

Senate State Affairs Committee

Minutes
2006



MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: January 13, 2006

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.

Chairman Burtenshaw introduced the Page, Jill Moratz and Committee Secretary, Deborah Riddle.

GUBERNATORIAL APPOINTMENT: **Chairman Burtenshaw** introduced **Charles Hedemark**.

Charles Hedemark addressed the committee. He retired as of the 1st of July from Intermountain Gas Company where he was Executive Vice President and Chief Operating Officer. He spent some 40 years at Intermountain Gas in a number of management positions. Served with Governor Evans originally on the energy policy committee that was in the early eighties while we were coming out of the energy crisis and they put together a team to go around the state to start coming up with some ideas on how energy might be advanced in the state of Idaho. Appointed by Governor Batt to serve as an Idaho Delegate on a year long study called the Comprehensive Review of the Northwest Energy System to review how to maintain lower cost energy.

Chairman Burtenshaw asked **Mr. Hedemark** how many members will be on the committee. He responded there will be seven members. The remaining members will appear before the committee for confirmation.

Chairman Burtenshaw asked if there was a budget in place. **Mr. Hedemark** replied that they have received a loan from the Coops Municipal as far as start up funds go. He further stated that the funding will come when contracts are written, and they will take a small percentage of those funds.

Chairman Burtenshaw asked if there were any questions from the

committee.

Senator Darrington asked for clarification of the name of the group referred to as an authority not a task force or a committee so where the use of authority is used will your committee then have the legal authority to assist others in the procurement of finance. **Mr. Hedemark** replied, that is correct. He further stated that they are in the process of organizing and about ready to request a proposal for finance; basically assistance from the people, and similar to what the hospital authority is here in the state. There is an authority in the state of Wyoming that has operated for a number of years and they are looking at how they began. Some organizational meetings have taken place, but still in the process of getting things in place to go forward.

Senator Davis made mention of **Mr. Hedemark's** history with Intermountain Gas and that from an independent judgment point of view asked what kind of assurances can he give the committee and state of Idaho that he will approach this assignment independent of his prior professional associations. **Mr. Hedemark** indicated it was a good question and responded that he has a significant amount of knowledge of gas, certainly more than electricity. The main role is to look at the financial under handing on the agreement and look at the benefits to Idaho and bringing this energy forward.

Senator Davis asked what his point of view based on his experience to date and limited experience so far as the agency starts to form, what does he think some of the greatest challenges are that face Idaho as it relates to energy. He further asked him to speak regarding the issue of transmission and whatever other significant energy delivery problems he may perceive for the state of Idaho. **Mr. Hedemark** replied that as far as transmission, the one problem is that it is rural and transmission is expensive. He stated that the authority will be able to help advance transmission.

Senator Davis asked **Mr. Hedemark** to speculate what kind of impact the sale of Pacific Core might have as it relates to any new companies' commitment to transmission. Have we heard anything, have they made any expressions to instill confidence in our state as it relates to this? **Mr. Hedemark** replied that there is a pipeline to Bakersfield, the Kern River Pipeline on the gas side, and there have been significant improvements and that he expects that to continue.

Chairman Burtenshaw asked if there were any additional questions, and remarked that the committee would not be voting today.

RS15469

Relating to funding of design, development, testing and demonstration of safe, state of the art, advanced nuclear energy systems.

Senator Bunderson explained that this a Memorial and a product of the Bio Science Interim Committee. The Federal government needs to make clear how we can use nuclear energy to reduce our dependence on foreign oil. The northeast and Midwest are primarily dependent on foreign oil for their heating. President Bush has talked about the need for

hydrogen in the future to power motor vehicles. Idaho has a premier nuclear research facility and we are one of the few states who has such a facility. The first time atomic energy was used for power in the nation was here in Idaho. However, we have learned that there are certain attitudes in Washington that question this fact. It is believed that Idaho is on the opposite side of that scale. But discussion followed and the question was asked to why can't we have a modular prototype that is clean and safe. The safe part is evident today on our military aircraft, 5,000 live and rely on that fuel and have been doing so for twenty five years. Better technology is moving forward which makes it even more clean. This Memorial is intended to explain and express clearly how we stand. This legislation is important to the state of Idaho and advancing nuclear energy as a means of strengthening national security and freeing us from these gyrations that will likely occur when we rely on foreign sources for energy.

