look at reprioritization of these projects and work with the Federal Government to get more money as well as look at and address that safety concern and need. **Mr. Ekern** thanked the Senator for his concerns.

**Senator Stennett** asked when is the next Congressional authorization for the 3 or 6 year bite at the apple. **Mr. Ekern** replied that they are currently in active discussion and added that the President has authored a bill going to the Senate. He anticipated that reauthorization will occur this year. **Senator Stennett** asked what percentage is on the table today and where did he anticipate that. **Mr. Ekern** replied that the Administration has suggested \$256 billion, the House \$284 billion and the Senate \$318 billion. He reported that an agreement has been reached for \$284 billion or 35%. **Senator Stennett** asked what percentage of federal funds are anticipated. **Mr. Ekern** answered that these will be decided after we receive three sets of approval from the Board of Transportation, JFAC and the Legislature, and Congress.

**Senator Little** pointed out the \$170 million in debt service in 2014. **Mr. Ekern** replied that this is if the entire \$1.6 billion is bonded, and stated that at the max every year it would be \$1.69 billion. **Senator Little** asked where Idaho ranked relative to those states. **Mr. Ekern** answered that he

didn't have that information but added that this would be based on projections and growth. **Senator Little** noted that the previous publication by the Department showed 3% for California, up to 66% for New Jersey and pointed out that his arithmetic showed Idaho to be around 44%. **Mr. Chuck Winder** replied that the earlier projections were based on an interest rate of 4.4% and added that they provided numbers high on cost and low on revenue.

**Senator Geddes** expressed his concerns with McCammon to Soda Springs and noted that a railroad representative had a significant safety concern with moving both the highway and the railroad to the north. He added that this would avoid two overpass constructions and quoted his favorite constituent who says, "nothing is more permanent than that which is temporary." **Mr. Ekern** answered that he traveled to the District and met with the District Engineer. He reported that they have redone the costs and can reopen that discussion.

**Mr. Gerald Hunter**, Executive Director of Idaho Housing and Finance testified that his department has issued over \$3 billion in bonds and reported that they have the systems and the staff in place to implement this program. He pointed out that he didn't believe there to be a negative impact on his department. He stated that their focus and mission is to assist and access capital markets.

**Senator Stennett** asked if there was an additional cost or appropriation needed to implement this program. **Mr. Hunter** replied that there will be no extra funds since his office is self sufficient. He reported that they will charge a fee for expenses incurred.

**Mr. Chuck Winder** closed by saying that the GARVEE program is focused and provides the same controls at the Board level. He stated that this is a manageable program because it is not a significant portion of what they already handle.

**Senator Little** inquired about the 30%. **Mr. Winder** responded that it is between 35% and 40%. **Senator Little** stated that he has the utmost faith in the Board, but if the money is available, it will be spent. He added that he is interested in putting in sideboards to the balance sheet and asked if we are taking tax revenue away in the future. He further asked how much is leveraged against the balance sheet. **Mr. Winder** answered that the Department will have the opportunity in six years to make adjustments. He stated that if we put in a natural cap, it will give more comfort, but no guarantee that any projects will happen. He explained that the Indian Valley and the Twin Falls Bridge will have to go through ESA hearings and added that if we put in a cap, we may have to decide which projects come out.

**Senator Stegner** responded to the question to amend the bill and put in a cap. He stated that he will resist the attempt to amend the bill because it doesn't do any particular good and added that the Legislature can change this at any time.

**Senator Stennett** noted that Senator Little talked about the 30%, Mr. Winder talked of 35-40%, and the fiscal impact shows 22-40%. He stated

that there needs to be a better number. **Senator Stegner** replied that it is actually 29-32% of the Department's total budget.

**Mr. Gerald Tews** of Twin Falls explained that he lives off of Highway 93. He testified in support of the legislation and explained that the proposed bridge will go right through his property.

**Ms. Margaret Hinson** of Weiser testified in opposition based on the Indian Valley/Crane Creek project. She outlined the sage grouse and 20 other various animals that would be disrupted if this project continues on.

**Ms. Nancy Merrill** testified in support. She is a member of COMPASS and explained the advantages of this legislation.

**Mr. David Dudley** testified in opposition and provided the committee with a slide presentation consisting of maps of Indian Valley and the surrounding area as well as photos of that area. He pointed out that the Indian Valley project is proposed to go over Council Mountain and West Mountain and will displace 16,000 big game animals. He concluded that he is concerned with habitat change.

**Senator Stegner** asked him if he realized that this legislation doesn't authorize the Indian Valley project. **Mr. Dudley** replied that he did understand, but noted that it is listed as one of the 16 projects and added that he wants this project removed from the list.

**Mr. Skip Smyser**, representing the Idaho Trucking Association testified in support by saying that this will reduce congestion and improve safety. He added that existing routes should be completed before more are started.

**Mr. Jon Barrett** with Idaho Smart Growth testified in opposition. He asked what this does to improve transportation and why they don't know how much it will cost to maintain 250,000 lane miles. He further asked how maintenance costs are covered. He shared other states with caps: 5% in Texas, 10% in Florida, and 15% in Maryland. He recommended a cap in Idaho of 20% and shared a handout with the committee showing a list of states.

**Mr. Steve West** testified in support. He explained that air quality and non-attainment issues are important and stated that this will bring updated information.

**Ms. Wendy Green** of Indian Valley testified in opposition. She pointed out \$1.6 trillion to repair roads, bridges, dams and water systems nationwide and pointed out the House of Representatives bill to decrease money coming to Idaho. She remarked about the \$157 million for the Indian Valley project and noted that at a cost of \$5 per mile, this would total \$400 million.

**Mr. Michael Gifford**, Executive Director of AGC testified in support by explaining that the economy is changing with exports and imports moving via roads. He stated that the state of Oregon has invested \$2.8 billion to rebuild every bridge. He reported that the 2003 Universal Bonding Bill provided a positive return on the investment and added that construction

employment in Idaho is up 12%.

**Former Senator Dan Van Engelen** testified in opposition. He explained that he is retired and lives in Eagle but used to hold the seat now held by Senator Darrington, followed by Budget Director for Governor Batt. He shared a story about Boise-McCall who wanted a mink coat and a diamond whose husband got a new credit card with low interest. He concluded that this will be tying up future Governors and Legislature.

**Ms. Diane Jones** of Boise testified in opposition. She stated that this is not visionary and is a 20<sup>th</sup> century solution for 21<sup>st</sup> Century challenges. She reminded the committee that world oil production will peak and then go down in the future.

**Former Senator Ric Branch** testified in opposition. He explained that he is a 5<sup>th</sup> generation rancher with rights on the North and South sides of the Middle Fork. He proposed an amendment to fix a road from Mesa to Tamarack mill, not touch Highway 55 and not go through McCall. He then urged the committee to hold this bill in committee.

**Ms. Anne Hausrath** testified in opposition. She is concerned with the road between Caldwell and Meridian and stated, "If you build it, they will come." She pointed out that widening that stretch will provide more air pollution and suggested an investment into public transportation or job creation in Canyon County and Emmett so that people can work where they live. She concluded by warning the committee to not use GARVEE bonds, and suggested that if we do, to at least provide a cap.

**Ms. Charlie Hendrix** testified in opposition by saying that she does not agree with long term debt and noted that the road from Emmett to Mesa would be unnecessary since there are already two parallel roads on either side of this proposed project.

**Chairman Burtenshaw** asked Mr. Winder to explain GARVEE and bonding. **Mr. Gerald Hunter** explained that the bonds are secured by a pledge of the federal highway money and added that there is no obligation by the state for repayment.

**Senator Stennett** asked if the first wave of bonds were more secure than those 40-50% out and if the first dollar has the same value as one 8-9 years down the road. **Mr. Hunter** replied that all holders have the same rights to the federal stream of highway money and added that there is no differentiation of rates over time.

**Chairman Burtenshaw** asked what happens if too much money is required for Indian Valley, could this project be taken out. **Mr. Winder** answered that this project would be based on the NEPA process that will take 5-7 years and possible legal action. He stated that each project has to comply to be under federal funding.

**Senator Stegner** asked if a project goes through the whole process, anyone can reject a part at any time. **Mr. Winder** answered that if the project doesn't comply, it doesn't qualify.

**Senator Stennett** asked if there was any experience on creating new roads through environmentally sensitive areas. **Mr. Winder** answered that they deal with this on virtually every project.

**Senator Stegner** noted the concerns with specific proposed routes and stated that this legislation is not mandating the state to do anything, it is just opening the doors to construction and financing.

**MOTION:** **Senator Stegner** made a motion to send S 1183 to the floor with a **DO PASS RECOMMENDATION**. **Senator Davis** seconded the motion.

**SUBSTITUTE MOTION:** **Senator Little** made a motion to send S 1183 to the **14<sup>th</sup> ORDER**. **Senator Geddes** seconded the motion.

**DISCUSSION:** **Senator Little** commented that he wants to narrow the door and would prefer to put this in the Constitution. He stated that with GARVEE bonding, he is concerned with the size of the door and concluded that this is not a good policy.

**VOTE ON SUBSTITUTE MOTION:** The motion failed 3-6-0. Senators Darrington, Davis, Stegner, McKenzie, Stennett, and Burtenshaw voted in the negative.

**VOTE ON ORIGINAL MOTION:** The motion carried 8-1-0. Senator Geddes voted in the negative. **Senator Stegner** to carry on the floor.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 10:14 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

MINUTES

**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Monday, March 14, 2005

**TIME:** 8:00 a.m.

**PLACE:** Room 437

**MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, Malepeai.

**ABSENT/  
EXCUSED:** None.

**GUESTS:** See attached sign in sheet.

**CONVENE:** Chairman Burtenshaw called the meeting to order at 8:09 a.m.

**VOTE ON  
GUBERNATORIAL  
APPOINTMENTS:** **Idaho Commission on Human Rights  
Andrea Wassner of Boise. Serving a term commencing February 1,  
2005 and expiring July 1, 2006.**

**MOTION TO  
CONFIRM:** **Senator Malepeai** made a motion to confirm the appointment. **Senator  
Geddes** seconded the motion.

The motion carried by unanimous voice vote.

**Senator McKenzie** will carry on the floor.

**VOTE ON  
GUBERNATORIAL  
APPOINTMENTS:** **Idaho Commission on Human Rights  
Clarisse Maxwell of Boise. Serving a term commencing July 1, 2004  
and expiring July 1, 2007.**

**MOTION TO  
CONFIRM:** **Senator Malepeai** made a motion to confirm the appointment. **Senator  
McKenzie** seconded the motion.

The motion carried by unanimous voice vote.

**Senator McKenzie** will carry on the floor.

**RS 15080:** **To the Senate and House of Representatives of the United States in  
Congress assembled, and to the Congressional Delegation  
representing the State of Idaho in the Congress of the United States.**

**RS 15082:** **Relating to Sales and Use Taxes; by the addition of a new Chapter  
46, Title 63, Idaho Code, to provide a short title, definitions, a  
statement of findings and intent, duties of the State Tax  
Commission, to authorize the commission to enter the streamlined  
sales tax agreement, to provide that the agreement does not  
preempt state law, to establish the minimum terms and conditions  
for entering the agreement, to provide that the agreement is an  
accord among cooperating sovereigns, to provide for limitations on**

**actions, to provide for certified service providers and to require the State Tax Commission to prepare proposed legislation to implement the provisions of the simplified Sales and Use Tax Agreement; providing an effective date and providing a continent effective date.**

**Senator Hal Bunderson** explained that there was a Memorial passed in the Senate a couple of years ago. He requested that RS 15082 precede RS 15080 in the hearing when these are printed.

He explained that states only require businesses to collect sales tax in their state, or nexus, and shared that currently there are 46 sales taxing states that also include the District of Columbia.

He reported that the University of Tennessee conducted a study which found that by 2006, Idaho will have an impact of \$150 million based on sales of \$3 billion. He pointed out that this will streamline the sales tax agreement with 34 other states who will vote on this final agreement in April. He stated that this legislation will allow Idaho to be at the table to be part of that vote. He explained that each state has one rate and added that if ten states with at least 20% of the population sign on, then Congress will be petitioned to pass a law to allow the states to implement and collect internet sales tax. He reported that this does not allow Idaho to sign since that will take legislation next year.

**Senator Little** asked about the states with 100 different rates and what is the general consensus to take care of that problem. **Senator Bunderson** replied that they haven't addressed that. He explained that they have addressed the definition of "food" such as miniature marshmallows vs. large marshmallows and added that this gets rid of goofy interpretations. He added that remote sales would only have one tax. **Senator Little** asked if the Tax Commission will get the check and then divvy it up. **Senator Bunderson** replied that they would.

**MOTION:** **Senator Little** made a motion **TO PRINT both RS 15080 and RS 15082.** **Senator Malepeai** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**S 1174:** **Relating to the State Campaign Finance and Reporting Law; to provide a definition of "Electioneering Communication", to provide requirements for persons who conduct or transmit any electioneering communication and to provide requirements for statements filed with the Secretary of State; to provide civil penalties and misdemeanor penalties for failing to report electioneering communications in compliance with law, to provide a correct statutory reference.**

**Senator Little** explained that this fills a hole in the Sunshine Laws. He further explained that if a person contributes \$50 to a campaign, their name is available for anyone in the nation to view, but if a person contributes as part of an electioneering scam, then no one can find out the names. He pointed out that this defines electioneering and doesn't stop news articles, editorials, or communications among memberships. He further added that this includes the 48-hour rule as well as including

the cities, counties and magistrates. He concluded that this is not a panacea, but a right start.

**Senator Davis** asked if there was an asserted violation, how would the Secretary of State solve the problem. He pointed out that with the current backdrop of challenges in Ada County, how would the Secretary of State go through to find the third party. **Senator Little** replied that if anyone uses a broadcast mass telephone call or other media, then line 28 on page 2 addresses that. He pointed out that this is a net to provide protection. **Senator Davis** asked him how that net will be pulled in. **Senator Little** replied that this would fall under the same section of code as the Sunshine Law.

**Senator Stennett** asked what was the target that they are shooting at regarding the definition of electioneering and what fell through the cracks. **Senator Little** replied that this is a dynamic issue with the Supreme Court decision on *McKane v. Feingold*. He commented that people should be under the same section. He reported that the Ada County Mayoral contest had an issue where the day before the election there were a number of individuals where the Citizens for Trust Free Government called voters regarding Chuck Winder. He added that these calls were not expressed advocacy, but shared some negative information about Chuck Winder. **Senator Stennett** asked about the rise in 521 or 527 and how this would fall. **Senator Little** responded that he assumes those 527 relate to national organizations. He explained that the problem is we just change the currency from cash to phone banks and added that it is best to let the public see where the money comes from.

**Secretary Ysursa** testified that he worked with Senator Little and the Attorney General to have some regulation. He noted *McConnell v. FEC* and explained that this legislation is patterned after the federal Electioneering Communication law. He pointed out that this will allow them to go after ads with no expressed advocacy and also addresses the 48-hour policy. He reported that there is currently a lawsuit in Colorado as to if their bill is Constitutional. He pointed out that this provides more ammo in the law to make them disclose but stated that it is not a cure-all. It is simply an attempt to get the sunshine disclosure.

**Senator Stennett** asked about the \$5,000 limit for statewide office and the \$1,000 per contribution. **Secretary Ysursa** replied that this is not limited in scope, just disclosure. He pointed out section 2 on page 4 with the description that contributions over \$100 must be filed with the state. **Senator Stennett** asked what type of education will they be doing locally regarding the local measures. **Secretary Ysursa** explained that he removed "measures" because of *McIntyre v. Ohio* regarding leaflets. **Senator Stennett** asked about line 22 on page 2. **Secretary Ysursa** answered that this is the unamended part of the statute as well as line 25 on page 3. He stated that the new sections have no effect on previous measures and further stated that measures are not affected by this.

**MOTION:** **Senator Little** made a motion to send **S1174** to the floor with a **DO PASS RECOMMENDATION**. **Senator Stegner** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

S 1160:

**SCHOLARSHIPS - Amends existing law to provide reference to Iraq and Afghanistan; to place a limit on the length of time educational benefits shall be extended to a qualified dependent; to provide proper terminology; to provide that application for eligibility shall be made to the State Board of Education and the Board of Regents of the University of Idaho or the State Board of Vocational-Technical Education; and to provide duties of the State Board of Education and the Board of Regents of the University of Idaho and the State Board of Vocational-Technical Education for verifying and communicating eligibility findings.**

**Senator Mike Burkett** explained that there is already a scholarship program in place for members of the military who are wounded or killed in foreign wars and added that this simply updates that program. He pointed out that on line 15 they have changed "child" to "dependent" and have included Iraq and Afghanistan. He stated that this will provide for a ten-year period for the scholarships to be in effect. He reported that under 30a, the State Board of Education will determine the eligibility and administer the program and added that this will bring one uniform system. He pointed out that at the bottom, on line 43 it shows "future budgets" and explained that this will have no impact on the FY'06 budget. He reported that last year there was still money going to the Vietnam scholarships but stated that this year there is no money going to these scholarships. He pointed out that there will be some additional fiscal impact in the future for spouses and children but added that this impact will not be on the FY'06 budget. He reported that there is some good support for this bill. He remarked that the Governor found it interesting that the bill number is so close to the 116<sup>th</sup>.

**Senator Stegner** noted that the language was very specific with the addition of lines 19 and 20 regarding, "or in Iraq or Afghanistan". He asked about a sailor who dies in the military but not in Iraq or Afghanistan and if their dependents would be eligible. **Senator Burkett** answered that if they die in conflict, the dependents would be, but if they were not in conflict, like on a nuclear submarine, then the dependents would not. **Senator Stegner** asked where that language referring to this was. **Senator Burkett** replied that on line 20, "in any area of armed conflict in which the United States is a party." He pointed out that this section is already in statute and added that this legislation would impact the spouses.

**Senator McKenzie** asked about the \$500 limit on line 26 and how that could add up to \$5,100 per year. **Senator Burkett** explained that the \$500 is for equipment or supplies and stated that tuition, fees and books falls under the scholarship program. He explained that the equipment and supplies cannot exceed \$500. He further explained that this scholarship also includes campus housing and subsistence.

**Senator Little** asked how they define "subsistence". **Senator Burkett** answered that the Board of Education will define this. He pointed out that the Universities used to do this differently and reported that this legislation would make it more uniform.

**Senator Darrington** asked how many in the audience were in opposition.

There were none.

**Mr. Steven Edgar** provided the committee with a handout and explained that he is retired from the Air Force. He then asked the committee for their unconditional support in giving the gift of education. He explained that Idaho is one of ten states not supplementing veterans benefits and pointed out that on the second page of his handout the article from Salem, OR regarding free college for reservists. He pointed out that this legislation is only providing the scholarship if they are killed in a conflict as defined by the Department of Defense and added that the dependency is verified using tax returns.