Chairman Burtenshaw asked the committee if there were any questions. **Senator Davis** commented that on memorials that they do not necessarily come back to committee meeting and it was his understanding that **Senator Bunderson** was requesting we move to print. **Senator Davis** requested that the motion also include a request that the memorial be returned to the committee for further hearing. **Senator Bunderson** agreed. He further stated that a Statement of Purpose was useful and because of the significance of the issue we should not send it to the floor without coming back to the committee first.

Senator Davis suggested some revisions be made to the SOP before going to print. **Senator Bunderson** replied if it was moved to print, the corrections would be made.

MOTION:

Senator Little made a motion to move to print **and return to the committee.** **Senator Davis** seconded the motion,

Bob Meinen, Director of Park and Recreation presented the proposal put forward by the Governor for review entitled "Experience Idaho". The goal of the initiative is to fund needed improvements within Idaho's State Parks that will preserve Idaho's public spaces, provide economic assistance to local communities, and benefit the citizens of Idaho by expanding recreational possibilities and enriching visitor experiences within Idaho's State Parks.

Chairman Burtenshaw turned the meeting over to **Vice Chairman, Curt McKenzie.** For the presentation of Pending Rules.

PENDING RULES:

Commissioner Paul Kjellander presented the following rules for the PUC:

Safety and Accident Reporting Rules for Public Utilities.
Customer Relations rules for Gas, Electric and Water Public Utilities.
Rules for the Measurement of Stray Current or Voltage.
Railroad Safety/Sanitation Rules.

Docket 31-1101 and 31-7103 were combined regarding railroad safety

sanitation rules and safety and accident reporting rules for utilities. They

are merely updated to conform to federal regulation and are updated annually.

Docket 31-2101 customer relations rules for gas, electric and water public utilities are changes that were in response to a petition.

Docket 31-6101 rules are a result of legislation passed last year to try and eliminate that dairies might be affected by stray voltage from electric utilities.

Vice Chairman McKenzie asked if there was anyone who wished to address the PUC rules. He proposed the rules go forward. **Senator Stegner** moved to support the adoption of the rules and **Chairman Burtenshaw** seconded the motion.

Deputy Attorney General, **Joanna Guilfoxy** presented the following rules for the Department of Administration:
Rules Governing the Idaho Emergency Communications Commission.

Vice Chairman McKenzie asked if there was anyone who wished to address the Department of Administration rules. **Senator Stegner** moved to support and approve the rules; **Chairman Burtenshaw** seconded the motion.

Docket 38-0601-0401 and Docket 38-0602-0501 were approved by the committee.

Deputy Attorney General, **Christopher Clark** presented the following rule for the Office of the Treasurer:
Rules Governing the College Savings Program.

Docket 54-0201 initially a temporary rule; a modification of the existing definition of cash as it relates to cash deposited in a college savings account. The change is needed due to compliance of federal law.

Vice Chairman McKenzie asked if there was anyone who wished to address the Office of the Treasurer regarding the modification of the rule. Senator Darrington moved to approve the rule and it was seconded by Senator Geddes.

ADJOURN:

There being no further business before the committee, **Chairman Burtenshaw** adjourned the meeting at 9:30 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: January 16, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

**ABSENT/
EXCUSED:** Senator Stennett

GUESTS: See attached sign in sheet.

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

**GUBERNATORIAL
APPOINTMENT:** **Chairman Burtenshaw** introduced **Larry A. Crowley**.

Larry Crowley addressed the committee regarding his employment history. He has a twenty-year history with the Idaho Power Company but is now a consultant. He specializes in energy and utility matters, and develops and implements practical solutions for energy service providers and customers. While at Idaho Power he was the manager of Rates and Regulatory Affairs, Manager of Power Management, and Senior Manager of Strategic Planning. Additionally he was President of Idaho Power Resources Corporation, a wholly owned subsidiary of Idaho Power Company and was responsible for developing domestic and international non-regulated business initiatives to provide future revenue and earnings growth.

Chairman Burtenshaw advised **Mr. Crowley** that the committee would not be voting on his appointment today.

Chairman Burtenshaw introduced **E. Robert (Bob) Mooney**.

Mr. Mooney has over thirty years of experience in a broad variety of roles as a consultant to the electric utility industry and developer/owner/operator of energy projects. Since 1981 he has owned Mooney Consulting and is the President of Malacha Power Project, a 32.5 HM hydroelectric project in Northern California.

Senator Little asked if he had any advice regarding eminent domain issues. **Mr. Mooney** replied that he had no authority but many challenges to face and no real advice at this time. **Senator Davis** commented that on paper **Mr. Mooney** looked impressive but asked him to speak to the issue of conflicts or the potential for any real problems. **Mr. Mooney** disclosed that his only client is the City of Idaho Falls of which he has a long history.

As he sees it there will be no conflicts of interest. At this time the authority is his priority. **Senator Davis** asked if he would have conflicts as to his consulting business. **Mr. Mooney** replied no because he is the only employee.

Chairman Burtenshaw advised **Mr. Mooney** that the committee would not be voting today. He then introduced **Ralph Williams**.

Mr. Williams told the committee that unlike the others his direction is mostly in distribution not transmission. He has thirty-seven years experience in the Northwest power industry. Since 1995 he has been the General Manager of United Electric Co-op, Inc. His prior employment was with Raft River Electric. He commented that since deregulation and the wholesale market broke up that he believed it was good for the future of energy. **Senator Davis** commented that Idaho was lucky to have such a strong collection of individuals with diverse experience, but asked if he thought there would be any conflicts. **Mr. Williams** responded that the only possible conflict may be with Intermountain and Idaho Energy. **Senator Davis** asked due to the need for growth regarding load demands what assurance could **Mr. Williams** give the committee that he could separate the two? **Mr. Williams** replied that he will his best to do so.

Chairman Burtenshaw said the committee would not be voting today on his appointment. At this time **Ron Williams**, attorney for the authority, asked to address the committee.

Mr. Williams said the issues regarding conflict have been addressed. Provisions have thoroughly been discussed and he is keeping tabs on the issue. **Senator Davis** commented that the state needs authority to be effective. **Senator Little** asked if a surety bond had been purchased. **Mr. Williams** replied no. **Senator Little** asked him to report back to the committee regarding procedure for bonding and the cost.

Chairman Burtenshaw commented that he was very impressed with all the candidates, and stated again that the committee would not be voting today.

Joseph S. Bleymaier addressed the committee regarding his appointment as Administrator for the Idaho Division of Veterans Services. He is originally from Walla Walla; and grew up in an Air Force family. He flew 300 missions in Vietnam. Three years ago he was appointed as the Project Coordinator for the veterans cemetery and appointed Director of the Idaho State Veteran's Cemetery soon after.

Senator Davis commented how impressive **Mr. Bleymaier's** service record was along with his education. He asked him to tell the committee about "Walkin The Talk, Inc.". **Mr. Bleymaier** responded that it was a non-profit organization established to assist in building character in children. The organization's main focus is teaching accountability for actions.

Chairman Burtenshaw thanked **Mr. Bleymaier** and advised him that the committee would not be voting on his appointment today.

RS15422 Relating to horse racing; amending Section 54-2508, Idaho Code, to provide correct terminology, to revise license application requirements for race meets, to revise license specification provisions, to provide for the simulcast purse moneys fund, to provide rulemaking authority and to make technical corrections; and declaring an emergency.

Jack Baker, Executive Director of the Racing Commission addressed the committee. Three changes have been accomplished as a result of legislation passed. The future of horse racing has been greatly affected due to the influence of the internet regarding poker, sports betting, and internet casino gaming. Pari-Mutuel betting, bingo, and the lottery need to be maintained in order to stay healthy. Horse racing is a major part of agriculture by creating jobs and strengthening the economy.

MOTION: **Senator Stegner** moved to print and **Senator McKenzie** seconded the motion, and the motion carried by voice vote.

RS15412 Relating to horse racing; amending section 54-2502, Idaho Code, to define "Pari-Mutuel" and "Simulcast" and to revise the definition of "Horsemen's Group".

Mr. Baker said it basically refers to the change in definition. **Senator Little** asked if breeders were included? **Mr. Baker** said yes, they are included. **Chairman Burtenshaw** asked if the races were simulcast elsewhere? **Mr. Baker** responded no, we are a receiver only.

MOTION: **Senator McKenzie** moved to print and **Senator Little** seconded the motion. The motion was carried by voice vote.