**Mr. Jeff Anderson**, General Manager for Channel 2 News in Boise and Channel 3 News in Idaho Falls testified that as Liaison for the Idaho State Broadcasters, they are in support of this. He reported that the local stations have been providing interest stories on the 116<sup>th</sup> and their families. He concluded that extending scholarships to spouses is important.

**Mr. Bob Finney**, past Commander for the Veterans of Foreign Wars and their current Adjutant testified that it is better to educate the dependents because with an education they will bring in more revenue for the state in taxes.

**Senator Malepeai** asked Senator Burkett if the figures were indexed for inflation and rising tuition. **Senator Burkett** replied that they are not. They are based on what it is today. He added that there is no way to predict what the costs will be in 10 years. **Senator Malepeai** asked about the wording on indexing tuition since the only figure is \$500. He further asked if this was a sliding scale with the Department of Education.

**Senator Burkett** answered that there is a sliding scale. **Senator Little** jokingly asked Senator Burkett if he was carrying the Tuition Bill. **Senator Burkett** laughed and replied that he is not.

**Senator Darrington** commented that the passage of this bill gets right to the benefits and asked what if JFAC didn't fund this. **Senator Burkett** answered that the dependents apply with the University. The University sends the application to the State Board of Education for approval. Once the Board approves the application, they then request reimbursement from JFAC. He stated that JFAC has always reimbursed the Universities for these scholarships in the past.

**MOTION:** **Senator Stennett** made a motion to send **S1160** to the Floor with a **DO PASS RECOMMENDATION**. **Senator Malepeai** seconded the motion.

**DISCUSSION:** **Senator Stennett** commented that the committee has been well versed by the testimony and added that by including dependents, this is a good way for a young mother to provide for her family.

**VOTE:** The motion carried by unanimous voice vote.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 9:02 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

MINUTES

**SENATE STATE AFFAIRS COMMITTEE**

- DATE:** Monday, March 16, 2005
- TIME:** 8:00 a.m.
- PLACE:** Room 437
- MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, Malepeai.
- ABSENT/  
EXCUSED:** None.
- GUESTS:** See attached sign in sheet.
- CONVENE:** Chairman Burtenshaw called the meeting to order at 8:06 a.m.
- RS 15108:** **Relating to Idaho Grape Growers and Wine Producers; to provide that Commission members currently serving shall continue to serve until reappointed or until a new member is appointed and to make technical changes.**
- Mr. Bob Corbell**, representing the Idaho Grape Growers and Wine Producers, presented RS 15108. This legislation is related to H 150 which is currently in the 14<sup>th</sup> Order, and addresses certain tax issues. He requested it be sent to the Second Reading Calendar.
- MOTION:** **Senator Little** made a motion **TO PRINT RS 15108** and to send to the Floor with a **DO PASS RECOMMENDATION**. **Senator Geddes** seconded the motion.
- VOTE:** The motion carried by unanimous voice vote.
- H 214:** **Relating to Stray Current and Voltage; to provide legislative findings and purposes, to require the Idaho Public Utilities Commission (PUC) to promulgate certain rules, to provide for the review and revision of promulgated rules, to provide for claims, to require certain notices and to provide for response by utilities, to provide for the exclusive initial jurisdiction of the Commission, to specify post-hearing Commission requirements, to provide for Commission orders and to specify conditions relating to commencement of certain civil actions, to provide for the application of Commission rules of practice and procedure, to provide for civil actions, to provide for damages and to limit claims; and declaring an emergency.**
- Mr. Rex Blackburn**, an attorney representing Idaho Power on H 214, told the committee that this legislation represents a compromise between utilities and dairies with regard to stray voltage. Stray voltage results from the grounding of electrical systems (for safety), as a byproduct a certain amount of voltage returns to its source. Dairy cows have a certain

sensitivity to stray voltage.

Hallmarks of this legislation are:

1. Defines stray current/voltage in a scientific manner and makes it applicable to all disputes.
2. Defines acceptable and permissible level of stray voltage called a preventative action level. The PUC and dairy industry have agreed to this definition.
3. Sets a trigger point for action by the utility to remedy or resolve the presence of stray voltage. This provides a prompt and adequate solution to dairy producers concerned about the presence of stray voltage on their farm.

A utility has 14 days, upon notification by a dairy with concerns regarding stray voltage on their farm, to proceed to the farm and measure absolute levels of stray voltage. If a preventative action level has been exceeded, the utility must determine whether the stray voltage results from the utility or from the farm system. If at least a half of the preventative action level (half a volt) is attributed to the utility, the utility must promptly take action to eliminate the contribution of stray voltage from the utility. If a dairy producer is unsatisfied with the efforts of the utility, it can seek intervention of the Public Utilities Commission, who will then make a non-binding determination after a hearing. If either the dairy or the utility object to the determination, the matter may be taken to court.

Utilities are required to promptly address stray voltage in response to concerns from dairy producers who may seek an administrative or judicial remedy if necessary. They are entitled to seek damages retroactively for a period of one year for the period of time when the utility did not address the problem.

**Chairman Burtenshaw** inquired regarding support from the dairy industry. **Mr. Blackburn** introduced representatives from the dairy industry who have worked on the bill to ensure it is acceptable.

**Senator Little** asked about situations, such as damage to a ground wire, that are of no fault to the utility, but result in stray voltage. **Mr. Blackburn** replied it would depend on whose ground wire it was, and if it was a component of the utility's system. It would still be able to trigger an investigation into the source of the voltage. If it is determined the fault doesn't belong to the utility, they may still offer assistance to the dairy in remedying the situation.

**Commissioner Paul Kjellander**, from the PUC, made himself available for questions from the committee. He reviewed the PUC's involvement in the stray voltage issue. The standards in the legislation make sense. They have no official position on the language. An issue of interest is the fiscal note which states the PUC may need to return to the legislature to request spending authority in regard to their functions described in this act.

**Chairman Burtenshaw** inquired regarding the protocol for the PUC mentioned in the statement of purpose for this legislation. **Commissioner Kjellander** responded that this is with regard to the rulemaking

procedure. **Chairman Burtenshaw** asked about the resulting increase of work for the PUC. **Commissioner Kjellander** acknowledged it was extra work, but the PUC would be pleased to do it.

**MOTION:** **Senator McKenzie** made a motion to send H 214 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Darrington** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote. **Senator McKenzie** will carry this bill on the Senate floor.

**H 224:** **TELECOMMUNICATIONS - Amends and adds to existing law to authorize a telephone corporation to elect to have all or part of its telecommunications services excluded from regulation pursuant to Title 61, Idaho Code, and to be subject to regulation pursuant to Chapter 6, Title 62, Idaho Code; to authorize the Public Utilities Commission to regulate telephone corporations for the purpose of implementing the Federal Communications Act of 1966; to provide the Public Utilities Commission with authority to determine noneconomic regulatory requirements for telephone corporations providing basic local exchange service; to prohibit certain rate increases for basic local exchange service during the period of three years following the effective date of the election; to authorize the Public Utilities Commission to extend the transition period for an additional two years; to establish the rates for basic local exchange service to be used to determine eligibility of certain telephone companies to draw funds from the state universal service fund; to prohibit a telephone corporation from requiring a basic local exchange service customer to purchase or subscribe to telecommunication services other than basic local exchange services; to prohibit any increase in the stand-alone basic local exchange service rate to an amount that is higher than the rate for such service for basic local exchange customers in the local exchange calling area having the highest number of basic local exchange customers served by the telephone corporation; to define "stand-alone basic local exchange rate"; to provide certain duties relating to unauthorized charges by third-party service providers; to provide an exception to the exemption from the antitrust liability of a telephone corporation; and to provide the Public Utility Commission authority to establish a minimum price for basic local exchange service upon complaint by another telephone corporation relating to below variable cost pricing for such services by certain telephone corporations.**

**Mr. Jim Schmitt** with Qwest testified the government initially started regulating business 92 years ago. However, none of the conditions existed that regulations were originally put in place for still exist today. There is no longer a single technology or a single provider. The market is contestable and open, and therefore is self-regulating. Congress has eliminated barriers of entry to the market. It isn't just about cell phone competition, however in the last five years cell phone usage has gone up 100% and there has been a reduction in usage on their lines. **Mr. Schmitt** said the concerns on last year's deregulation bill have been addressed in this legislation.

To ensure that rates are affordable, QWEST took a rate determined by the Public Utilities Commission (PUC) allowed to other companies, primarily in rural areas of the state since about 1999, and set that as the maximum rate they will charge for a minimum of three years and up to five years. In 2010, QWEST customers will be paying no more than they currently pay. This will not impact those people who qualify for the telephone assistance program. This bill protects the consumer and is fair from an industry standpoint.

**Senator Davis** recognized the assurances in this bill are different than they provided for in last year's bill. **Mr. Schmitt** said these assurances have been improved, and that QWEST has no intention to raise rates. Another provision in this bill caps the price increase in one year at 10%.

**Senator Stennett** pointed out that ATT and MCI have pulled out of residential land lines in Idaho, and asked who QWEST will be competing with. **Mr. Schmitt** said the primary competition is cell phones and broadband, text and email, as well as voice over internet.

**Senator Malepeai** inquired as to the status of competition with MCI. **Mr. Schmitt** said they are interested in acquiring MCI which would give them a stronger infrastructure.

**Bill Roden**, representing QWEST, walked through the bill and the provisions in place to address common concerns (see attached). Referring to the price caps during a transition period of three years, Mr. Roden said that the first year of the transition period, the price cap will be an amount equal to 10% of the company's regulated rate at the time of the election to become subject to the legislation. During the following years, the price cap may increase in an amount equal to the difference between the first year price cap and the rate in effect at the time of the company election to be subject to the law. He told the committee that in no event, "during the transition period, may the price for basic local exchange service exceed the maximum regulated rate authorized by the PUC for regulated companies within the state."

**Senator Davis** inquired regarding the price cap. **Mr. Roden** said the 10% cap is based on the initial rate and not assessed on the previous year's rate after the first year. Upon further inquiry, **Mr. Roden** clarified the cap does increase annually, however, the company does not have to adjust their rates to meet the cap. During the 5 year period, the cap increase each year is equal to 10% of the price at the time they took the election.

**Senator Davis** asked for Mr. Roden's interpretation of page 4 lines 4-5, "extend the transition period for a period of two (2) additional years if the commission finds that such action is necessary to protect the public interest." **Mr. Roden** said the term "the public interest" was taken from existing language in Title 62 that is being removed. The intent was to give the PUC the broadest possible latitude to extend the period of time. The current law in Title 62 states they can revert to Title 61 if the company was acting adversely to the public interest; this language is meant to put the company to the same test as originally intentioned. **Senator Davis** noted the word "necessary" is not consistent with allowing the broadest latitude possible. He inquired regarding Section 4 of the bill and the

removal of “slam charges” and would a customer receive a report about a potentially disputed charge that could adversely impact the customer’s credit rating. **Mr. Roden** said the intent was to allow the charge to be removed and would not be disputed as far as the phone company was concerned.

**Will Rainford** from the Catholic Diocese testified in opposition to H 224. He spoke about the importance of telephone service to economically fragile families, especially to access emergency services. De-regulating telephone utilities will most assuredly lead to rate increases that low-income working families cannot afford. Idaho families who are above the poverty line, do not qualify for QWEST’s low-income assistance program, but cannot afford QWEST rate hikes.

**Karen McWilliams**, representing the Idaho Community Action Network, testified in opposition to H 224. She said there is not substantial competition for QWEST from other land line companies. Since the PUC denied QWEST’s petition for deregulation in 2003, competition from other land line companies has actually decreased. AT&T and MCI have both quit offering any land line residential services in Idaho.

**Keith Allred**, President of The Common Interest, testified in opposition to H 224. National studies have shown that 5.5%-6% of American households have gotten rid of land lines and rely on cell phones. He noted the lack of competition in land lines. He stated this legislation should wait until effective competition has reached a higher level.

**Woody Richards**, representing three telephone companies in Idaho: Frontier Citizens, Century Tel, and Potlatch Telephone Company, testified in support of H 224. Preliminarily none of these companies plan to take advantage of the provisions in this legislation, however, the companies support the legislation. Competitive sources of telephone service include cell phones, land based companies, wireless high-speed internet and cable companies. Recently, there has been a decrease in land line subscribers. The PUC has been receiving more applications for certificates of public convenience and necessity and more companies have been entering into interconnection agreements with local exchange companies, and more competitive phone companies are filing price lists with the PUC. Competition is increasing. They would like to have options to adjust to the rapidly changing environment.

**Joe Bejsovec**, retired, testified in opposition to H 224. He said QWEST needs protection from itself because the local company is part of the larger Denver-based company who may have influence over the Idaho practices. He also expressed concern other utilities may also want to become deregulated if this legislation passes.

**Karen McNary** testified in opposition to H 224. She raised questions about the quantity and type of lines QWEST has lost and whether they are being replaced by other services. **Senator Geddes** asked if she had a land line and/or a cell phone and **Ms. McNary** replied she had a cell phone, but no land line.

**Stan Hobson**, a retired resident of Boise, testified in opposition to H 224.

He raised issues regarding a lack in effective competition and functionality. It is not logical to deregulate at this time.

**Joe Gallegos**, lobbyist for the AARP, testified on H 224. He made note of the improvements over the previous legislation, although they had hoped to see other changes made in this legislation. The PUC will be able to evaluate QWEST's practices over the next 5 years and therefore the AARP does not have an official position on the legislation. Should there be a dramatic increase or other activity considered unfair to consumers, they will aggressively seek measures to re-establish the PUC's oversight.

**Dennis Tanikuni**, Assistant Director of Public Affairs for the Farm Bureau, testified in opposition to H 224. The IFBF's opposition is not anti-QWEST nor is it anti-business. It is about uncertainty and unforeseen consequences. PUC regulation of large telephone providers provides certainty to the customer base, especially a rural customer base. QWEST has made assurances that it will look out for the interests of its rural service areas. We trust that QWEST will be a good corporate neighbor. However, this legislation creates significant future uncertainty. This type of deregulation will not only make QWEST, but any communication provider utilizing the benefit of H224, a much more attractive candidate if put up for sale.

**John Eaton**, representing the Idaho Association of Realtors, testified in support of H 224. This is good legislation and the customer service would still be regulated. Realtors are asked what the schools are like, and if high speed internet access is available. H 224 expands QWEST's ability to be competitive, thereby expanding services provided to IAR members and their clients. In addition this could provide the Idaho Division of QWEST, the ability to be more competitive within their network, allowing them to attract more resources to Idaho, whether it be additional DSL routers or something else.

**Dennis Hansen**, One of the three Commissioners from the PUC asked to be present at the request of the Chairman, responded to questions from the committee. **Senator Geddes** asked what the 3-5 year period allows. **Commissioner Hansen** explained QWEST could raise rates \$1.75 each month for three years. He clarified that the \$1.75 was per month, not per year as was previously stated, which would be an increase above the current monthly payment of \$17.50 to about \$21.00 for the first year, at \$3.50 a month would be \$42.00 for the second year and at \$5.25 a month, would be \$63.00 for the 3<sup>rd</sup> year. This could be extended for a 4<sup>th</sup> and 5<sup>th</sup> year but the monthly payment cannot exceed \$24.10 during this time. After that, they can charge whatever price they desire.

In reference to the universal service fund, it is meant to provide assistance to high cost areas - mainly rural areas. By law, if an entity receives universal service funding they must charge customers 125% of the state average (which is heavily influenced by Qwest in Idaho). When QWEST raises their rates the state average increases as well, consequently the rural companies with universal service funding have to raise their rates to 125% of the newly increased state average. In the 1996 rate case with Qwest, the Commission raised the basic rate to \$17.50, and the rural companies had to charge 125% to keep their

universal service funding by charging in the range of \$22.00. Because it is expensive to conduct a rate case, they requested that the Commission set their rate at \$24.10 so they couldn't have to appear again if Qwest raised their rates.

In this legislation, the PUC has very little control over pricing and there isn't a set of strict performance standards for Qwest to meet. The PUC could level a fine, however, Qwest can challenge that in court

**Senator Geddes** asked if the PUC could require an expansion of service capabilities. He had stated he received a phone call from Soda Springs indicating there is a shortage of T-1 lines. Under the deregulation scenario, could through the oversight in service that is granted to the PUC, can the PUC require Qwest or any other telephone company to expand or enhance what service capability is available.

**Commissioner Hansen** yielded the question to Marsha Smith.

**Commissioner Smith** stated if there is inadequate service provided to the customer, the Idaho telecommunications act was re-written in 1988 and it would be necessary to determine whether or not the service falls within Title 61 regulation, if it does not fall within Title 61 regulation, then there is a serious issue as to whether the commission has the authority to order the provision of that service. **Commissioner Smith** stated she did not have a definitive answer and there are a lot of questions that would need to be taken into consideration and explained that services still fall under Title 61 regulations.

**Senator Malepeai** asked if this proposal is before the legislature because they have more flexibility than the PUC. **Commissioner Hansen** said the PUC is obligated to provide a regulated utility with a fair rate of return and they must take that into consideration. In the last rate case, the Commission set 9.4% as a fair rate of return, and the current review shows Qwest making approximately that amount. When the unregulated business is taken into consideration, Qwest information shows they are making a 15.1% rate of return. The PUC is limited because customers can take the issue to court if the rates are beyond the fair rate of return.

**Commissioner Smith** said legislation can determine how rates are set.

**Senator Malepeai** asked if the rate of return for Qwest is consistent with those in other states. **Commissioner Hansen** answered this saying that the rate structure is complex especially in Idaho because of allocations. In 1988, the Legislature allowed Qwest and others to de-regulate some of their services, but they still used some of the regulated services to provide those services, so these costs have to be allocated. Costs to Idaho have to be looked at versus Utah and other states, so the allocation would be very difficult. It was in 1996 when the Idaho staff reviewed it and came up with a proper allocation. **Commissioner Hansen** stated "In the numbers that have been provided by Qwest to the staff, I would feel comfortable if they are earning in the neighborhood of what other regulated utility companies are, and fairly close to what the Commission allowed them in 1996 in a return on equity. Recently, when Qwest submitted the numbers to the staff they used the same allocation numbers used in the rate case of 1996 and a lot can change in 9 years. "

**Senator Stennett** asked **Commissioner Smith** about balancing a fair

rate of return with the deregulation. If Qwest is losing lines, will that eventually drive the rates up in order for them to get a fair rate of return and will they be able to come in as a regulated utility with a loss of lines and drive the rates up similar to what this bill is proposing.