RS15432 Relating to horse racing; amending section 54-2512, Idaho Code, to provide correct terminology, to revise application provisions for licenses authorizing simulcast and/or televised races and to revise provisions relating to advance deposit wagering; and declaring an emergency.

Mr. Baker said this proposed legislation provides for protection against missing funds from simulcast. **Chairman Burtenshaw** asked if the problem that occurred in the past will be corrected? **Mr. Baker** responded, yes. **Senator Davis** asked if the agreement reached was voluntary? **Mr. Baker** advised that the horsemen and track have an agreement and the racing commission will be custodial. The changes needed to be made because the payments were not made as outlined.

MOTION: **Senator Stegner** moved to print; **Senator Malepeai** seconded the motion, and motion was carried by voice vote.

Chairman Burtenshaw advised that they needed to vote on Charles Hedemark's appointment to the Idaho Energy Resource Authority.

Senator Stegner made the motion and **Senator Davis** seconded. The motion was carried by voice vote.

ADJOURN: There being no further business before the committee, **Chairman Burtenshaw** adjourned the meeting at 9:20 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: January 20, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: None.

GUESTS: Sign in sheet attached to original minutes on file.

CONVENE: **Chairman Burtenshaw** called the meeting to order at 8:00 a.m.

MINUTES: **Senator Darrington** made a motion that the minutes from Friday, January 13, 2006 be approved. The motion was seconded by **Senator McKenzie**. The motion was carried by voice vote.

Senator Malepeai made a motion that the minutes from Monday, January 16, 2006 be approved. It was seconded by **Senator Darrington**. The motion was carried by voice vote.

GUBERNATORIAL APPOINTMENTS: **Senator Little** made a motion to confirm Larry A. Crowley, E. Robert (Bob) Mooney and Ralph Williams to the Idaho Energy Resources Authority. **Senator Stegner** seconded the motion. The motion was carried by voice vote.

Senator Darrington made a motion to confirm Joseph S. Bleymaier as the Administrator for the Idaho Division of Veterans Services. The motion was seconded by **Senator Stegner**. The motion carried by voice vote.

Chairman Burtenshaw requested sponsors and **Senator Darrington** stated he would sponsor Ralph Williams, **Senator Little** will sponsor Bob Mooney, and **Senator McKenzie** will sponsor Larry Crowley. **Senator Davis** will sponsor Joseph Bleymaier.

RS 15342 **Chairman Burtenshaw** introduced Ted Roper, Manager of Industrial Special Indemnity Fund. **Mr. Roper** addressed the committee and stated that they are part of the Worker's Compensation system. They are funded solely through assessments on worker's compensation insurers and self insurers who are licensed or authorized to transact business in Idaho. The assessments cover both administrative operations or claim expense. They are requesting a change to the statute to change the timing and frequency of the assessment process. The industrial commission currently processes about 2,800 transactions per year and the proposal would reduce that to approximately 2,100 which equates to about 25%.

The savings would be substantial to time, cost to the insurers, the commission, and the fund.

Senator Stegner moved to print RS 15342 and **Senator Malepeai** seconded. The motion carried by voice vote.

SJM 114

Senator Bunderson addressed the committee regarding SJM 114 and stated that our nation is dependent on foreign oil which is used for home heating. If the technology was already in process and developed, we could have clean, safe, modular, small nuclear power plants and they could be replicated across this nation. Nuclear power plants have the ability to alter and eliminate greenhouse gases. President Bush has stated we need to use alternative fuel sources and he specifically mentioned nuclear. Idaho could help the Idaho National Laboratory (INL) to fulfill its role and mission as the premier nuclear research facility in the nation. The memorial was produced so that the legislature of Idaho could state how we feel about nuclear energy, INL, and the prospects of removing our dependency on foreign energy sources.

Senator Bunderson stated this legislation was passed to move forward and continue with research with nuclear energy. There are 3 reasons; 1) for electrical power, 2) the nuclear facilities would produce hydrogen, and 3) hydrogen would be the fuel source for motor vehicles in the future.

Chairman Burtenshaw requested **Mr. Lou Riepl**, Manager of the Boise Idaho National Laboratory to address the committee regarding the memorial. **Mr. Riepl** stated it matters to the Department of Energy to understand and appreciate the wishes of the Idaho Legislature. INL is committed to the concept of energy security the memorial denotes and acknowledges that. Additionally, INL is the leader in the nation for research.