**Commissioner Smith** answered that is one scenario and it all comes back to the complex allocation scenario that **Commissioner Hansen** described. She commented that “ If what a previous witness said, that ‘Qwest is it’s own best competitor’ and its unregulated services are growing, then the allocation of costs may shift from the regulated to the unregulated and it may be a wash or rates may go down” It is true that a regulated utility can get into a “death spiral” where the more they raise rates, the more customers they lose. In speaking of Qwest, it is much more complex because of the way the allocations of costs are done in state and intrastate and corporate. **Senator Stennett** asked if she could factor in any of the profits from the deregulated side. **Ms. Smith** said they could not use any of those revenues to reduce, but on the allocation side revenues are one of the factors used in determining what an appropriate allocation of costs of these jointly used facilities might be. “You couldn’t sweep up the revenues and subtract them from the regulated revenue requirement,” she concluded

**Senator Little** asked if in high growth areas, if all the new users were CTC and the other ones, doesn’t it come into play that if you lower the total customers out there with cell phone services and voice over and those with satellite or cable connections and have that option, isn’t that going to make Qwest a second class provider on the regulated side, because their customers are decreasing and going to the non-traditional hard wired phone line services? **Ms. Smith** said it depends on whether you are talking about expansion of services by alternative providers into new areas, which has no cost burden on Qwest, because they are not the company providing the investment to make those services available, so that would not affect their current earnings. If you are talking about their existing customers on their existing facilities choosing to go somewhere else, that could have an impact. She told the committee that she lives in an area where she cannot get cable, or DSL, or these types of services because the geographic dispersion of these new high tech services is very limited.

**Chairman Burtenshaw** thanked the PUC Commissioners for attending this hearing and asked Mr. Roden to wrap it up for the committee. **Mr. Roden** said that after listening to the discussion, the questions is whether there is an explosion of technological change going on that affects this entire issue. The entire concept of regulation by the PUC in terms of rates was based upon the assumption that they would be the sole provider, have a protected monopoly area, a protected service area, and in exchange for that protected service area, their rates would be regulated. That was true in 1913 but it is not true today. A competitive marketplace is not the same as having an existing competitor. We could argue all day about cell phones, but those things are happening. Once the market is open, misbehavior by any company is going to produce competitors. As long as you have regulated rates that may artificially hold rates down, the marketplace isn’t allowed to function. Qwest and other companies are in a situation where they are trying to compete and have

one hand tied behind their back. Regulation is not cheap; a rate case takes thousands of rate payer dollars to go to the PUC and handle a rate case. The reason for that in this kind of competitive environment no longer exists. People going to a cell phone with no land line is making a difference on other companies throughout the state. If there is misbehavior in the marketplace, this Legislature always has the authority to go back.

**MOTION:** **Senator Little** made a motion to send H 224 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Stegner** seconded the motion.

**DISCUSSION:** **Senator Geddes** stated that there is a potential of raising rates. He added that it will not make it more competitive, but remarked that they should reduce rates. He added that the PUC does not take a rate case to reduce rates.

**Senator Stennett** stated that he is still fearful of going there and pointed out that he will oppose the bill.

**Senator Davis** stated that he couldn't imagine a more dynamic market. He added that we have the opportunity to take advantage of changes and stated that he will support the legislation even though he has some problems with some of the words.

**Senator Malepeai** remarked that this is a difficult issue. He stated that utilities have to be regulated. He commented that once you let the genie out of the bottle, it is difficult to put her back in and added that he opposes this.

**Senator Little** commented that the genie is already out and pointed out the changes made by Congress in 1983 and the State in 1988. He pointed out that we have to protect rural service so that they are able to compete. He concluded that he would support this.

**VOTE:** The motion carried by roll call vote 5-4-0. **Senators Geddes, Stennett, Malepeai, and Burtenshaw** in opposition. **Senator McKenzie** to carry on the Floor.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 10:07 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

## MINUTES

### SENATE STATE AFFAIRS COMMITTEE

**DATE:** Friday, March 18, 2005

**TIME:** 8:00 a.m.

**PLACE:** Room 437

**MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, Malepeai.

**ABSENT/  
EXCUSED:** None.

**GUESTS:** See attached sign in sheet.

**CONVENE:** Chairman Burtenshaw called the meeting to order at 8:06 a.m.

**APPROVAL OF  
MINUTES 3/4/05:** **Senator McKenzie** made a motion to approve the minutes dated March 4, 2005. **Senator Little** seconded the motion.

The motion carried by unanimous voice vote.

**Gubernatorial  
Appointment:**

**Idaho Racing Commission  
Judy Radin of Rigby. Serving a term commencing February 24, 2005  
and expiring January 15, 2010.**

**Ms. Judy Radin** explained that she has been racing quarter horses in Idaho since 1991 and has been the Director for the Idaho Quarter Horse Breeders Association. She then provided the committee with personal background.

**Senator Davis** asked her if she was related to John Radin. **Ms. Radin** replied that she was his ex-wife. **Senator Davis** asked her if she was close to the industry. **Ms. Radin** answered that she was close, but not personally involved throughout the industry. She explained that her brother is a jockey who was injured a year ago on the track. She added that he works for UPS part-time. She further added that she can be fair and can stand up to whatever needs to be taken care of. She then recounted an incident in Idaho Falls where the purse money was not accounted for. She explained that she started the investigation herself.

**Chairman Burtenshaw** asked her how important is it to have good records and accountability in the industry. **Ms. Radin** replied that it is as important as safety and added that it is a business as well and needs integrity.

**Chairman Burtenshaw** thanked her for coming and announced that we would be voting on her appointment at the next meeting.

**H 85 aa: IDAHO STATE RACING COMMISSION - to clarify the content of the report to be filed.**

**Representative Steve Smylie** explained that he was a member of the House Subcommittee on horse racing six years ago. He stated that his intern conducted a search through news reports and found that since 2000, there were 64 articles about Les Bois. He reported that the 2003 report was filed in 2005, and the 2002 report was filed in 2004. He pointed out that under Idaho Code 54-2405, the reports are due by December 31<sup>st</sup> of each year, but noted that the reports aren't available until one full year after the season is over.

**Representative Smylie** stated that this bill tightens up the reporting and makes it due 90 days after the season is over. He added that this will provide more up-to-date information. He further added that this has an amendment to include "financial summary" showing on one page what comes in and what goes out. He reported that he shared this with the Ada County Commissioners and Capitol Racing who are in the process of taking over the Les Bois license.

**Senator Malepeai** asked who uses the information of a report that is delayed a year. **Representative Smylie** replied that the information is used by the track owners and various horsemen groups. **Senator Malepeai** asked if they were not getting the information in a timely manner. **Representative Smylie** answered that some information is available, but that we need better accountability.

**Ms. Jacqueline Libengood** with the Racing Commission explained that the annual report of the Commission shows \$400,000 for operating budget, and \$6,000 for the cost of reporting. She stated that the Governor's Office suggested posting this information on the Internet as a cost-saving measure and added that the posting is done by ISP. She further stated that these reports are done by the end of December, but due to various circumstances and staff vacations, this information wasn't posted by ISP until January 4<sup>th</sup>. She then explained that there are some problems with tracks submitting information such as the purse amounts, breeds, number of races, and so forth.

**Ms. Libengood** reported that under 9-304C, the Racing Commission has no authority to request financial statements since they are not public. She added that this would be an undo hardship for small licensees.

**Senator Little** asked who are the licensees. **Ms. Libengood** answered that 54-2502 defines the Associations and the HBPA, or Horsemen's Benevolent Protection Association. **Senator Little** asked if there was only one licensee, or if there was one for each county or contractee. **Ms. Libengood** replied that new tenants such as Capitol Racing, as well as the small fairs in Eastern Idaho, Cassia County, Rupert, Jerome and Idaho Falls. **Senator Little** asked if it was also Fair Boards and if this was really intended for Capitol Racing. **Ms. Libengood** noted that it is a requirement for them to have a summary to obtain a license. **Senator Little** asked if they renewed their license every year. **Ms. Libengood** replied that they do.

**Mr. Earl Lilley** of Emmett explained that this will cost money and will hurt the industry.

**Representative Smylie** explained that the amendments were done to address those concerns mentioned by Mr. Lilley. He stated that the summary should be included as part of the report and added that this summary is already done and should be made available. He further added that this is for paramutuel racing. He remarked that licensees are Capitol Racing and the small track, or county boards. He pointed out that they already turn in the information anyway, but added that it will be easier for them to compile this information fresh since some information gets stuffed into the back of the drawer. He likened it to income taxes and added that data becomes fuzzy overtime. He concluded that this will add more public confidence.

**Senator Little** noted the situation in Boise and that the Ada County Commission contracts with them. He stated that this appears to be casting a net over small tracks and added that it appears the Ada County problem is trying to lay over the rest of the state. **Representative Smylie** replied that this is not asking for new requirements over the counties, but is maybe speeding up the process. He added that the records are available but noted from personal experience, are hard to get. **Senator Little** asked if it was difficult to get the information from the one in Boise, or from all. **Representative Smylie** answered that there is a specific concern with the Boise track, but added that he didn't believe this would be projecting Boise over the whole state. **Senator Little** asked if the Ada County Commission could fix that within the contract. **Representative Smylie** answered that there is a breakdown with the County and the State regarding tracks. **Senator Little** stated that he is concerned that we are asking for a new layer of information with small tracks.

**MOTION:** **Senator Little** made a motion to **HOLD H 85aa**. **Senator Darrington** seconded the motion.

**SUBSTITUTE MOTION:** **Senator Davis** made a motion to send H 85aa to the floor with a **DO PASS RECOMMENDATION**. **Senator Malepeai** seconded the motion.

**VOTE ON** The motion carried by a 6-3-0 vote.

**SUBSTITUTE MOTION:** **Senator Malepeai** to carry on the floor.

**H 49 aa:** **TORT CLAIMS - to revise the definition of "employee", to provide that a governmental entity shall provide a defense and indemnification against any claims brought against an employee in the employee's individual capacity when the claims are related to the course and scope of employment and to provide for the right to a hearing following the dismissal of a claim.**

**Representative Bill Deal** explained the bill and stated that this will include "Board member" as an employee on line 24 of page 1. He pointed out that page 2, lines 12 and 13 have an amendment, and added that 69-03c and d match the language in statute. He added that page 3 provides for the defendant to seek recovery of costs.

**Senator Little** asked what 12-123 is. **Representative Deal** answered that it provides the opportunity for the defendant to recover costs.

**MOTION:** **Senator Davis** made a motion to send H 49aa to the Floor with a **DO PASS RECOMMENDATION**. **Senator Little** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Davis** to carry on the floor.

**H 23:** **ELECTRONIC BINGO DEVICES - Amends and adds to existing law to provide that the Idaho State Lottery Commission shall regulate electronic bingo devices; the approval of electronic bingo devices and site systems; to authorize testing by the Lottery Commission; to specify requirements and duties of licensed distributors, including notification requirements and invoice requirements; and to govern operations of licensed organizations.**

**Mr. Roger Simmons**, Director of the Idaho Lottery deferred to Representative Rich Wills.

**Representative Will** explained that this comes from the Bingo Raffle Advisory Board who wants to have electronic bingo games available for their customers. He stated that this also makes the regulations and formulas clear and will be easier to track and follow. He added that the State Lottery will have easier accounting since it will be done electronically.

**Senator McKenzie** pointed out page 2, line 15, and asked if the manufacturer's are licensed in Idaho. **Representative Wills** answered that they are through the State Lottery systems and added that the game boards are stored in the device and cannot be changed or altered.

**Mr. Roger Simmons** stated that the Idaho Lottery is in favor of this and added that the Lottery serves as the regulatory agency over the bingo facilities. He further added that they want to make sure that the money is going to a charitable organization.

**Senator Davis** referred to electronic facsimile and added that this may provide additional arguments regarding gambling such as the tribal gaming devices which are also electronic facsimile. He asked them to compare the electronic workings of this device versus the tribal slot machines. **Director Simmons** replied that he was not qualified to provide such a comparison. **Ms. Amber French** explained the difference is that the indian gaming device is hooked to a random number generator. She explained that the bingo device is the same as any other bingo game, in that the caller inputs the number into the machine, but there is no dauber used since the operator enters the numbers in like a calculator. She added that this is great for the eyesight disabled. She further added that the player cannot win with just the device.

**Senator Darrington** noted that the device has numerous cards and asked if the player can choose which ones they play. **Ms. French** replied that they cannot since they are in a series of serial numbers and put into a mainframe in that order, just like the paper version. **Senator Darrington** asked if they can play them random. **Ms. French** answered that the serial numbers are sold in order.

**Senator Malepeai** asked if they classify this machine under the same category as the indian gaming machines. **Ms. French** replied that it isn't the same since it doesn't have a random number generator like the slot machine.

**Senator Little** asked Representative Wills what was the human cry behind this. **Representative Wills** answered that the Bingo organizations with groups with disabilities brought this. He reported that it is easier for older people to play, understand and enjoy.

**Senator Stegner** noted that no machine shall have more than 54 faces and added that it is impossible to run 54 games themselves, but asked if they can holding this device. **Representative Wills** reported that they are not increasing the games.

**MOTION:** **Senator Stegner** made a motion to send H 23 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Little** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Stegner** to carry on the floor.

**H 249:** **PERSONS WITH DISABILITIES - Amends existing law relating to prohibitions against discriminatory practices to include prohibitions against discrimination against persons with disabilities; to provide for diverse representation among members of the Human Rights Commission; to provide additional limitations on the application of this act; and to prohibit reprisals for taking actions pursuant to this act.**

**Mr. Kelly Buckland** passed out a handout and explained that this bill gives the Human Rights Commission the opportunity to enforce Title 3 of the Americans with Disabilities Act. He stated that this provides one more option for complaints. He explained that a task force was formed a year and a half ago with Senators Davis, and Kennedy and Representatives Jaquet, Garrett and Paisley-Stuart.

**Senator Darrington** asked if this would preclude the organization coming in to ask for subpoena power in the future. **Mr. Buckland** replied that it would not. **Senator Darrington** asked if there had been any discussion of this. **Mr. Buckland** answered that it was mentioned once, but quickly tossed aside once the point was made that the Legislature hated it. **Senator Darrington** asked if he could provide any assurance, as long as he was involved, that they would not ask for subpoena power. **Mr. Buckland** replied that he gave his word.

**Ms. Leslie Goddard**, of the Human Rights Commission explained that the Commission is in favor of this and added that she was a member of the task force. She pointed out that the \$20,000 is not another FTP, but would be used to contract someone locally.

**Senator Stennett** asked about the definition of "readily available" on page 3 and if this was lifted from some other place because it seemed squishy. **Ms. Goddard** replied that it was taken from the Americans with

Disabilities Act and added that IACI suggested it.

**Senator McKenzie** noted pages 4 and 5 regarding the prohibitions and asked if there were any concerns by IACI or NFIB. **Ms. Goddard** replied that this language was taken from the Americans with Disabilities Act.

**Senator Stennett** asked if someone owns their own building that was a two-story without elevators, what would be the necessity to provide access. **Ms. Goddard** answered that elevators are very expensive and added that the ADA language doesn't require if it is expensive or changes the nature of the business. She added that an owner could accommodate by putting the services needed for access on the first floor of the building to satisfy the requirements.

**Senator McKenzie** noted that he works for a law firm in a building built in 1905 that you have to go up stairs to get into. He asked what would be the impact on such a building. **Ms. Goddard** commented that they could go and work with a client someplace else. **Mr. Buckland** added that this only applies to buildings over 3,000 square feet and further added that this is why "readily achievable" was added. He stated that this legislation allows that issued to be resolved by the Human Rights Commission and not the courts.

**Mr. Jim Baugh**, Executive Director of the Comprehensive Advocacy Corporation explained that this will tighten the language but added that IACI wanted to mirror the federal act and the Department of Justice regulations. He stated that this is mainly to address the problems such as snow piled in a handicapped space, a big flower pot placed in the middle of a ramp to the doors, or ramps on stairs.

**Senator Stennett** asked if the Human Rights Commission makes the decision, what is the next step if the owner doesn't agree. **Mr. Baugh** replied that they could file with the Department of Justice or a file suit in court.

**Mr. Roger Howard** testified in support.

**Ms. Bobby Ball**, Executive Director of the Americans with Disabilities Act Task Force explained that compliance is education and added that a local authority would be a huge benefit.

**Mr. Mike Keithly** provided the committee with printed comments and stated that this is a place for mediation and keeps the lawyers and courts out of it.

**MOTION:** **Senator Davis** made a motion to send H 249 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Little** seconded the motion.

**DISCUSSION:** **Senator Darrington** shared that he has two family members and a son building a handicapped house. He noted that he is more sensitive than in the past and guessed that he will vote for it.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Davis** will carry on the floor.

**H 149:** **LIQUOR LICENSES - Amends existing law to provide that a facility that has been authorized by the county to conduct motor sports racing shall qualify for a liquor by the drink license.**

**Senator Dick Compton** introduced Representatives Nonini and Henderson.

**Representative Henderson** explained that this will extend to motor racing facilities a liquor license under Idaho Code 23-953. He added that the annual fee for this license will be \$400. He shared that the Post Falls Raceway has had a beer and wine license for 16 years and use a colorful wristband for those of age. He reported that they operate from March to October with an estimated 176,000 in annual attendance.

**Senator Geddes** asked how those 176,000 go home. **Representative Henderson** answered that they use Beck Road, Highway 53 or I-90 and added that they come from Idaho as well as Washington and Montana.

**Chairman Burtenshaw** asked if the bar at the race track was within the facility or used for other events. **Representative Henderson** replied that they do have dinners and food and added that recently the sponsors, such as Les Schwab, have wanted to entertain their guests and put up tents. **Chairman Burtenshaw** noted that a liquor license is hard to get and asked if there were other incidents where they have a tent set up. **Representative Henderson** answered that there has been once or twice, and added that there was another license with the dog racing facility that has expired since. He reported that this license would be assigned to this site only and not issued on a quota or per capita basis. **Chairman Burtenshaw** asked if they had talked with Dyke Nally at the State Liquor Dispensary. **Representative Henderson** answered that the Dispensary would have to inspect it and that the racing facility would have to follow the Dispensary rules.

**Senator Davis** remembered that there was a bill proposed a while ago to provide a liquor license to caterers and if Representative Henderson was familiar with that. **Representative Henderson** replied that he was not familiar with it and added that if this did exist, the businessman at the raceway would have used it. **Senator Davis** noted that if it did exist, we wouldn't need this. **Representative Henderson** reported that they run twice a week but would still need this legislation.

**Senator Compton** explained that the owner of the facility testified in the House committee but was unable to make it today. He reported that this man has an exemplary record and has been in business for over 25 years.

**MOTION:** **Senator Little** made a motion to send H 149 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Stegner** seconded the motion.

**VOTE:** The motion failed 4-5-0.

**H 283:** **ELECTIONS - Amends existing law to provide that the voting**

systems used in the 2004 election shall continue to be authorized for use as long as the voting system meets the requirements of the "Help America Vote Act of 2002".

**Mr. Tim Hurst**, with the Secretary of State's Office testified that this provides for a touch screen, prints out the vote, then casts the ballot in the machine. He added that this also provides for voter confidence.

**Senator Davis** is excused at this time.

**Senator Darrington** asked how much money this will cost. **Mr. Hurst** replied \$17 million. **Senator Darrington** asked if it would be disbursed to counties. **Mr. Hurst** replied that \$5 million will go for statewide voter registration, and \$10 million for new voting devices.

**MOTION:** **Senator Malepeai** made a motion to send H 283 to the Floor with a **DO PASS RECOMMENDATION and to the CONSENT CALENDAR.** **Senator Little** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Malepeai** to carry on the floor.

**S 1192:** **Relating to the Idaho Energy Resources Authority Act; to provide further declaration of necessity and purpose, define terms and to make a technical correction, additional powers to Idaho Energy Resources Authority, to authorize the Idaho Energy Resources Authority to undertake any renewable energy project for the benefit of one or more independent power producers and issues its bonds to finance the cost thereof and to provide application to an independent power producer.**

**Senator Brent Hill** explained that this is the trailer bill to H 106. He stated that it includes independent developers of renewable energy. He then explained the bill regarding the importance, facility definition, and independent power producers. He reported that Idaho Power is also pursuing renewable energy. He explained that this was part of the recommendations from the Interim committee but added that this was left out because it was a separate item.

**Representative Eskridge** explained that he was part of the Interim Committee who recommended this enhancement for the development of renewable energy in the state. He added that we will be able to enjoy the economic advantages and the clean energy resources. He thanked Senator Stegner for covering him the other day in the print hearing.

**Representative Eric Anderson** explained that this will provide more energy competition and a more stable rate structure.

**Senator Darrington** asked if this would apply in any way to individuals who want to set up wind farms. **Representative Anderson** replied that it would.

**Mr. Ron Williams** with the Idaho Consumer-Owned Utilities Association explained that he brought H 106 and is in support of this.

**MOTION:** **Senator Darrington** made a motion to send S 1192 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Geddes** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**DISCUSSION:** **Chairman Burtenshaw** announced that the committee would be meeting at 7:00 a.m. on Monday.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 9:38 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

MINUTES

**SENATE STATE AFFAIRS COMMITTEE**

- DATE:** Monday, March 21, 2005
- TIME:** 7:00 a.m.
- PLACE:** Room 437
- MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett.
- ABSENT/  
EXCUSED:** Malepeai.
- GUESTS:** See attached sign in sheet.
- CONVENE:** Chairman Burtenshaw called the meeting to order at 7:05 a.m.
- APPROVAL OF  
MINUTES:** **Senator McKenzie** made a motion to approve the minutes dated March 14<sup>th</sup>. **Senator Darrington** seconded the motion.
- The motion carried by unanimous voice vote.
- VOTE ON  
GUBERNATORIAL  
APPOINTMENT:** **Idaho Racing Commission  
Judy Radin of Rigby. Serving a term commencing February 24, 2005  
and expiring January 15, 2010.**
- Senator Geddes** made a motion to recommend the Gubernatorial Appointment. **Senator McKenzie** seconded the motion.
- The motion carried by unanimous voice vote.
- Chairman Burtenshaw** to carry on the floor.
- RS 15165:** **Relating to the State Historical Society; to provide certain requirements for state agencies and other entities of state government preparing to remove or perform renovation work on structures owned or controlled by the state; to provide for optional project review by the State Historic Preservation Office, to provide certain requirements for state agencies or other entities of state government proposing a project that involves state-owned structures, to provide for response to project proposals by the State Historic Preservation Office to provide that the state agency or other entity of state government proposing the project shall have the discretion to act upon the recommendations of the State Historic Preservation Office and to provide for the use of recommendations of the State Historic Preservation Office.**
- Mr. Steve Guerber**, Executive Director of the Idaho State Historical Society explained that Idaho is one of five states that do not review construction projects on state lands. He stated that this would require notification to the Historical Society to see if there is any impact or

historical significance before allowing building or renovations on state lands. He added that this will allow thirty days for the Society to provide recommendations and early notification. He pointed out one case at Idaho State University where the Society was not notified of the renovation on Frazier Auditorium. He stated that they sand blasted off the sandstone front and repainted it. He also added that there were three buildings at the Nampa State School that were torn down before the Society could get there and take photos or documentation for their files. He concluded that this provides for recommendations only.

**MOTION:** **Senator Darrington** made a motion **TO PRINT RS 15161**. **Senator Stegner** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**RS 15161:** **Relating to the Idaho Millennium Fund; to provide that any money appropriated, expended or distributed from the Millennium Fund shall be approved by at least a two-thirds vote of both houses of the Legislature voting separately.**

**Senator Darrington** explained that this is an easy RS and requires a two-thirds vote to dip into the Millennium Fund. He added that this should actually be a Constitutional Amendment. He stated that the monies should be locked up and treated like we don't have them.

**Senator Davis** pointed out the amendment on lines 20-23, *"Notwithstanding any other provision of law to the contrary, any money appropriated, expended or distributed from the millennium fund shall be approved by at least a two-thirds (2/3) vote of both houses of the legislature voting separately."* He stated that it would only require a simple majority under Idaho Code 67-1801. **Senator Darrington** replied that creative people can find creative ways. **Senator Davis** stated that he can't support legislation that could be overridden by simple majority. He pointed out that the language should be *"Notwithstanding 67-1801, hereby appropriate all funds for millennium fund."*

**MOTION:** **Senator Davis** made a motion **TO PRINT RS 15161**. **Senator Stennett** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**H 213:** **IDAHO HEALTH FACILITIES AUTHORITY - Adds to existing law relating to public securities of health institutions to authorize interest rate exchange and other hedge agreements to be used in connection with the indebtedness and lease obligations of the Idaho Health Facilities Authority, county and district hospitals in the manner and under the conditions specified.**

**Mr. Pat Collins**, with the Idaho Health Facility Authority explained that this Authority was created in 1992 for financing and issuing bonds for health institutions. He stated that this legislation will allow the county hospitals and hospital districts to reduce their interest rate by using the interest rate swap from a fixed rate to a variable rate and vise versa. He pointed out that private 501C3 hospitals can do this already.

He shared a handout with the committee and explained that on page 2, example A shows the fixed rate bond issue where the IHFA leases the facility back to the board and makes the payments, equal to the bond payment, to the bond holder. He added that they can also swap a portion of their bonds.

He pointed out the bottom of page 2 showing that the counter party pays IHFA at the original rate then pays the bond holders. He stated that there is very little risk to the counter parties with being able to fulfill agreements. He stated that the purpose is to give the hospitals the power to enter into swap agreements. He conclude by saying that this passed the House by a vote of 65-0-5.

**Senator Little** asked what restrictions on the bonds was he trying to get around. **Mr. Collins** answered that there is an absence of authority and added that the only way is to refinance and reissue new bonds. He stated that this is not a restriction, just no expressed grant of authority.

**Senator Little** asked why they couldn't reissue. **Mr. Collins** replied that this is a "no call" issue and added that there are additional costs with no flexibility. It's all or nothing. **Senator Little** asked who the counter parties were. **Mr. Collins** answered that they were the larger investment firms. **Senator Little** asked if they receive a fee. **Mr. Collins** replied that they take a spread out of the two contracts and added that they are simply facilitators.

**Senator Davis** asked if the Idaho Bond Bank authorization is similar. **Mr. Collins** answered that it is. **Senator Davis** asked if this language was similar to the Idaho Bond Bank. **Mr. Collins** replied that this is more detailed. He pointed out that the Bond Bank's language is only one paragraph under Idaho Code 67-8721 , *"SWAPS. In connection with, or incidental to, the issuance or carrying of bonds, but only for the purpose of reducing the amount or duration of payment, interest rate, spread or similar risk, or to result in a lower cost of borrowing, and not for purposes of investment or speculation, the authority may enter into contracts which the authority determines to be necessary or appropriate to hedge such risk or to place the obligation of the bonds, in whole or in part, on the interest rate, cash flow, or other basis desired by the authority, including without limitation, contracts commonly known as interest rate swap agreements, interest rate caps or floors, forward payment conversion agreements, futures or hedge contracts."* He added that this legislation requires the two highest debt ratings. **Senator Davis** asked him to compare the liability of the State of Idaho to how it handles the Bond Bank Authority and how it handles the IHFA Bonds with differences and similarities. **Mr. Collins** answered that with broad brush strokes, it would be very similar. **Senator Davis** asked if on the bonds the IHFA issues, is there any state pledge. **Mr. Collins** replied that there is none.

**Mr. Neil Moss** explained that there was a Supreme Court test case that was adjudicated in 1974 before the bonds could be issued. He reiterated that there is no liability to the state since bonds are strictly revenue bonds based on the revenues of the facility being financed.

**Senator Darrington** noted that this is not dissimilar to an individual refinancing for a lower interest rate and asked what is in it for those who

agree to do the swap. **Mr. Collins** answered that these financiers benefit from the profit on the spread and do a credit analysis on both contracts prior to underwriting.

**Senator Stegner** asked if these were municipal bonds. **Mr. Collins** replied that, basically, yes they are. **Senator Stegner** asked if they are tax-free issue. **Mr. Collins** replied that they are. **Senator Stegner** asked if they are federally and state tax free. **Mr. Moss** answered that they are tax exempt from both. **Senator Stegner** asked if there was a requirement for another tax free instrument in the swap. **Mr. Moss** replied that these are done on a tax exempt basis because of how the market works. He explained that in August, two years ago, the taxable rate was close to the tax exempt rate and recounted how the Shoshone Medical Center in Kellogg ended up choosing the taxable rate because of less restrictions. **Senator Stegner** asked if the swap affected the bond holder and if that bond holder could be unaware of the internal swap. **Mr. Moss** answered that this was correct, the swap is done outside of the bond issue. He pointed out that only four governmental hospitals are able to do this on their own: Portneuf Medical in Pocatello, Magic Valley Regional Medical Center in Twin Falls, Kootenai Medical Center, and Madison Memorial in Rexburg. **Senator Stegner** asked if there was no way the swap would increase the tax free interest bearing documents and if there was no way to loose track and get additional tax free documents. **Mr. Moss** replied that there was no way to create an additional tax free debt with the swap. **Senator Stegner** stated that this legislation might be designed to get around the premium and may potentially damage the bond holder. **Mr. Moss** answered that he didn't think so since it is a mechanism to legally lower the exposure to interest rate changes. He pointed out that bonds carry a 10-year "no call" and cannot be called or redeemed ahead of time. He stated that they can be advanced refunded but only once as part of the Federal Tax law. He added that it costs a lot to refinance and stated that this will level the playing field.

**Senator Stennett** asked who owns a county hospital. **Mr. Moss** replied that Portneuf in Pocatello is owned by the county as a whole. He explained that to borrow money, the county has to either go to the voters or come to the authority. He pointed out that there is no mortgage placed on the hospital. The Commissioners sign a lease agreement with the Authority as collateral on the loan. The Authority then leases that facility back to the hospital on a monthly basis in order to amortize the payments. He explained that if there was a payment default, they can't foreclose since it is government property. They can force out the existing board and release to someone else until the payments are brought back up.

**Senator Davis** asked about joint participation in bonds and how this could impact two different municipalities. **Mr. Moss** replied that this has never been presented to the Authority and added that borrowing is done on a case-by-case basis with one borrower. He stated that he did not feel comfortable doing a joint bond. **Senator Davis** noted that this portion should be repealed. **Mr. Moss** added that he had no opinion because he hadn't studied it.

**Mr. Steve Millard** with the Idaho Hospital Association explained that this is advantageous and urged the committee to support it.

**Senator Stennett** commented that a year and a half, possibly two years ago, the Butte County Hospital closed. He asked who was the ultimate payer, the county commissioners? He asked if they sell it and come in with only 50% of the debt, who is the ultimate payer. **Mr. Millard** replied that ownership was the hospital district with the taxing authority. He added that it does revert back to the county. **Mr. Moss** added that in Shoshone County there were two taxing districts: a west side for Kellogg and an east side for Wallace. He explained that the one in Wallace was closed with debt outstanding. He explained that the east Shoshone District had been backed with part of the taxing to pay it off.

**MOTION:** **Senator Little** made a motion to send H 213 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Davis** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Little** will carry on the floor.

**H 219:** **CORPORATE NAMES - Amends existing law relating to names of formally organized business entities and assumed business names to prohibit such names from falsely implying government affiliation.**

**Mr. Chuck Goodenough**, Deputy Secretary of State in the Commercial Division testified that there are new entities in the state of Idaho using names to suggest affiliation with any governmental agency. He shared that there was a private investigator in Northern Idaho who petitioned for the name, "Idaho Bureau of Investigation". He pointed out that in 1999, the Department of Law Enforcement had a division with the same name. He added that he sees this as a general standard.

**Senator Stennett** asked if a guy tries to register a name like, "Idaho State Bow Hunters" would his office be a traffic cop on that. **Mr. Goodenough** explained that names like that don't apply and added that they have been operating under similar language since 1992. He further added that they are not an enforcement agency. He stated that they are looking to reject an unambiguous attempt to appear to be connected with a state agency.

**Senator Davis** noted that he wished we still had the language on "deceptively similar".

**MOTION:** **Senator Stegner** made a motion to send H 219 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Little** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Stegner** will carry on the floor.

**H 220:** **TRADEMARK RENEWAL FEES - Amends existing law to clarify that trademark renewal applications may include a fee for each class code.**

**Mr. Chuck Goodenough**, Deputy Secretary of State in the Commercial Division testified that this is an amendment to the trademark laws. He explained that a class code is based on the international table of class

codes regarding all goods and services. He added that there are 45 different types.

He explained that John Deere has three different class codes: farm, toys and vehicles. He noted that they pay a fee for each code to renew that trademark. He explained that the statute is unclear on if there is a charge for each or only one. He pointed out that when they first register, they pay for each code and added that there are only about 250 currently in the system.

**MOTION:** **Senator Little** made a motion to send H 220 to the Floor with a **DO PASS RECOMMENDATION**. **Senator McKenzie** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Little** will carry on the floor.

**H 221:** **CORPORATIONS - Amends existing law relating to annual reports filed with the Secretary of State by business corporations, nonprofit corporations, limited liability companies and limited liability partnerships to permit annual reports to be filed electronically; to specify information required in the annual report; and to provide the time for filing by limited liability partnerships.**

**Mr. Chuck Goodenough**, Deputy Secretary of State in the Commercial Division testified that this will permit the Secretary of State to accept and file electronic reports and changes with Limited Liability Partnerships to bring these in line with other entities. He stated that he is not sure how many will use this since they can still file on paper and are not charged a filing fee, so the Department won't offer a discount. He remarked that this keeps the database up to date with officers and addresses. He pointed out that this will not include financial data.

**MOTION:** **Senator Little** made a motion to send H 221 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Stennett** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Little** will carry on the floor.

**H 238:** **RECORDS EXEMPT FROM DISCLOSURE - Amends existing law relating to records exempt from disclosure to provide that certain records relating to academic research shall be exempt from disclosure.**

**Representative Mack Shirley** stated that this addresses the topic of academic research. He pointed out that this is similar to last year but much improved with no opposition so far. He pointed out that the University of Idaho receives \$100 million for research. He reported that INEEL has formed a consortium of research with the three Idaho schools, MIT, North Carolina University, and the University of New Mexico.

**Mr. Martin Peterson**, Special Assistant to the President of the University of Idaho stated that this is a result of a collaboration of a number of

parties in opposition last year. He listed the Idaho Press Club, the Allied Daily News papers, the ProTem, and others. He reported that this is tighter than last year's version.

**Mr. Peterson** stated that subsection 20 relates to the exemption of disclosure; subsection 21 relates to the exemption of material of a private individual or entity; subsection 22 relates to information publicly released following patented, finished or terminated research; and subsection 23 shows that this does not apply to the nature of the research, the name of the researcher, or the money allotted the research. He added that this also includes an emergency clause.

**Senator Stennett** asked if elk and deer farmers in Idaho can contract research to ensure disease is not in their herd with the Universities. **Mr. Peterson** replied that this will only apply to research, not regulatory activities with Fish and Game. **Senator Stennett** asked where in the bill does it ensure that the University of Idaho keeps information public and not shovel that type of research elsewhere. **Mr. Peterson** replied that this only applies to research activities within the University. **Senator Stennett** asked him to point out in the bill where this is not the case. **Mr. Peterson** replied that he was referring to something in another section of the code and not in the Public Records Act.

**Senator Little** asked if a nitrate level was too high in a nutrient program, where the levels by DEQ showed "X", but were originally thought to be "Y", with the open records act, where is the shield with any regulatory activity. **Mr. Peterson** replied that DEQ would be doing their own testing and getting their own findings. He added that the University would not be using any information to regulate any other entity.

**Senator Stennett** reported that he is hung up on this. He asked if this consortium would do research through a state funded oversight committee and noted that this may be a way to go around that. **Mr. Peterson** explained that the state has an INEEL oversight office in Idaho Falls to monitor ground water. He stated that this is purely for University-based research. He pointed out that there are statutory requirements to public health districts and would not circumvent that research.

**Mr. Jim Little** explained that he and his family operate a diversified crop and livestock farm in Gem County. He currently serves as the Chairman of the Idaho Alfalfa and Clover Seed Commission. He testified in support of the legislation by saying that success of modern agriculture in Idaho is dependent on research and especially on field trials and real world evaluations. He explained that over the years his farm has been opened for field-testing for a variety of research projects with no reimbursement for costs associated with this research and added that he has gotten no exclusive benefit from it. He pointed out that if, at any time, he would have known he was subject to public records disclosure, he probably would not have participated in these tests. He stated that premature release of data creates the opportunity to make unfair, unsafe, and misleading conclusions and exposes other farmers to unfair assumptions and erroneous information about farming operations. He concluded that this bill provides good public policy and urged the committee to support it.

**Senator Stennett** asked about a dairyman neighbor wanting to put nutrients on your land. **Mr. Little** explained that this will provide protection during the term of research with the information released at the conclusion of that research. He added that this is not a shield to prevent public disclosure. **Senator Stennett** noted that there is no endpoint. **Mr. Little** responded that he couldn't answer that.

**Senator Little** stated that he doesn't see an affect on conduct or outcome of the research because it says "specifically".

**Mr. Dick Rush**, of IACI testified in favor of it. He explained that they have a Potato Division that is not part of the governmental activities. He stated that they fund research and have hired a private firm to conduct water quality research. He stated that most plant research is to develop the best plant with the least amount of fertilizer and using nutrients of the soil. He added that this research occurs on various plots provided by local farmers. He remarked that it is impossible to find a private firm with scientists understanding the chemistry of the soil and added that there is a benefit using the Universities. He concluded that this will allow for the results to be available, but not the input.