Chairman Burtenshaw asked **Mr. Riepl** to give the committee an idea if there was a possibility for a test reactor that could actually produce electricity? **Mr. Riepl** stated that it was considered a high research priority for the laboratory and the Department of Energy. The consensus is that we do not need the large nuclear generating facilities any longer and the smaller more modular reactor facilities are far more appropriate. INL is investigating a 250 mega watt modular reactor that could be self-contained and be more efficient in burning the nuclear fuel.

Senator Geddes stated that in his career dealing with environmental compliance and regulations, a lot of the fear comes from what people do not understand. He asked **Mr. Riepl** to tell the committee about the outreach INL is engaged in to help educate people and help them understand what we are doing and why? **Mr. Riepl** replied that the director of INL made it clear that INL is an open book. They have nothing to hide.

Senator Malepeai asked **Mr. Riepl** to address the issue of fear as it relates to waste? **Mr. Riepl** responded that waste is truly a political issue as opposed to a technical issue. The fuel source of nuclear power is

incredibly energy dense. In the process of extracting energy from uranium fuel, nuclear power generates far less waste than combusting fossil fuels. The waste issue is actively addressed. **Senator Malepeai** asked if the United States is behind other countries? **Mr. Riepl** stated there is a concern that we have fallen behind in nuclear energy research. Both Japan and France are investing heavily in the arena and their investments are paying off.

Chairman Burtenshaw asked if the 250 mega watt unit would be self contained and would the waste be used up? **Mr. Riepl** replied that an iris reactor is being examined and the intention is that the modular reactor will be able to function its entire lifetime without having its nuclear fuel removed and replaced with new fuel. This is currently the case in our naval fleet. In the future the reactors will burn more efficiently but not burn everything. The hope is to recycle and reuse.

Jeremy Maxand, Director of Snake River Alliance, spoke to the committee regarding concerns about some of the wording in the resolution and the perception about the existing technology vs. the future regarding nuclear technology. The resolution mentions climate change and our dependency on foreign oil as the primary reason for advancing our research on nuclear power. Global warming is an issue that needs to be dealt with now. Technology will not be in place for decades.

Senator Little commented that there is diversity among the environmental groups. The solution for global warming is way off, but we should not overlook nuclear energy as an option. Something needs to be done and we cannot afford over look any alternative. Although he appreciates the work being done by his alliance, long term decisions need to be made regarding the economics of Idaho.

MOTION: **Senator Geddes** moved to send SJM 114 to the Senate floor with a do adopt recommendation. **Senator Davis** seconded the motion. A roll call vote was taken by the Secretary, Deborah Riddle.

Senator Darrington - Aye
Senator Geddes - Aye
Senator Davis - Aye
Senator Stegner - Aye
Senator Little - Aye
Senator McKenzie - Aye
Senator Stennett - Aye
Senator Malepeai - Aye
Senator Burtenshaw - Aye
The motion carried 9-0.

S 1260 **Mr. Baker**, Executive Director of the Racing Commission, spoke to the committee and stated that S 1260 relates to definitions. Pari-Mutuel and Simulcast was not in the statute. The Horsemen's Group needed to be redefined.

MOTION: **Senator Little** moved, and **Senator Stegner** seconded the motion to send S 1260 to the floor with a do pass recommendation. The motion was carried by voice vote.

S 1261

Mr. Baker stated this bill relates to the race commission becoming the custodian of simulcast monies. Monday it was asked whether or not the money should go to the State or the Horsemen's Group. He introduced **David Hahn**, Department of Financial Management to address the issue. **Mr. Hahn** addressed the issue of the interest being retained in the fund. **Senator Little** asked if the Treasurer's Office charged a fee? **Mr. Hahn** replied there would be an administrative fee. **Senator Little** asked if the fee would be a sliding fee or flat fee. **Mr. Hahn** stated he did not know.

Senator Little commented that any interest received was to be returned to the fund. He asked how many funds have similar language in their statutory language regarding funds managed by the Treasurer's Office? **Mr. Hahn** answered that there are several. Forty four agencies have funds that retain interest. Those funds are governed by Federal Law which dictates that the funds retain interest.