**Senator Little** noted that without protection, aren't those in the Potato Division able to hire private companies to conduct research. **Mr. Rush** replied that they are currently in the process of contracting a private company. **Senator Little** stated that if we stifle the Universities, the only ones who are able to get the research done would be those with the resources to hire private firms. **Mr. Rush** added that public policy is that we want more research money, and currently use private and public funds to do it.

**Mr. Dar Oberding** with the Idaho Grain Producers explained that the research plots are 6 feet by 10 feet and added that with GMO, we need this law to exempt information from public disclosure until the research is done.

**Mr. Mark Dunham**, Director of Governmental Relations with Boise State University stated that this is important to BSU and added that their research funding is only \$25 million. He read from page 3, lines 54-55, "*The exemptions from disclosure provided in subsections (20) and (21) of this section do not include basic information about a particular research*" and then on page 4, lines 1-3, "*project that is otherwise subject to public disclosure.*" He added that DEQ requirements are subject to public disclosure.

**Senator Stennett** directed him to read on, "*such as the nature of academic research.*" **Mr. Dunham** said that "such as" is speculative and doesn't narrow this.

**Mr. Brent Olmstead**, Executive Director of Milk Producers of Idaho testified that an odor study was part of the genesis for this and added that everyone felt that this was confidential. He pointed out that rules are being promulgated by the Department of Ag using research and stated that money will stay in Idaho because the research will be done anyway.

**Mr. Dennis Tanikuni** with the Idaho Farm Bureau testified in support.

**MOTION:** **Senator Little** made a motion to send H 238 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Stegner** seconded the motion.

**DISCUSSION:** **Senator Geddes** commented that this bill has been improved since last year and added that his concerns have been resolved. He stated that this is a step in the right direction.

**VOTE:** The motion carried by roll call vote 7-1-1. **Senator Stennett** voted in the negative.

**Senator Little** will carry on the floor.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 8:39 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

MINUTES

**SENATE STATE AFFAIRS COMMITTEE**

- DATE:** Wednesday, March 23, 2005
- TIME:** 7:00 a.m.
- PLACE:** Room 437
- MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, Malepeai.
- ABSENT/  
EXCUSED:** None.
- GUESTS:** See attached sign in sheet.
- CONVENE:** Chairman Burtenshaw called the meeting to order at 7:05 a.m.
- APPROVAL OF  
MINUTES:** **Senator Little** made a motion to approve the minutes dated March 2<sup>nd</sup>, March 7<sup>th</sup> and March 21<sup>st</sup>. **Senator Geddes** seconded the motion.
- The motion carried by unanimous voice vote.
- Senator McKenzie** made a motion to approve the minutes date February 25<sup>th</sup> and February 28<sup>th</sup>. **Senator Little** seconded the motion.
- The motion carried by unanimous voice vote.
- RS 15098C1:** ***Unanimous Consent Request by Resources Committee to Print: Relating to Institutions of higher learning: to encourage the stewardship and increase awareness that will lead the state of Idaho to a sustainable future.***
- Senator Little** reported that both he and Senator Stennett had been briefed regarding this. He added that this is a noble thing for the state to do.
- MOTION:** **Senator Little** made a motion to send **RS 15098C1 TO PRINT** and to the floor with a **DO PASS RECOMMENDATION**. **Senator Stennett** seconded the motion.
- VOTE:** The motion carried by unanimous voice vote.
- H 226:** **VETERANS SERVICES DIVISION FUND - Amends existing law to provide for the Division of Veterans Services Fund; to delete the Veterans Home Fund as part of distribution of moneys from the Charitable Institutions Fund; and to provide that the Division of Veterans Services rather than Idaho State Veterans Home shall be a beneficiary of the Charitable Institutions Land Grant.**
- Representative George Eskridge** explained that this cleans up a change in the endowments for the Veterans as outlined in Idaho Code 65-1106.

He stated that when this code was instituted, there was only one veterans home and reported that now there are three veteran's homes, a Division of Veterans Services, the Veteran's Cemetery and the Headquarters Offices. He explained that this will strike out "Veterans Home" and replace with "Division of Veterans Services".

**Senator Little** asked if this was basically bookkeeping. **Representative Eskridge** replied that it is and recognized Veterans Services for foregoing their portion of the endowments last year when the funds dropped. **Senator Little** reported that there is a recommendation by the Land Board to pool all the Endowment lands in order to take the volatility out. He reported that some endowments have been assigned the cabin sites in McCall and added that this "pooling" will mirror the activity of other endowments.

**Chairman Burtenshaw** stated that he noticed the split and asked what was the difference between the state homes and the Division of Veterans Services. **Representative Eskridge** answered that the homes are part of the Services. **Chairman Burtenshaw** asked if there was a difference with how the money is used. **Representative Eskridge** replied that the money will be used for the homes, the community and other parts of the Division of Veterans Services.

**MOTION:** **Senator Little** made a motion to send **H 226** to the **CONSENT CALENDAR** with a **DO PASS RECOMMENDATION**. **Senator Stennett** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Little** to carry on the floor.

**H 227:** **VETERANS AFFAIRS - Amends existing law to delete language requiring the Administrator of the Division of Veterans Services to cause benefits from the United States Department of Veterans Affairs for burial and plot allowance to be deposited in the Veterans Cemetery Maintenance Fund.**

**Representative George Eskridge** explained that 65-107 and 65-202 include the benefits paid for burial into Fund 0211. He stated that the budget appropriates this money into miscellaneous receipts. He pointed out that this deletes 65-107 section 2 *"Benefits paid by the United States department of veterans affairs for burial and plot allowance for persons interred at the state veterans cemetery and charges related to interment, disinterment and reinterment in the state veterans cemetery shall be deposited by the administrator of the division of veterans services as authorized and directed in section 65-202, Idaho Code."* He concluded that there is no fiscal impact.

**MOTION:** **Senator Little** made a motion to send **H 227** to the **CONSENT CALENDAR** with a **DO PASS RECOMMENDATION**. **Senator Malepeai** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Little** to carry on the floor.

**H 240:** **IDAHO BOND BANK AUTHORITY - Amends and adds to existing law relating to the Idaho Bond Bank Authority to clarify that the authority can purchase municipal bonds from entities other than municipalities; to revise the sales tax intercept mechanism; and to provide that the authority need not guarantee sales tax moneys on all bonds it purchases.**

**Senator Davis** present at this time.

**Ms. Liza Carberry** with the State Treasurer's Office explained that this is adding a previously omitted section into the Municipal Bond Bank. She stated that this is the statute allowing municipalities to borrow money. She reported that last December, 7 participants were issued \$11 million, at a savings to the state of a quarter of a million dollars. She added that these bonds were refinanced with DEQ. She stated that they inadvertently excluded some municipalities from participating and listed: Bellevue, Weiser, Council, Post Falls, and Victor.

**Senator Davis** asked how this picks up those cities. **Ms. Carberry** answered that section 9 of the bill provided for that. **Mr. Brian Kane**, with the Attorney General's Office explained that 67-8728 relates to limited exemption and added that they weren't able to take those bonds into the Bank. **Senator Davis** noted that Section 9 talks about sales tax and added that this will allow other cities to participate.

**MOTION:** **Senator Davis** made a motion to send **H 240** to the Floor with a **DO PASS RECOMMENDATION**. **Senator Stennett** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Davis** to carry on the floor.

**H 291:** **LIQUOR LICENSES - Amends and adds to existing law relating to liquor licenses; to provide for the continuation of golf course liquor licenses following a change of land use.**

**Mr. Pat Collins**, an Attorney with Hawley, Troxell, Ennis and Hawley testified that he is here representing Sun Valley Ventures LLC. He stated that this deals with a liquor license, is an economic development bill as well as a land-use bill. He stated that this does not create a new liquor license or allow any existing license to be moved to another location. He pointed out that it relates to golf courses who have been in operation for at least 20 seasons and allows the owner of that golf course to change the use of the facility. He added that it allows the golf course to be converted to a higher and more pertinent use. He introduced Mr. Henry Dean with the Warm Springs Ranch project.

**Mr. Collins** explained that this will deter someone from opening a minimal golf course and then doing something else with the license. He explained that this license is not transferrable and goes with the property at the sale of that property. He reported that last year H 645 allowed for the property to separate a golf course from a ski resort and added that this happened

in Post Falls to a day spa that was originally part of the golf course. He reported that this legislation says that a license can't be split and provides that if a property is divided, then the parties decide who gets the license, or must use the formula for the license to go to the portion where the liquor is served.

**Mr. Collins** explained that the Warm Springs Ranch project will have a world-class hotel with the same restaurant that has been there for over 50 years. He explained that the lodge will be adjacent to it and under the same ownership. He added that it will also include a condo-time share aspect as well.

**Mr. Collins** reported that there are 14 liquor licenses in Ketchum: 2 are at golf courses; 2 at ski resorts; and 10 others that could be transferred or available. He stated that the ones at the golf courses and the ski resorts cannot be moved or transferred to another location. He stated that currently there is only one for sale and the recent price tag was \$450,000. He commented that there is no guaranteed way for the project to get a license if this legislation doesn't pass.

**Senator Stegner** asked how you could have a higher and better use of a golf course. **Mr. Collins** replied that it depended upon the golfer. **Senator Stegner** mentioned that last year, we passed another Sun Valley liquor license and stated that we were told that Bruce Willis had a liquor license for sale. He added that this will save the project a half a million dollars. **Mr. Collins** replied that they can't buy it yet because they have no place to put it. He added that a half a million is a half a million and stated that you can't force someone to sell something.

**Senator Davis** pointed out line 25 and added that someone could say that there are four seasons in a year, so they could do this faster. He stated that we may need to amend this to say "years". **Mr. Collins** answered that "seasons" denote the time that golf is played and pointed out that the SOP says "years". **Senator Davis** asked Mr. Collins to walk through the bill and added that he understood the intent. **Mr. Collins** read through the bill and explained that it includes the 23-910 Code relating to morality exclusions as well as maintaining the same fee for the license under golf course. **Senator Davis** asked if those fees were different than if they acquired Mr. Willis' license. **Mr. Collins** answered that he was not sure if the annual fee was different. He then explained that this also includes that the license stays with the property, the provision of the bill last year and the "split" formula. **Senator Davis** asked if this is an asset, then at the time of the split, good lawyers would identify that, and if they failed to identify that, then there should be a right to if the license lapses. **Mr. Collins** commented that he didn't have the same faith in lawyers. He pointed out that the last sentence would allow for the portion of the split property without the license, to go ahead and purchase another liquor license.

**Senator Stegner** asked if this property was within the city limits. **Mr. Collins** replied that it is. **Senator Stegner** pointed out that according to Idaho Code 23-904 regarding license fees, the fees range from \$300 to \$750 annually but with golf courses, it ranges from \$200 for counties with less than 20,000 in population to \$300 for 20,000 to 40,000 in population

annually. He asked what is the population of Blaine County. **Senator Stennett** replied that it is slightly over \$20,000. **Senator Stegner** noted that this would be a fee of \$300 versus \$750 and added that it is a good deal.

**Mr. Henry Dean**, explained that he has resided in Ketchum for 12 years and added that he was born and raised in Coeur d'Alene. He stated that he has funding for this project which includes local investors and a Seattle-based boutique hotel investor. He reported that this project will include 77 acres and added that the original golf course has deteriorated to the point that it would cost more money to repair it than it is worth. He explained that Owen Simpson was the original owner.

**Mr. Dean** reported that this project will restore the creek and replant the vegetation to the cost of \$3.2 million. They will also provide access via a trail head for access to Mount Baldy. He reported that half of the property will be deeded to the Wood River Land Trust as a nature preserve and will be funded by approximately \$2.5 million from a 1% transfer tax. He explained that they will rebuild the Ranch Restaurant and reported that they serve an average of 57,000 dinners there every year. He then pointed out that the hotel operation is the economic driver and that this driver as well as the restaurant are dependent upon the liquor license. He mentioned that John Church provided the economic study then explained the economic outlook for the Ketchum area as outlined on his presentation board.

**Mr. Dean** concluded that he has the financing through a trust, Mr. Steve Roth and the Noble House Hotels. He shared that the Hotel is part of a twelve-facility chain around the country. He stated that he talked to Ned Williamson, who is Bruce Willis' attorney, and was told that the liquor license was priced at between \$450,000 and \$500,000. He added that they were not sure at the time if that license was actually available for sale. He concluded that they can't buy a license and put it in a drawer for two years, it is unlawful. He pointed out that they have to hang it and added that they have no place to hang it.

**Senator Stegner** reported that there is an attorney in Lewiston who has one hanging on his office wall. **Mr. Dean** commented that they can't do that. **Mr. Collins** added that it has to be where liquor is sold and has to be put to use. **Senator Stegner** stated that this one is on behalf of the attorney's client who is a rancher and was purchased as an investment. **Mr. Collins** reported that there was an attorney in Meridian who was told by the Department of Law Enforcement to use it or sell it. He added that he ended up selling it at a discount because of time pressures.

**Mr. Dean** commented that they have been working for three years on this project and have had five meetings with Planning and Zoning. He reported that they have another meeting on March 28<sup>th</sup> and the final meeting on April 13<sup>th</sup>. He stated that throughout this process they have attempted to alleviate any concerns of the public. He stated that one of the concerns was that they were going to be tearing down the old tennis courts and that the committee was concerned about public recreation areas. He reported that they will be putting in six new tennis courts. He then reported that at every meeting with Planning and Zoning, the vote

has been 5-0. He asked the committee to support this legislation.

- MOTION:** **Senator Stennett** made a motion to send **H 291** to the Floor with a **DO PASS RECOMMENDATION**. **Senator Little** seconded the motion.
- SUBSTITUTE MOTION:** **Senator Davis** made a substitute motion to send **H 291** to the **14<sup>th</sup> ORDER** to define “seasons” and the rate in 29-904 to be changed to the other rate once the property stops being a golf course. **Senator Stegner** seconded the motion.
- DISCUSSION:** **Senator Little** inquired about the floor calendar management and if we would go back to the 14<sup>th</sup> Order prior to Sine Die. **Senator Davis** reported that Mr. Collins could do the amendments quick and the Senate could go back to the 14<sup>th</sup> Order tomorrow. He asked if this was a way to bury H 291, and then stated that this is not suggested by his motion.
- Senator Stennett** asked Senator Davis if this suggestion was in good faith, could we hear this on the 14<sup>th</sup> Order today. **Senator Davis** replied that there are two problems: the Assistant Majority Leader would be angrier with him than he already is. **Senator Stegner** replied that this was true. **Senator Davis** continued that it is his intent to go to the 14<sup>th</sup> Order daily and added that if Mr. Collins gets the amendment in by 4:00 today, then we can do it tomorrow and transmit it back to the House where the Minority Leader could provide some assistance. **Senator Stennett** stated that he is concerned with the lateness of the hour. **Senator Davis** replied that we may not hit Friday as a Sine Die. He then reported that the intent is to finish up at noon on Friday, give Monday off, then come back and work Tuesday and Wednesday with Sine Die happening Wednesday night. He pointed out that the biggest problem is getting the work up from the basement and noted that this would give them time to get that work done. **Senator Stennett** asked if Senator Davis would be packing this on the floor. **Senator Davis** replied that he was confident that the Minority Leader could work that out.
- Senator Stennett** commented that this is vital to the community and will still provide open public access with the lodge and restaurant. He stated that as long as he had Senator Davis’ assurance that this will get to the floor, he will support it.
- Senator Davis** stated that since he had to turn his cards up, if the amendments come, it will advance. He added that he is not trying to kill it.
- Senator Little** stated that he didn’t know if a difference in fees was that big of a deal. He remarked that he was not sure that someone with the city of Ketchum would want this to die over \$450 a year.
- Senator Davis** remarked that the definition of the 20 seasons is the more troubling issue.
- Senator Stegner** commented that if there wasn’t time for this to go through, he wouldn’t support the motion, but added that we do have time.
- VOTE:** The motion carried by an 8-1 roll call vote.

**Senator Stennett** to carry on the floor.

**H 300:** **STATE AGENCY STRATEGIC PLANNING - Repeals, amends and adds to existing law relating to state agency strategic planning and performance measurement to set forth purposes; to define terms; to provide for strategic planning; to provide for performance measurement; and to provide for training.**

**Senator Shawn Keough** testified that there is a code section in place that requires the agency to send their Strategic Planning to DFM, who publishes a book. She showed the committee a copy of the book that each member receives. She reported that no one uses this book because of a number of factors which included that the information is not reflective of agency performance. She then pointed out that the DFM prints a disclaimer saying that they cannot ensure accuracy of the information. **Senator Keough** reported that this rewrites that section to establish a formal mechanism to obtain accurate information. She concluded that there are no additional resources needed to do this and pointed to the fiscal impact on the SOP.

**Senator Davis** excused at this time.

**Senator Darrington** asked if the purpose of this performance evaluation wasn't to check that the agencies were conforming with the statute and not that we should change the statute to conform to them. **Senator Keoguh** replied that this was correct.

**MOTION:** **Senator Stegner** made a motion to send **H 300** to the Floor with a **DO PASS RECOMMENDATION**. **Senator Little** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Keough** to carry on the floor.

**GUBERNATORIAL APPOINTMENT:** **Idaho Commission on Human Rights. Estella O. Zamora of Caldwell. Serving a term commencing July 1, 2004 and expiring July 1, 2007.**

**Mrs. Estella Zamora** explained that she lives in Canyon County and has been on the Commission for a number of years. She remarked that she has enjoyed it and would like to continue.

**Senator Stennett** asked which Governor originally appointed her and how many years has she been on the Commission. **Mrs. Zamora** replied that Governor Andrus appointed her to replace someone in 1994. She has been on the commission for 9 years.

**Senator Stegner** noticed that on her resume she had "interpreter" listed. **Mrs. Zamora** answered that she has been an interpreter for nineteen and a half years for Canyon County and also has been the Interpreter Coordinator. **Senator Stegner** commented that those skills must come in handy. **Mrs. Zamora** replied that she works in the community and volunteers numbers of hours with the Latino community in Canyon County.

**Senator John McGee** testified that he has known Mrs. Zamora since he was six years old. He reported that he went to school with her son Romero, and highly recommends her for reappointment.

**Chairman Burtenshaw** thanked her for coming and explained that the committee would be voting on this appointment at the next meeting.

**HJM 7:**

**SAFE ACT - Stating findings of the Legislature concerning adoption of the SAFE Act to limit certain provisions of the Patriot Act in order to protect liberties of citizens of the United States and urging the congressional delegation representing the State of Idaho in the Congress of the United States to support the SAFE Act.**

**Representative Tom Trail** explained that he has worked with Senator Larry Craig and provided a copy of a letter from Senator Craig regarding this legislation to the members of the committee. He then yielded to Representative Phil Hart.

**Representative Hart** explained that he has a friend from college who works as a partner for an Internet service provider. He stated that this friend has told him that the FBI comes in and searches her emails regularly without any notice or warrant. He added that sometimes she doesn't know that they are there until she bumps into them because the staff is not allowed to alert her upon their arrival.

**Representative Hart** reported that there are 375 communities that have passed resolutions on the Patriot Act. He pointed out that the only way to make people respect the law is to make the law respectable. He reported that this is currently being heard in the Montana Legislature. He stated that both Senator Craig and Congressman Otter are pursuing language to change the Patriot Act. He encouraged the committee to give this a Do Pass recommendation.

**MOTION:**

**Senator Little** made a motion to send **HJM 7** to the Floor with a **DO PASS RECOMMENDATION**. **Senator Stennett** seconded the motion.

**VOTE:**

The motion carried by unanimous voice vote.

**Senator Malepeai** to carry on the floor.

**HJM 9:**

**POWER MARKETING ADMINISTRATION - Stating findings of the Legislature and urging Congress to reject the administration proposal to move Power Marketing Administration rates to market rates, thereby ensuring the continued responsible management of power generation, transmission and sales.**

**Representative Eric Anderson** explained that the purpose of this is to urge Congress to reject the Administration's proposal to change the current power rates through the Bonneville Power Administration to market rates. He stated that this would cost the Northwest ratepayers \$480 million next year and a potential \$2.5 billion in three years. He pointed out that the Northwest ratepayers currently pay full price with no subsidy and added that 12 power providers purchase 100% of their power from the BPA. He concluded that the entire Congressional delegation

supports this memorial.

**Senator Stennett** asked what is the market rate and what determines that market rate. **Representative Anderson** replied that the rate changes from IOUs to independent providers and added that this is on a preference rate. He stated that we currently buy the power at cost. He explained that the market rate is established by the market and added that the BPA does not currently fall under this rate. He pointed out that Avista and Idaho Power also purchase power from the BPA.

**Senator Geddes** noted that this was a great idea and stated that this is working from the top down. He mentioned that we have very good contacts with the BPA and suggested trying this from the bottom up. He pointed out that the 26 districts would be great lobbying agents as well.

**Representative Anderson** disclosed to the committee that he is a board member with the Northern Lights Electric Co-op and added that the BPA is present at all of their monthly meetings.

**MOTION:** **Senator Geddes** made a motion to send **HJM 9** to the Floor with a **DO PASS RECOMMENDATION**. **Senator Stegner** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Hill** to carry on the floor.

**RS 15188:** **IMMIGRATION POLICY - Requesting Congress to comprehensively review current immigration policy, examine enforcement of the policy, and to seek reasonable revisions of such policy.**

**Senator John McGee** testified that this is a joint memorial asking Congress to look at the immigration policy. He stated that this is not about legal immigrants, but illegal ones. He stated that there was a report last Monday showing the number of illegal immigrants has increased to half a million and now totals near 10 million. He pointed out that the cost falls on the states with capital expenses and education costs approximating \$11 million. He explained that this calls on the federal government to reform the policy and tells them that the system needs to be fixed.

**Senator Little** asked if there was any nexus between the memorial by the civil libertarians to loosen the intent of the Patriot Act and this one.

**Senator McGee** agreed that there was and added that he takes a more strict approach. He reminded the committee that we don't live in 1999 anymore. He pointed out that the nation of Israel has been dealing with this problem for decades and pointed out that they discovered that stricter rules mean more success. **Senator Little** asked if this will stem the illegal immigration but protect everyone's constitutional rights. **Senator McGee** replied that he didn't agree with the prior memorial and added that it is not heading down the correct road.

**MOTION:** **Senator McKenzie** made a motion to send **RS 15188 TO PRINT** and to the floor with a **DO PASS RECOMMENDATION**. **Senator Little** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**Senator McGee** to carry on the floor.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 8:38 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

MINUTES

**SENATE STATE AFFAIRS COMMITTEE**

- DATE:** Friday, March 25, 2005
- TIME:** 7:00 a.m.
- PLACE:** Room 437
- MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, Malepeai.
- ABSENT/  
EXCUSED:** None.
- GUESTS:** See attached sign in sheet.
- CONVENE:** Chairman Burtenshaw called the meeting to order at 7:04 a.m.
- GUBERNATORIAL  
APPOINTMENT:** **Idaho Commission on Human Rights  
Estella O. Zamora of Caldwell. Serving a term commencing July 1,  
2004 and expiring July 1, 2007.**
- VOTE:** The motion carried by unanimous voice vote.  
**Senator McGee** to carry on the floor.
- HCR 21:** **HEALTHY MARRIAGES - Stating findings of the Legislature and  
encouraging the promotion of public awareness and education  
regarding the value of healthy marriages to men, women and  
children and to Idaho's communities.**
- Senator Patti Anne Lodge** introduced Reverend Jim Hardenbrook of Nampa. She added that he is the son of the Senate Chaplain, Don Hardenbrook.
- Reverend Hardenbrook** thanked the senators for taking such good care of his father. He reported that sometimes he stands in as Chaplain in the House and added that he is representing Healthy Families of Nampa. He explained that this resolution related to the Healthy Marriages and the Responsible Father programs in Nampa. He reported that the federal, state and local governments are working with a faith-based coalition for the past two years. He pointed out that Idaho has not made Healthy Marriage a state policy.
- Reverend Hardenbrook** reported that this a nationwide initiative that began with the 1996 Welfare Reform and continued into President George W. Bush's first term. He pointed out that this is not about trapping someone in an abusive relationship or forcing anyone to marry.
- Reverend Hardenbrook** explained that Former Governor, Frank Keating of Oklahoma started this. He pointed out that Oklahoma and Arkansas are two of the highest states in the nation for divorce and added that Idaho is in the top ten. He shared that there are over 50 congregations in Nampa

who won't perform a wedding until the couple goes through pre-marital counseling. He added that they are also working with Channel 7 to run pro-marriage spots through March.

**Senator Little** asked what kind of disincentives he was looking for. **Reverend Hardenbrook** answered that they have been part of a wonderful cooperative effort with the Department of Health and Welfare. He stated that when people come into the Department for food stamps, they are offered counseling. He pointed out that there are nine areas of concern and listed birth costs as one of them. He explained that when a man is not married to the mother of his child and claims paternity, then he is responsible for the birth costs. He commented that there needs to be some work on this because of the harshness that occurs when they go after the man. He also listed temporary assistance for families in rural areas as another concern regarding the leeway given by the government when counting vehicles to determine eligibility. He concluded by reporting that the program is expected to be funded after Easter and will provide \$300 million in funding to be split: \$200 million divided among the states and \$50 million for the Responsible Father Program.

**Senator Lodge** introduced Tammy Payne with the Department of Health and Welfare and thanked her for all of her hard work.

**MOTION:** **Senator Darrington** made a motion to send HCR 21 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Geddes** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Lodge** to carry on the floor.

**RS 15200:** **JOINT MEMORIAL - to urge the U.S. Army Corps of Engineers to continue to work toward the development of a long-term sediment management plan.**

**Senator Stegner** explained that this is a memorial to Congress dealing with dredging. He stated that this was approved by a meeting early last fall by the National Resource Committee in Northern Idaho. He explained that this is intended to dovetail with the water proposals and added that this is why it is so late. He reported that it is for maintaining the navigating channel between Portland and Lewiston and encourages Congress to find ways to make that happen. He concluded that this is a lifeline for the Port of Lewiston.

**MOTION:** **Senator Little** made a motion **TO PRINT** and to send RS 15200 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Darrington** seconded the motion.

**DISCUSSION:** **Senator Stennett** asked if there was anyone here to testify. **Senator Stegner** replied that it was just him.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Stegner** to carry on the floor.

**H 269:** **HOLIDAY CHRISTMAS TREE FUNDRAISER - Amends existing law to provide regulation of and limitations on holiday Christmas tree fundraisers by the Lottery Commission.**

**Representative Wendy Jaquet** explained that this relates to hospitals and senior citizen's centers who have charity auctions for decorated Christmas trees.

**Senator Stegner** asked if there was any specific intent for only including senior centers and hospitals and asked if it would prevent other organizations from doing this type of event. **Representative Jaquet** explained that they wanted it narrower. **Senator Stegner** asked why they excluded the Lewiston Civic Theater. **Representative Jaquet** replied that if he wanted to send it to the 14<sup>th</sup> Order for amendments, she was fine with that. **Senator Stegner** laughed and stated that the hospital does this, but not the Theater. He asked her if she researched this to make sure that we were not excluding someone. **Representative Jaquet** replied that she worked with the Lottery Commission and added that this is not prohibitive.

**MOTION:** **Senator Little** made a motion to send H 269 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Malepeai** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Malepeai** requested unanimous consent to send this to the **CONSENT CALENDAR**. There was no objection.

**Senator Stennett** to carry on the floor.

**H 313:** **BOND ISSUES - Amends existing law to revise information on reports to be filed with the State Treasurer regarding bond issues.**

**Ms. Jennifer Hobbs**, with the Treasurer's Office testified that this is a housekeeping bill related to 67-1222 and added that they are modifying the code to include required information and removing other information.

**MOTION:** **Senator Malepeai** made a motion to send H 313 to the Floor with a **DO PASS RECOMMENDATION**. **Senator McKenzie** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Malepeai** requested unanimous consent to send this to the **CONSENT CALENDAR**. There was no objection.

**Senator Malepeai** to carry on the floor.

**H 351:** **ABORTION - Amends existing law to revise the parental consent law for abortion for minors if the United States Supreme Court has denied a petition for certiorari in the case of Wasden v. Planned Parenthood of Idaho, Supreme Court Docket No. 04-703.**

**Representative Bill Sali** explained that this is an amendment to the Idaho Parental Consent Law that was originally passed in 2000. He

stated that the original legislation defined the emancipated minor and explained the different categories of emancipated minor. He reported that the ACLU and Planned Parenthood challenged this law and appealed the decision at the federal level based on the medical definition. He added that the conference is taking place today on the petition. He pointed out that the effective date on this legislation is based on if the petition is denied at the Supreme Court. He added that if the Supreme Court accepts the petition, then the bill will not go into effect.

**Representative Sali** explained that Section 1 refers to 18-609a. He stated that this adds a definition of medical emergency, which was found insufficient at the 9<sup>th</sup> Circuit and added that this language is based on *Casey v. Reproductive Services* in Pennsylvania. He explained that this definition requires the physician to notify the parents or guardian and adds in the appointment of an attorney if a woman appears in court without one. He pointed out that there have been 3-5 cases per year in Ada County for guardian ad litem and added that the language mirrors the Child Protection Act. He stated that this also excludes statutory rape because the District Court had a problem since every minor who is pregnant is a victim of statutory rape. He explained that they were trying to address incest, forcible rape and other such crimes.

**Representative Sali** stated that this also shortens the time for dealing with a case and clarified the importance of fixing the health section by using either the parent or the bypass of the court by putting in "as soon as practical, no longer than 5 days."

**Representative Sali** pointed out that if a girl appears and is claiming to be an adult or if someone claims to be the parent, then the doctor can take a copy of their identification and keep it in a file so that the doctor has a defense.

**Representative Sali** reported that there was a copy of the Attorney General's opinion in the packets. He pointed out that since the passage of this law, there has been a 30% decrease in minor abortions based on the average of three years before versus the three years after the passage of this law. He added that of those 3-5 cases in Ada County, there was an attorney present at every bypass with one petition denied, one withdrawn and none appealed. He stated that there has been 22 cases in five years regarding the bypass proceeding petition.

**Representative Sali** explained that the Guardian Ad Litem portion requires them to report criminal activity and added that this also includes 18-6603 regarding fornication. He pointed out that on page 12, line 37 it was not the intent of the sponsors to include a requirement that fornication be reported, but that only serious crimes such as incest, forcible rape and those who are sexual predators be reported. He added that the reporting of fornication should not be considered a problem because even though it is law, it is not prosecuted. He also requested a "strike and insert" based on Rule 46 and pointed out that the word "or" on line 45 should be "of" and explained that this was a typographical error.

**Senator Darrington** commented that he has seldom seen a bill with legislative intent at the end of the bill and referred to page 11. He added

that he has also seldom seen a bill with stories in it and referred to page 12. He remarked that this is highly unusual. **Representative Sali** replied that Section 1 is in code and stated that when the statute was challenged, the court told them what you can't do and why, but added that there is no "do it this way". He pointed out that they are trying to be constitutional. He then explained that Section 6 is the findings and intent and added that he was trying to go through the changes and provide a record and direction.

**Senator Davis** stated that he has problems with three areas. The first one is the parental consent. He asked if the Supreme Court had sanctioned the Parental Consent and if so, which state and how would this compare to that state. The second is the continuum of Constitutionality. He asked on a scale of one to ten, how aggressive was the prior statute and how aggressive is this one and, third, what role has the gentleman on the second floor played in this bill and will he join and sign this if it passes the Senate. **Representative Sali** replied that Montana has a parental notification by sending a postcard in the mail and added that Arizona had a parental consent law upheld. He pointed out that in 1996 this was first introduced. In 1998, the bill was vetoed by Governor Batt. In 1999, Governor Kempthorne promised to work with them and added that Michael Bogert, of the Governor's office, informed him to be aggressive in writing the legislation. He reported that the post-medical procedure is unique and added that Idaho will have more complete reporting requirements than other states. He pointed out that the Guardian Ad Litem portion is the most aggressive and that the other requirements are not so aggressive. **Representative Sali** explained that the number of reports indicate that the age of the men involved are often many times older and added that the reports are not showing two teens. He reported that the statute part of the Child Protective Act requires that if you know of abuse, you must report it. **Senator Davis** asked if the 9<sup>th</sup> Circuit had addressed that particular issue. **Mr. Jeremy Chou**, with the Attorney General's Office, stated that they have not addressed that issue. He pointed out that the 4<sup>th</sup> Circuit had a case where they approved of the reporting requirement if a minor doesn't have to disclose information. **Senator Davis** noted that if the 9<sup>th</sup> Circuit wants to find fault, this might be an area since it is required in most instances. **Representative Sali** replied that there has been a lot of time spent on the definition of medical emergency. He added that it would become a fatal flaw in the Constitution with the whole statute unenforceable. He stated that this is using the Pennsylvania language on the medical emergency.

***Printed copies of the following testimonies were provided for the permanent record and are available in the committee minute book in the Legislative Services Library in the basement of the Capitol. Following are excerpts of the testimonies with committee questions.***

**Mr. Newal Squires**, an attorney for the ACLU and Planned Parenthood, testified in opposition. He pointed out that Idaho has moved outside of the envelope but added that there are 24 states with statutes that have been upheld. He declared that this bill will be challenged based on the provisions that are identical or similar to what was struck down before.

He pointed out that no other state has this reporting requirement and explained that there is a risk of breaching minor's confidentiality. He continued that this will not pass Constitutional muster and added that currently, the state has spent over \$300,000 defending the first statute in court. He explained that the post-medical emergency and the reporting requirements breach minor's confidentiality. He concluded that this creates a risk and a disincentive.

**Senator Davis** remarked that the standard of the Constitution is a moving target and added that we don't know what the 9<sup>th</sup> Circuit will do. He pointed out the definition section regarding medical emergency and stated that the Attorney General issued an opinion saying that this is similar to *Casey* where the Supreme Court blessed this definition. He asked if Mr. Squires believed that the 9<sup>th</sup> Circuit would not have any trouble with this. **Mr. Squires** replied that he has not listed this definition as one of the big problems. **Senator Davis** noted the two problem areas as being the post-medical emergency notification and the reporting. He asked what impact does the severability clause have on the scheme and if it will at least keep the concept alive. **Mr. Squires** answered that the Court applied the severability issue to carve up the statute. He added that the 9<sup>th</sup> Circuit is focused on the medical emergency portion. He concluded that this is an open question. **Senator Davis** asked if in his opinion, if the medical emergency was intertwined and if it fails, would this be difficult to enforce. He also asked if the two problems were also so intertwined in the bill that this is an equal risk. **Mr. Squires** replied that he didn't know, but stated that the issue will be a central one.

**Senator McKenzie** asked if there was a letter outlining their positions. **Mr. Squires** replied that it should be in the packet. The Page made copies of the original and provided them to the members of the committee. (It was later discovered that the information had been placed into the individual Senator's mail boxes on the third floor.)

**Mr. Gregg Lynde** testified on behalf of his wife, Julie Lynde, with the Cornerstone Institute. He explained that she was snowed in in Montana while visiting her father. He read her testimony in support of this legislation. This testimony included the two primary reasons she supports this: protection of a minor child and parental rights.

**Ms. Marty Durand**, Legislative Counsel for the ACLU testified in opposition. She stated that the judicial bypass needs to be confidential. She pointed out on page 7, line 34, that the Guardian Ad Litem "must" provide the information and added that statutory rape is excluded. She also pointed out 18-6603 regarding fornication and added that legislative intent does not say what the law is. She reported that every petition will result in a notification to law enforcement and added that there is no way to waive parental involvement. She concluded that this does not cure the defects, and asked the committee to hold it.

**Senator Stennett** asked what she would project the attorneys fees to her organization to be. **Ms. Durand** replied that she didn't know.

**Mr. David Ripley**, Executive Director for Idaho Chooses Life testified in support. He stated that the data presented by Representative Sali is not

only a number, but a life and added that there is a toddler playing in someone's front room because of the dedication to this cause. He concluded that the effort and the money have been more than regarded by the knowledge that we have made a contribution toward a reduction in carnage.

**Ms. Ellie Merrick**, Director of Public Affairs for Planned Parenthood testified in opposition. She shared a story about Spring Adams from Fruitland in 1989 who sought to have an abortion. She explained that this young woman's confidentiality had been broken and that when her father found out that she intended to have an abortion, her father killed her in her sleep. She explained that many teens cannot speak to their parents about many things and are those who find themselves pregnant without a support system and without parental guidance. She referred the committee to the joint letter with ACLU and Planned Parenthood regarding the areas of concern and the need for confidentiality for young women.

**Mr. John Keenan**, Attorney from Nampa, testified in support. He explained that he is with Idaho's Right to Life and was contacted by Kerry Uhlenkott. He pointed out that the findings at the front are important for the care of children and in providing proper medical care.