Senator Little followed up and asked if it means the state retains or the fund retains? **Mr. Hahn** said the fund. **Senator McKenzie** asked if there was a management fee? **Mr. Hahn** stated yes, there is a management fee that is assessed. **Senator Davis** stated that as he understands this legislation, it will provide that the interest will be returned and the Racing Commission will give it to the participants. He asked for an example of where else that is done? **Mr. Hahn** replied that he could not think of a fund. **Senator Davis** asked what kind of dollars are we talking about? **Mr. Hahn** stated an interest amount of \$6,100.00 assuming the fund balance would grow to \$450,000.00 with the annual interest at 2.5%, which was for fiscal year 2005.

Chairman Burtenshaw asked if all the funds will strictly go back to the Horsemen's Group or used for repair, etc. on the parks? **Mr. Baker** replied that this fund originates from part of the pari-mutuel handle. When a dollar is wagered, 3.6 cents of it belongs to the horse, never to the state or the track or any other entity. The proprietary right to the money is always the horsemen's. **Senator Davis** asked if the participants would be better or worse off if the bill was changed? **Mr. Baker** responded they would be ahead even if they didn't receive interest off of this, and with their protection they would still be ahead based on what the past management did to them. **Mr. Baker** stated further that the primary objective is protection of the fund as it grows.

MOTION:

Senator Little moved that S 1261 be sent to the floor with a do pass and it was seconded by **Senator Stegner**. **Senator Davis** said he had issues with the interest portion. It needs to be worded differently for his support. The most dangerous component has nothing to do with the principal objective of the bill and it sets a precedent. Other industries will want to do this and use S 1261 as an example. He said he would not support the motion for that limited purpose.

Senator Little asked **Mr. Baker** if he considered going to a private bank? **Mr. Baker** stated they looked at that option. **Senator Little** requested holding this legislation until more information was available from the Treasurer and see if the Racing Commission has an opportunity to go to a

private bank. **Chairman Burtenshaw** stated if it is their money they should receive the interest on it.

Chairman Burtenshaw asked about the other funds and if it is in a different account? **Mr. Baker** replied that the money received from the pari-mutuel handle will be a tax, it is the difference. The pari-mutuel handle is taxed for the small track fund, for the breeder's fund and for operating costs. The money is agreed upon between the horsemen and management. **Chairman Burtenshaw** asked if they could take money out of the fund and use it for the operation money? **Mr. Baker** answered no. **Senator Davis** stated maybe his position needs to be softer based on that answer. He asked **Mr. Baker** if out of all the tax that is levied, does the tax payer have to pay anything to the Racing Commission? **Mr. Baker** replied that they are self-funded.

Senator Little withdrew his request and stated he would stand by his original motion. **Senator Stegner** seconded the motion. The motion passed by voice vote.

S 1262

Mr. Baker stated that S 1262 has to do with the portion of wagering that is done through the account wagering system. Expenses at the live race tracks have accelerated, mainly worker's compensation. The commission is taking 10% of the original 40% and giving it to the tracks to put towards their expenses.

Senator Little asked if simulcast would be giving up some of the money available out of the handle to subsidize live racing? **Mr. Baker** replied it was being taken away from the simulcast operation and given directly to the race track. **Senator Geddes** commented that the deleted language on page 1 talks about what constitutes the qualifications to have a racing license. It looks like this deleted language is deleting all of that, is that correct? **Mr. Baker** answered yes. Discussion continued and the 46 race days were explained as well as the 2-day requirement for the small operator to be licensed. **Senator Davis** suggested that S 1261 and S 1262 be combined to ensure that the 46-day standard makes it through with the deletion of sub part b.

Senator Little asked if S 1262 would pass and S 1261 failed to pass, would there be a requirement for any live racing? **Mr. Baker** responded yes, the statute would remain and the proposed changes would not be passed. Anything over 5 million requires 46 race days. **Senator Davis** suggested taking S 1261 to the amending order, and put S 1262 as a piggy back to it. You would get the benefit of the day requirement in there, and ensure if you delete sub paragraph b, that both proposals make it through the legislative process, and the Governor will sign off on it. He asked if what he explained made sense? **Mr. Baker** replied that his point was well taken.