**Senator Davis** noted that on page 5 is the medical emergency and also on page 4 under romanette 5. He added that on page 5, line 14 , *"If the physician causing or performing such abortion reasonably believes that the minor is or will be homeless or abandoned so that the parents cannot be readily found or that the minor has suffered or will suffer abuse or neglect such that the minor's safety would be jeopardized if a parent were notified that the abortion was caused or performed, or reasonably believes that the best interests of the child require that notification to a parent that the abortion was caused or performed must be withheld, the physician shall, in lieu of notifying a parent as required above."* He remarked about the striking story of Spring Adams in Fruitland. He then noted *"file a petition pursuant to section 16-1605, Idaho Code"* as well as the notation of homeless, abandoned, and will suffer. He commented that this may be softened by the language on page 19. He then asked if the judicial bypass was before or after the abortion. **Representative Sali** replied that in that section, the referral to abortion has already occurred. He pointed out that an abortion has a half hour recovery time and asked what do you do if there is a medical emergency. He then directed the attention of the committee to page 12, line 14 regarding Kathy Denise Murphy who in August of 1973, had a severe infection in her uterus and subsequently died on September 8<sup>th</sup>. He pointed out that Spring Adams was before this law. **Senator Davis** pointed out that on page 5, line 16, the notation where they must demonstrate that a child will suffer and added that the judge has to find effect of suffer or neglect.

**Representative Sali** stated that this was wrong and added that the District Court included, "or will be". **Senator Davis** noted that the court can give acceptance on one of three criteria to relieve the physician from post-abortion notification of the parent and added that the focus is on the "will suffer" language. **Representative Sali** replied that lines 14-21 are the grounds that the physician uses to file the petition and added that below that is the criteria the court uses to find why the parent is not

notified. **Senator Davis** remarked that lines 14-21 (as included above) show the three basis for petition and then asked him to skip to line 32, *“or upon a finding that the best interests of the child require that a parent not be notified, the court shall, in a manner which will protect the confidentiality of the minor,”* He stated that this says that the court has to make a finding on only the third standard, or the interest of the child. He asked why they were only recognizing the third standard.

**Representative Sali** replied that line 26 regarding 16-1605 under the Child Protection Act is there to blend that law with this one. He pointed out that he tried to narrow the interplay with the Child Protection Act and this Parental Consent standard. He pointed out that the doctor's obligation is on the front end while the judge's is based on the Child Protection Act standards. **Senator Davis** asked why they didn't have *“or upon a finding that a minor will be homeless or abandoned so that the parents cannot be readily found or that the minor has suffered or will suffer abuse or neglect such that the minor's safety would be jeopardized if a parent were notified that the abortion was caused or performed, or reasonably believes that the best interests of the child require that notification to a parent that the abortion was caused or performed must be withheld.”* **Representative Sali** replied that line 26 is upon adjudication. **Senator Davis** stated that he understood the argument, but lines 14-21 form the basis for the doctor on if a petition is filed, and that the court decides if it will be adjudicated and if it is in the best interest of a child. He noted that if it is required for the basis of a petition, then it should also be for the basis for a finding. **Representative Sali** replied that this is part of the adjudication and added that it is just to look at the best interest of the child. **Mr. Jeremy Chou**, with the Attorney General's Office, suggested that he read the sentence in it's entirety, *“Upon adjudication that the minor comes within the purview of chapter 16, title 16, 28 Idaho Code, or upon a finding that the best interests of the child require that a parent not be notified, the court shall, in a manner which will protect the confidentiality of the minor.”* He explained that the court has a choice of if it is in the best interest of the child or in the purviews of Title 16, Chapter 16. He added that this falls in there.

**Senator Darrington** stated that 16-16 may include Guardian Ad Litem, Child Protection Act and the reporting requirements. **Mr. Chou** replied that 16-16 shows the definition of abuse and neglect. **Senator Darrington** noted that it also includes Child Protection and reporting requirements.

**Ms. Susan Watterson** testified in opposition. She is the Reverend of the First Congregational Church, United Church of Christ. She applauded the intention to protect minors from decisions that will have long reaching and perhaps adverse affects upon their lives, but stated that this bill will not accomplish the goal of keeping girls and women and their families more safe and secure. She read an excerpt from the July 2003 National Bureau of Justice report that stated that nearly 2/3 or 67% of all victims of sexual assault reported to law enforcement agencies were juveniles under the age of 18 at the time of the crime. More than half of all juveniles were under the age of 12 and 33% of all victims of sexual assault reported to law enforcement were under the age of 6. The detailed age distribution of the victims of sexual assault emphasizes the high proportion of juvenile victims where 39% were assaulted by an

acquaintance - a friend of the family, someone in a trusted role of leadership in the community, or a family member themselves. She urged the committee to have compassion for the "little ones" who need our care and protection as a society and guard their privacy and their very lives by voting against this bill.

**Ms. Jeannette McAllister**, President of the Right to Life of Idaho, testified on behalf of Kerry Uhlenkott. She read from printed testimony that supported the legislation. She read that if parents must give their consent before a minor child has their ears pierced or before being given an aspirin at school, then the parents definitely need to be involved in a decision to have a major medical procedure. This testimony also stated that one of the strengths of this bill is the requirement of a positive identification of the parents. She urged the committee to vote to send this to the floor with a do pass recommendation.

**Ms. Lee Flinn**, with the Idaho Women's Network and representing 28 member organizations, testified in opposition. She reiterated the story of Spring Adams in Fruitland and added that this was reported in the Idaho Statesman on August 23, 1989. Miss Adams was thirteen years old and was shot in the head by her father while she was sleeping. She explained that many teens do include their parents in such a decision, but added that there are many more who do not because, instead of receiving support from their parents, these teens experience violent behavior from their parents which may put their lives in great danger. She suggested that we address and work toward preventative measures to decrease the number of unplanned and unwanted pregnancies among women of all ages and not just teens.

**Senator Stennett** asked Ms. Flinn to draw a line between H 610 and this one. **Ms. Flinn** replied that some parts of 610 were struck down. She stated that the main point is to draw out implications and ramifications. **Representative Sali** noted that people have concerns with the confidentiality of a minor and the post-medical emergency. He pointed out that confidentiality has been protected by two additions. He stated that Idaho has spent \$300,000 on lawyers and an equal amount on legal fees. He added that he knows they will be sued, but concluded that if this saves 25 kids every year for 5 years, that equals \$5,000 per kid.

**Senator Darrington** noted that the standard on page 5 used to be objective, but now looks to be subjective. He asked if the doctor would have immunity for making a wrong call on subjective. **Representative Sali** replied that he was not sure how to answer that. **Mr. Chou** answered that the question has not come up. His impression was that it will not be a problem if the physician fails to report it. **Senator Darrington** asked if the doctor subjectively decides that the girl will not be homeless, or suffer neglect, will he be liable if she does. **Mr. Chou** replied that he would not. But added if he reasonably believes, he can seek a petition of the court and stated that there would be immunity if he did not.

**Senator Stennett** asked Representative Sali about the 30% decrease in abortions and if he would prove that the tinkering with this law provided that. **Representative Sali** replied that he couldn't tell the number that

have gone out of state, but stated that these numbers are the ones from in state from 1997 to 2000 versus 2001 to 2003. **Senator Stennett** noted that there was a similar letter from the Attorney General in 2000 that told us that the bill was Constitutional. He stated that this letter today says the same thing and asked if it was an official opinion, or an advisory. **Mr. Chou** replied that it is an opinion but added that it doesn't carry the force of a judicial opinion. **Senator Stennett** noted that it wasn't signed by the publicly elected Attorney General. **Mr. Chou** replied that it is an advisory and added that there is no difference between Clayton Miner's letter and this one. He stated that there are going to be risks since there is no precedent or prohibition with the post-medical emergency. **Senator Stennett** asked if that \$300,000 was coming from a supplemental request, or from the Attorney General's budget. **Mr. Chou** replied that he has been with the Attorney General's Office for two years and didn't know. **Senator Stennett** commented that we were assured in 2000 that this was Constitutional and asked if Mr. Chou was giving the same assurances. **Mr. Chou** replied that there are no guarantees or assurances, he is only giving a legal opinion. He added that some of the risks are identified in the letter. **Senator Stennett** asked how much money would the Attorney General's Office expend to defend this. **Mr. Chou** answered that if we prevail, then the ACLU and the Planned Parenthood organizations would owe the state, but if we lose, then approximately \$300,000. **Senator Stennett** asked if he estimated that same \$300,000 in the future. **Mr. Chou** answered that it may be less since most of this would be handled in house.

**MOTION:** **Senator McKenzie** made a motion to send H 351 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Geddes** seconded the motion.

**DISCUSSION:** **Senator Davis** stated that he still didn't understand the interplay with Child Protection Act and this and added that 16-1603 shows exclusive jurisdiction only applies to a child who lives in this state. He stated that the only time the court has jurisdiction is if the child is neglected, abused or abandoned. He pointed out that there is no language to modify 16-1603 with a (c) to reference 18-609 (a) 1-5. He asked how does the court make a decision to adjudicate if the state doesn't allow them a statute to do so. He stated that he didn't want to have us pass a bill with an easy statutory challenge and added that it would be easier to add a proviso to include the Child Protection Act. **Representative Sali** stated that the Child Protection Act should stand on its own and added that there is no intention to affect the Child Protection Act. He stated that this has homeless, abandonment, or neglect so that the court can protect the child. He asked who do you give the girl to for care after an abortion if there are no parents.

**SUBSTITUTE MOTION:** **Senator Stennett** made a motion to **HOLD H 351 IN COMMITTEE**. **Senator Malepeai** seconded the motion.

**DISCUSSION:** **Senator Davis** asked how a doctor would file a petition under 16-1605 but the court only has the basis on those stated where two are not under the Child Protection Act. He asked how you can file a petition under the Child Protection Act and then say that this Act doesn't apply. He stated that we need to either grant jurisdiction, or not include it or allow it to apply.

**VOTE ON  
SUBSTITUTE  
MOTION:**

The roll call vote was 3-6-0. The vote failed. Senators Darrington, Geddes, Davis, Little, McKenzie, and Burtenshaw voted in the negative.

**DISCUSSION ON  
ORIGINAL  
MOTION:**

**Senator Davis** stated that he will support the original motion if Senator McKenzie or Mr. Chou will help him so that there is no missing gap.

**VOTE ON  
ORIGINAL  
MOTION:**

The roll call vote was 6-3-0. The motion carried. Senators Stegner, Stennett and Malepeai voted in the negative.

**Senator McKenzie** will carry on the floor.

**H 333:**

**UTILITIES - COST REDUCTION FINANCING - Adds to existing law to provide for cost reduction orders by the Public Utilities Commission for electric and natural gas utilities; to limit aggregate amount of cost reduction financing; to provide cost reduction rates; and to provide procedures for issuance of cost reduction bonds.**

**Representative George Eskridge** explained that the purpose of this is to provide a mechanism to cut rates by allowing the utility to refinance the total debt at a decreased rate. He added that this cost savings will go to customers and stated that this legislation is permissive and has no requirements. He pointed out that this only requires the PUC to accept applications that will be decided upon by merit and added that the order is permanent. He stated that this provides for a 40% cap on cost-reduction bonds and does not constitute a debt or pledge by the state. He added that all debts are the responsibility of the utility only. He reported that Avista has a debt above the 9% rate, financed during Enron, and added that this will allow them to refinance at 5-6%.

**Senator Little** asked if on page 3, line 36, would this affect what the PUC is authorized to change rates. **Representative Eskridge** replied that there is no harm to reissue at a lower rate. **Senator Little** asked if this will not allow the PUC to adjust the rates. **Representative Eskridge** replied no.

**Senator Geddes** noted that the only time a rate case comes before the PUC is to do an increase. **Representative Eskridge** replied that a case is brought before the utility to decrease and increase rates. **Senator Geddes** noted that if the utility is paying lower rates, it will save them money, and asked if they will have to pass it on to the customers. **Mr. Neil Colwell**, with Avista explained that they have 100,000 electric customers and 50,000 gas customers. He stated that the utilities make an application to create terms and conditions of the bonds and also direct that the customer rates be diminished.

**Senator Little** noted that on line 43, "*The state of Idaho does hereby pledge to and agree with the 44 owners of cost reduction property and with any cost reduction instrument hold- 45 ers that neither the state nor any of its agencies, including the commission, 46 shall (by administrative or legislative action, ballot initiative or other 47 similar process) limit, alter, restrict or impair the approved costs.*" He asked why this was in here. **Mr. Colwell** replied that this model was Title 61, Chapter 15 which

passed in 2001 regarding the Energy Purchase Cost Reduction Bond. He stated that the purpose is to satisfy bonding entities. He pointed out that the Commission won't change an order and the Legislature won't approve a referendum to do that. **Senator Little** asked if there was severability to save this. **Mr. Colwell** replied that the language states that the state will not initiate action. **Senator Little** noted that this ties the hands of the state with a regulatory standpoint and a public initiative.

**MOTION:** **Senator Stegner** made a motion to send H 333 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Geddes** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Stegner** to carry on the floor.

**H 350:** **SCHOOL DISTRICT BONDS - Amends existing law to revise procedures for advance refunding of school district bonds; to provide refunding bonds shall be authorized by a resolution of the board of trustees of a school district fixing the date, denominations, rate of interest, the maturity dates, the last of which shall not exceed the term of the outstanding bonds to be refunded.**

**Representative Mark Snodgrass** explained that this corrects an inconsistency with the code and clarifies the issuance of refunded bonds. He pointed out that 33-1121 refunds the entire issue and 57-504 refunds for all or any part. He pointed out that the districts can choose whichever they want for the best cost savings. He stated that 33-1123 allows for maturation of 15 years and 33-1107 for 20 years. He added that there is also an emergency clause so that those in 2001 can be refunded. He reported that the current code only allows for a refund once and that the money saved will be used to decrease the debt.

**Senator Little** noted that we raised the ceiling last year from \$400 to \$600 million on what the state guarantees and stated that a lot are refinancing. He asked if there were any concerns about this with the House since the Endowment fund is the ultimate guarantor.

**Representative Snodgrass** replied that the concern was not addressed during the committee hearing or on the floor. **Senator Bunderson** commented that it is refunding and will replace one with another, not add any new bonds. **Representative Snodgrass** added that it can only be done once and that the districts choose when and which bonds they will do. **Senator Little** asked what percent of Meridian's bonds are refinanced. **Mr. Eric Heringer** explained that the bonds from 1996 and 1993. He pointed out that those from 1998, 2001, and 2002 are not refinanced.

**Senator Stennett** commented about the \$600 million ceiling in 2000 or 2001 and stated that he assumed that these were bonds that were not backed by the state but asked if they were trying to refinance to save money. **Representative Snodgrass** replied that they also have the option to go to the Municipal Bond Bank. **Mr. Heringer** stated that some are not guaranteed by the state that can and will be refinanced. He added that some will use up that guarantee. **Senator Stennett** commented that we are soon approaching that headroom. **Mr. Heringer**

stated that this clarifies that the district can refinance a portion or all and added that it is best to refinance the "call" or they can do the whole bond for even more savings. **Senator Stennett** asked who else may be knocking at the door. **Mr. Heringer** answered that the 2001 bond issues from Kuna, Nampa, and Meridian can save \$3 million together. He added that there are 13 other districts that could save upwards of \$3.3 million.

**Senator Stegner** noted the guarantees of the state to decrease the interest rates and asked what about the legislature having a 10-100% of school district refinance. He asked if this would allow school districts to do that. **Representative Snodgrass** replied that H 329 would affect Meridian. **Mr. Heringer** added that levy equalization only happens if there is another election. **Senator Stegner** asked what district would not pass a levy to have the state pay the interest. **Mr. Heringer** replied that there have been several. **Senator Stegner** stated that the fiscal impact is inaccurate and added that this will encourage refinancing to get the state to finance the interest payments. He concluded that this will cost the state a bunch of money. **Mr. Heringer** stated that with Levy Equalization, an attorney would need to look at this and added that he may have mis-spoke. **Senator Bunderson** stated that the guarantee of the state is a strongman and added that the burden of the payment lies with the taxpayers. **Senator Stegner** stated that there is another code where the 10% comes from the lottery funds. He suggested that this may be new construction though.

**Senator Little** asked if there will be another committee meeting. **Chairman Burtenshaw** replied that it will be subject to the call of the chair. **Senator Little** asked if they could talk to someone about the general fund and then do a buck slip.

**Senator Geddes** stated that there was legislation coming from the House that may come here. He pointed out that the interest payments the state is making are doubling on an annual basis and added that this could open us up to that.

**Senator Stegner** stated that this may take payments from the permanent building fund and should be considered.

**DECISION BY  
THE CHAIR:**

**Chairman Burtenshaw** told Representative Snodgrass that we would hold this bill and contact him about it later. **Senator Geddes** asked him to run some questions down to the committee on the floor.

**PAGE  
APPRECIATION:**

**Chairman Burtenshaw** presented **Chad Reiser**, Committee Page from Grace, Idaho, with a letter of recommendation from the committee and a Senate watch. He thanked him for his service and for spending this time with us. He wished him luck in the future.

**ADJOURN:**

There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 10:04 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary

## MINUTES

### SENATE STATE AFFAIRS COMMITTEE

**DATE:** Wednesday, March 30, 2005

**TIME:** 8:00 a.m.

**PLACE:** Room 437

**MEMBERS:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, Malepeai.

**ABSENT/  
EXCUSED:** None.

**GUESTS:** See attached sign in sheet.

**CONVENE:** Chairman Burtenshaw called the meeting to order at 8:05 a.m.

**RS 15230:** **SENATE PROCLAMATION - Commending Bob Fick upon leaving the Associated Press.**

**Senator Davis** explained that Senator Geddes wasn't present at this time and stated that he would like to advance this to print. He pointed out that this must have been written by Mr. Fick since there is a dangling modifier on line 12 and added that on line 10 there is a desperate need for a comma. He then pointed out on line 17, "*WHEREAS, Bob Fick came to Idaho on city election day in November, 1983, and began covering the Idaho Senate the next year and initiated the ugly tie tradition in 1985,*" and added that it wasn't really started as a tradition, but only that people began to notice what he was wearing. He pointed out the notation that the Associated Press moved to the basement in 1985 where he was without daylight and added that it should read that he was, "without the light of understanding". He remarked that Mr. Fick has been a serious player in the role of government, especially when asking questions about the budget.

**Senator Geddes** stated that his only concern was the way that it was drafted and added that in light of time, it would not be possible to send this to the amending order. He commented that Mr. Fick has the finest ugly tie collection in the world.

**Senator Davis** commented about the first time he met Mrs. Fick and added that it was the greatest mystery of all time.

**Senator Little** joked about a roll call vote.

**MOTION:** **Senator Davis** made a motion **TO PRINT** RS 15230. **Senator Geddes** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Geddes** to carry on the floor.

**H 350:** **SCHOOL DISTRICT BONDS - Amends existing law to revise procedures for advance refunding of school district bonds; to provide refunding bonds shall be authorized by a resolution of the board of trustees of a school district fixing the date, denominations, rate of interest, the maturity dates, the last of which shall not exceed the term of the outstanding bonds to be refunded.**

**Representative Mark Snodgrass** explained that this relates to advanced refunding of bonds and added that this is not a new idea. He stated that this will allow all or part of the bonds to be refunded. He pointed out that currently they are only allowed to refund all of a bond issue and added that this will also open up the five-year window. He explained that this will provide substantial savings to the districts. He remarked that there were questions last Friday as to if these were subject to the \$600 million ceiling and the bond equalization formula and was happy to report that they were not and added that only the new issues are subject to this.

**Senator Little** stated that he did some research and pointed out that even if they hold a new election, these are still not eligible.

**MOTION:** **Senator Little** made a motion to send H 350 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Davis** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Bunderson** to carry on the floor.

**H 375** **SCHOOLS - BOND LEVY EQUALIZATION - Amends existing law relating to school funds to provide a date by which bonds must be passed for purposes of receiving the minimum of the interest cost portion in the Bond Levy Equalization Support Program; to provide a reference to each qualifying school district; and to revise provisions applicable to the Bond Levy Equalization Fund.**

**Representative Scott Bedke** provided a handout to the committee. He explained that this relates to three things: it will eliminate the 10% minimum subsidy that flows to school districts, where those who are under the 10% receive nothing; it extends the window so that those that are in the pipeline are also included; and moves funding out of the public schools budget and into the permanent building fund. He reported that in 2003, the obligation was \$825,000, in 2004 it was up to \$2,300,000 and for 2005-2006, the Division of Facilities has the amount at \$4.5 million. He reported that the funding source is the lottery money and added that if the lottery money was not for equalization, it would go to each school district. He stated that right now the districts have to backfill with their own discretionary funds, that could be spent in the classroom.

**Representative Bedke** introduced Jason Hancock with Legislative Services in the JFAC offices and stated that he would also be available for questions.

**Representative Bedke** directed the attention of the committee to page 1 of the handout, in the top left corner. He pointed out that this information is from five years ago and stated that they tried to gauge the cost which is

shown on the bottom left.

**Senator Davis** stated that the problem has been identified and noted that we have to do something. He asked what are some of the other solutions and added that he hesitates for us to take the money out of the permanent building fund since it may cannibalize this fund, in time, as well. **Representative Bedke** responded that he understood the concern with the permanent building fund but added that this is happening to the school budgets. He pointed out that half of the lottery funds go to the public schools and the other half goes to the permanent building fund. He stated that the Legislature passed a bond levy to equalize the funding and gave it to JFAC to find the funding source. He pointed out that it is better for this money to come out of the permanent building fund. **Senator Davis** asked why the solution wasn't for the funding to come from the general revenue of the state rather than dedicated funds.

**Representative Bedke** replied that the lottery money was there when the funding source had to be identified. He then directed the attention of the committee to page 2 of the handout and explained that there are 37 school districts with an index of one or greater who would receive the 10%. He pointed out that Meridian should get \$1.4 million, with \$432,145 in lost funds. He then remarked that according to page 1, we would have \$25 million in an annual obligation, which will mature someplace. He asked why not use lottery funds that do not affect the districts. He concluded that this is causing harm to districts.

**Senator Stenger** asked if the Senate turns down this, will the House have the will to find another source. **Representative Bedke** answered that in the House, there were only two dissenting votes. **Senator Stegner** pointed out that the Senate cannot originate a tax bill and added that it is most logical to turn down and let the House do further work. He added that the lottery money is not agreeable to Representative Bedke, but added that the permanent building fund is not agreeable to him, either. **Representative Bedke** replied that it should be a dedicated funding source. **Senator Stegner** remarked that we shouldn't take the path of least resistance and added that the House should be looking deeper. **Representative Bedke** remarked that with H 386, it was targeted for the permanent building fund as a revenue source.

**Senator Darrington** stated that he is on the Permanent Building Fund and added that they are struggling to do maintenance on state buildings. He asked if they had a proposal to replace this money. **Representative Bedke** responded that they have none at this point. He agreed with the concern for the permanent building fund, but stated that this is happening with school district budgets. He added that the impact of subsidizing every bond is a huge responsibility.

**Senator Stegner** noted that with regard to the bond side, he represents a district that could lose a guaranteed bond. He stated that the logic is those districts who tax heavily. He pointed out that this will penalize those schools by taking away funding. **Representative Bedke** responded that the second column shows what the bond would be. He stated that they used Meridian's recent bond of \$100,000 per support unit as a basis for figures. He pointed out that Lewiston would receive \$268,000 as a share of the lottery. He concluded that they would be better off to get the full

share of the lottery. **Senator Stegner** commented that it would be best for the House to find a better solution. **Representative Bedke** replied that if this is about why the House doesn't raise revenue, then he would address that, and added that Senator Stegner knew why. He stated that the phenomenon will not change. **Senator Stegner** commented that this won't change if the Senate doesn't stand up. He added that there are better revenue resources.

**Representative Bedke** likened this to a hostage situation with a child and with a dog. He stated that a parent will negotiate faster when it is their child than when it is their dog. He explained that this is harming the children and added that he agrees to the point but remarked that we have a problem now. He pointed out that the cigarette tax will end up in the permanent building fund for Capitol restoration. He stated that these funds will replace the discretionary money. **Representative Bedke** explained that this doesn't solve the funding source, but is better to not have this in the school budgets while all of this happens.

**Senator Little** pointed out that this is taking from children but putting on the roofs of buildings. He pointed out that there must be some flexibility for the permanent building fund to do projects. He remarked that the Millennium Fund is diminishing as a source of cash flow because we are trying to get people to stop smoking by keeping the cigarette tax. He concurred with Senator Stegner that this was postponing the inevitable and asked why not take the path of least resistance. **Representative Bedke** responded that the Senate understood the impacts of S 1474 but didn't attach a funding source either. He pointed out that the cost of \$825,000 was no big deal and added that the second year wasn't either. He further pointed out that all the Senators voted for it too. He explained that this year the costs are \$4.5 million and added that we will soon be hitting the top and tipping over the edge. He further added that the slope is outpacing the growth of the lottery funds. He remarked that we not take the money out of the schools and pointed out that this legislation is better for the salmon-colored sections to get their full share of lottery funds instead of the subsidy. He agreed that this puts the problem off, but not the phenomenon.

**Chairman Burtenshaw** asked if JFAC had already set the 2006 budget. **Representative Bedke** replied that they had. **Chairman Burtenshaw** asked if the problem was status quo. **Representative Bedke** stated that this would happen in 2007 and that every school district would receive the full share of the lottery based on ADA. **Chairman Burtenshaw** asked how much money would be going to the schools. **Representative Bedke** answered that it would be \$4-5 million this year, \$6-7 million next year, and \$8-10 million the third year. He added that it would culminate at \$30-35 million.

**Senator Stennett** stated that he didn't see the distribution formula in this bill and asked where it could be found. **Representative Bedke** replied that it is in code, but not in this bill. **Mr. Jason Hancock** reported that it is in 33-905. **Senator Stennett** asked Mr. Hancock if this was based on ADA. **Mr. Hancock** answered that it is not equalized but based on the size of the district.

**Senator Stegner** remarked that Representative Bedke was one of the smartest guys in the building, but stated that if the Senate turns this down, he knew that Representative Bedke would find another way.

**Representative Bedke** thanked him for the compliment but added that it seemed to cross the line to patronization. He remarked that he has every ability to raise revenue as the Senator does. **Senator Stegner** commented that he has zero. **Chairman Burtenshaw** commented that so does Representative Bedke.

**Representative Bedke** commented that he hoped he had elevated the issue and added that this needs to be passed. He reported that the ship is sailing and that the public school budget has been pretty flat. He concluded that every dollar counts.

**Senator Little** asked what if we reject the permanent building fund and the continuously appropriated language. **Representative Bedke** pointed out that the Legislature has an obligation with no funding source. He asked why not let all the money flow to the schools.

**Mr. Mike Friend**, Executive Director for the Idaho Association of School Administrators testified in support. He stated that they were supportive of S 1474 last year even though they weren't sure where the money was coming from. He reported that they opposed the first bill that Representative Bedke brought earlier this session, but stated that they support this one. He pointed out that they were concerned with the projections where no lottery money will be available and the restrictions on how that money can be used. He added that this also allows for an extension of the current program through to January 1, 2006.

**Mr. Cliff Green**, with the School Boards Association testified in support and thanked Representative Bedke for his work. He stated that there is a problem because by 2026, the cost will be \$231 million and added that this is an acceptable solution. He remarked that in 2014, there will be remediation with the No Child Left Behind requirements for adequate progress where title schools will receive federal money and the no title schools will receive no funds. He concluded that this is a viable solution.

**Senator Stegner** asked if this was the best solution he could think of. **Mr. Green** replied that at this point in time, yes. **Representative Bedke** pointed out that his track record of being proactive on budget issues speaks for itself. He added that he doesn't do this lightly but stated that for the moment, it is better for it to happen this way with respect to the districts. He pointed out that Cassia County is a consolidated district with new schools in Oakley, Burley, Declo and Raft River. He reported that passing bonds in Cassia County is a 25-30 year event.

**Senator Geddes** remarked that we are not very futuristic and likened this to a finger in a dyke to stop a leak. He pointed out that the water will just find another path. He agreed with Senator Stegner but added that he couldn't see any better solution at this time.

**MOTION:**

**Senator Geddes** made a motion to send H 375 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Stennett** seconded the motion.

**DISCUSSION:** **Senator Stegner** stated that he will vote against the motion because we need to restate this. He remarked that we spend all of our time patching holes that will stay in place for years.

**Senator Malepeai** stated that they can do better in the House and added that when he first came to the Legislature, he was optimistic that there would be discussions on important issues. He likened this to basketball where H 375 has been fouled and is throwing free throws to win the game. He pointed out that he hasn't seen a better way, even though this is not the right tool. He explained that he will support this and hoped in the future to come up with real solutions.

**Senator Davis** stated that he will vote in opposition to the motion but added that he valued the discussion. He pointed out that this is the wrong solution to the problem.

**Senator Stennett** pointed out that in 1988, the Lottery passed with the money going to schools. He added that half actually goes to the permanent building fund. He agreed that this isn't the best solution, but stated that he will support it.

**Senator Darrington** reported that there is \$22 million in the permanent building fund after the bond payments. **Senator Little** asked if \$15 million was for annual repairs and maintenance. **Senator Darrington** explained that one-third goes to capital expenditures and the other two-thirds, or \$14 million, for repairs. **Senator Little** remarked that this is like exchanging hostages and added that this was passed because there was a court case. He pointed out that in the early 80s there was a shortfall when the permanent building fund was reconfigured. He reported that he will oppose this based on the language continually appropriating.

**Senator McKenzie** remarked that Representative Bedke did not bring this to solve a problem of the priorities between the school districts and other funding issues. He stated that this takes care of the problem temporarily, but puts it on a lower priority. He commented that only when the problem is clear and obvious, do we deal with a fund issue. He concluded that he will vote no.

**VOTE:** The motion failed by roll call vote 3-5-1.

Senators voting in the negative were Darrington, Davis, Stegner, Little, and McKenzie.

**H 365:** **RULES - Adds to existing law to provide that administrative rules that expire on July 1, 2005, will continue to be effective until July 1, 2006; to provide that administrative rules approved or extended by the adoption of a concurrent resolution shall be effective until July 1, 2006, or until such time as they expire; to provide that rules rejected by concurrent resolution shall be null, void and of no force and effect; and to authorize agencies to amend or repeal certain rules pursuant to the Administrative Procedure Act.**

**Mr. Mike Nugent**, with Legislative Services, explained that this has been referred to as the "Drop Dead Bill". He stated that it allows the rules to be

in effect for one more year until July 1, 2006 unless they expire sooner. He reported that if this legislation fails, we will be back for a special session in July and noted the court case *Holly Care Center v. Department of Employment* in the late 80s. He reported that this is a mechanism to continue the rules.

**MOTION:** **Senator Davis** made a motion to send H 365 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Darrington** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Davis** to carry on the floor.

**S 1226:** **CONSTRUCTION - STATE HISTORICAL SOCIETY - to provide certain requirements for state agencies and other entities of state government preparing to remove or perform renovation work on structures owned or controlled by the state; to provide for optional project review by the State Historic Preservation Office; certain requirements for state agencies or other entities of state government proposing a project that involves state-owned structures; for response to project proposals by the State Historic Preservation Office; that the state agency or other entity of state government proposing the project shall have the discretion to act upon the recommendations of the State Historic Preservation Office and for the use of recommendations of the State Historic Preservation Office.**

**Mr. Steve Guerber**, Executive Director of the Idaho State Historical Society testified that the purpose of this legislation is to require the state of Idaho to follow the same guidelines as the federal and local programs. He pointed out that the review is to ensure that there is not an adverse impact and added that it occurs at the time of planning. He explained that a copy of the process must be sent to the Historical Society, which will make recommendations on how the project can be done differently. He reported that this is strictly to recommend and added that they have 30 days to respond. He remarked that there have been projects in the past where there might have been better ways to do them. He added that this affects only state owned buildings and not lands.

**Senator Geddes** asked if he had the opportunity to do this without the mandate by law. **Mr. Guerber** replied that he has worked with the Parks Department in the past, but added that there have been three Universities and the State School in Nampa, where changes have been made that affect a historical structure.

**Chairman Burtenshaw** commented about the old court house and how the state had it's hands tied. He asked if the 30 days will hold a project up and when this notification takes place. **Mr. Guerber** replied that this is not because of the court house, but reported that it was part of the legislation last year. He pointed out that the purpose of the 30 days is to make sure there is no delay in a project. He reported that this starts when the planning process starts. He added that the notification is up front with proper contact. **Chairman Burtenshaw** noted that this doesn't involve private buildings. **Mr. Guerber** answered that it only applies to those

owned by the state of Idaho and the grounds around them. **Chairman Burtenshaw** asked if they were not informed of a state remodel or raising of a building. **Mr. Guerber** responded that ISU had their earliest building where they sandblasted the building down to the sandstone and then painted over it. He reported that they simply could have resealed it had they notified the Historical Society.

**Senator Geddes** stated that he was concerned with the review process and noted page 2, section 3 ( c ) where it talks of “or” on line 32. He pointed out that this could delay almost any project. **Mr. Guerber** replied that the Historical Society would make recommendations to do a study. He pointed to the section below and added that this is a planning tool. He reported that the state agency ultimately makes the decision.

**Senator Stegner** noted that this was similar to H 87 that failed in the House and asked if there were any modifications to this. **Mr. Guerber** answered that the bill in the House included the language on buildings and state lands. He stated that there was testimony on putting a fence on state lands for grazing. He pointed out that this only deals with buildings and reported that he brought it to the Senate due to backlog in the House.

**Mr. Guerber** explained that Idaho is one of five states with no review process and remarked that this is designed to catch a situation early and added that this deals only with buildings.

**Senator Davis** explained that he will not support the bill because of 67-4102 section 2, on page 1, line 39, “*shall cooperate to the fullest extent practicable.*” He pointed out that he doesn’t know what the “fullest extent practicable” means and added that it may bring litigation. **Mr. Guerber** answered that the wording was to tell the agency to recognize historical significance. He pointed out that if it is not practicable to do the recommendation, then they don’t have to do it. He added that it gives the agency the flexibility to say “no”.

**Senator Darrington** asked if this was greased and ready to go through the House. **Mr. Guerber** stated that no one can predict what happens in the House. He added that there were many concerns with land in the first bill.

**Mr. Dennis Tanikuni** explained that he has no opposition to historical preservation. He pointed out that he is confused with eight items. Item one relates to section 67-4102 with “shall cooperate”, “shall notify”, and “cooperate to the fullest extent possible”. Item two is if it relates to other entities of state government. Item three relates to the size of the projects before they have to notify. Item four relates to 67-4103 and “other projects” and asked if this could include excavation. Item five is that there are no definitions of structures owned. Item six relates to 67-4101 on lines 27 and 28 about the “construction project” or “other project” and added that there might otherwise be an impact. Item seven relates to 67-4103 where the state shall respond within 30 days and section ( b ) where if they don’t respond, there is a defacto approval of the project. Item eight is that there is no enforcement or oversight of the submitted information.

**Mr. Guerber** replied that this deals only with the structures and not archeological review since the building is already built. He stated that new construction is not part of this, only existing structures. He pointed out that 30 days is to assure there is no delay.

**MOTION:** **Senator Malepeai** made a motion to send S 1226 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Darrington** seconded the motion.

**VOTE:** The motion passed 5-3-1 by roll call vote. Senators voting in the negative were Geddes, Davis, and Burtenshaw.

**Senator Malepeai** to carry on the floor.

**S 1227:** **IDAHO MILLENNIUM FUND - to provide that any money appropriated, expended or distributed from the Millennium Fund shall be approved by at least a two-thirds vote of both houses of the Legislature voting separately.**

**Senator Elliot Werk** explained that there are two funds under the Millennium Fund. One is a savings fund and the other is an income fund that acts like a checking account as designated in 67-1803. He reported that on July 1<sup>st</sup> of each year, 5% of the average balance is transferred into the checking account fund. He stated that there is no statutory directive as to how to use this fund. He pointed out that if it is not touched for ten years, then we will get \$16 million to deal with.

**Senator Davis** commented that we needed to address the water bills ten plus minutes ago and noted that Senator Schroeder stuck his head in a few moments ago. He asked the guests to try to make their comments short.

**Senator Werk** stated that the vision of the Millennium Fund is to take care of smoking and drug treatment but added that this has become co-dependent. He added that this will make it more difficult to appropriate funds.

**Ms. Mary McConnell** testified that the intent of the fund was originally for tobacco prevention, cessation and treatment.

**MOTION:** **Senator Darrington** made a motion to send S 1227 to the Floor with a **DO PASS RECOMMENDATION**. **Senator Stennett** seconded the motion.

**DISCUSSION:** **Senator Davis** stated that he will not support the motion because this is putting in a statutory provision and doesn't achieve the objective. He remarked that this is not an enforceable way.

**VOTE:** The motion failed by roll call vote. 2-5-2. Senators voting in the negative were Geddes, Davis, Stegner, Little, and Burtenshaw.

**H 376:** **INTERMODAL COMMERCE AUTHORITY - Amends existing law to provide for the creation of an independent public body to be known as the local county-based intermodal commerce authority.**

**Representative Scott Bedke** testified that this was part of S 1439 last year and added that it only puts in the word “independent” that was left out.

**Senator Stegner** reported that he opposed the legislation last year.

**MOTION:** **Senator Stegner** made a motion to send H 376 to the floor with a **DO PASS RECOMMENDATION**. **Senator Darrington** seconded the motion.

**VOTE:** The motion carried by unanimous voice vote.

**Senator Cameron** to carry on the floor.

**ADJOURN:** There being no further business before the committee, Chairman Burtenshaw adjourned the meeting at 9:49 a.m.

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Senator Don Burtenshaw  
Chairman

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Lisa Lalliss-Skogsberg  
Secretary