Jackie Libengood, Management Assistant for the Racing Commission addressed the committee and stated that in S 1262 there is a provision that says no license authorized in simulcast and or televised races shall be issued to persons who are not also licensed to conduct live races in

the State of Idaho. A live meet must be run to be licensed in simulcast. **Senator Davis** asked for the language requiring that live races actually be conducted. **Ms. Libengood** replied that the Horsemen's Group needs an agreement which addresses but not limit the number of live race days and their purses. If a live race is not run, they will not get a Horsemen's agreement, a license will not be issued for the live meet or simulcast.

Chairman Burtenshaw asked if this was cleared up? **Senator Davis** stated that S 1262 does not provide protection and suggested several options. **Chairman Burtenshaw** asked **Mr. Baker** to hold S 1261 and S 1262., rewrite them, and incorporate them into one bill. **Mr. Baker** stated he would be happy to do so, and do whatever it takes.

MOTION: A motion to that S 1261 be returned to the sponsor was made by **Senator Stegner** and **Senator Little** seconded. Chairman Burtenshaw stated as he understands it there is a motion on the floor to pull S 1261 and not act on S 1262, and return them both to the sponsor. A voice vote was taken and the motion carried.

Chairman Burtenshaw asked **Senator Little** to carry S 1260 and he agreed to do so.

ADJOURN: There being no further business before the committee, **Chairman Burtenshaw** adjourned the meeting at 9:50 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: January 23, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: Senator Davis

GUESTS: Sign in sheet attached to original minutes.

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

MINUTES: **Garrett Nancolas**, Chairman for the Idaho Emergency Communication Commission (IECC) addressed the committee with their annual presentation. **Mr. Nancolas** stated the IECC was created due to legislation passed during the 2004 session. This report is required as part of the legislation created outlined in Section 31-4816 of Idaho Code. The Commission consists of 14 members; 13 are voting members. Three members are by nature of the position and the remaining members are appointed by the Governor and represent various local statewide governmental associations, and the public and private sectors.

The Commission conducted 11 meetings between January 2005 and January 2006. During each meeting there was open discussion time allotted for members of the community to attend. Rules were negotiated and approved governing the IECC. They have been published and are now effective as temporary and proposed until the 2006 legislative session, where they will be considered by the Legislature for permanent status.

The Commission issued a survey to all counties soliciting information regarding their PSAPs (Public Safety Answering Points). The information gathered will be utilized to develop a profile of each PSAP, as well as a needs assessment, to achieve Phase II E911 compliance as defined by the Federal Communications Commission (FCC). The next step is to analyze the data from the survey and identify areas in the state that lack enhanced 911 capabilities.

Senator Darrington asked what is the main emphasis of the Commission? **Mr. Nancolas** responded that the primary function of the Commission is to research the capability and coordination of the capability of E911 systems throughout the state, to work with the Statewide Interoperability Executive Council (SIEC) , and make sure that a plan implements an interoperable system throughout the state. Along

with the research, try to identify who needs help in attaining that status and make sure the funds are directed in their direction. Additionally, the Commission is to encourage consolidated systems, which will benefit both financially and from an interoperable standpoint to save money and time, and be more efficient. **Chairman Burtenshaw** thanked **Mr. Nancolas** for his presentation.

Chairman Burtenshaw introduced **Dan Charboneau**, Director of the Idaho State Police and to present the Statewide Interoperability Executive Council's presentation. **Mr. Charboneau** stated that the SIEC had a milestone this year, the Idaho Cooperative Agencies' Wireless Interoperable Network (I-C-A-WIN). The Council worked 18 months to develop a concept as to how Idaho can get from where it is, to where it needs to be by 2012, and that is to have interoperability between all public safety entities within the State of Idaho. They have put together the framework for communication in a time of crisis. We can no longer rely on one technology.

Mr. Charboneau stated the Council is working diligently to plan for the future. On February 8, during Digital Government Day, the newest version of its public service message will be shown to bridge together where it was last year to where it is today, and to paint the picture for the future. There are 20 members on the Council with diversity who come together to do the right thing for the citizens of Idaho. They currently operate under an executive order but are in the process of looking for a legislative home for the SIEC. They want to ensure there is a future so that the plans implemented now will have a group to carry them forward into the future.

Chairman Burtenshaw asked if satellite communication is being used? **Mr. Charboneau** replied that launching a satellite to deal with the security needed for this type of transmission, is something being looked into. They are also looking at microwave and considering fiber optic land line capability. 2012 is an important date because the FCC is mandating a conversion of how radio traffic is transmitted across the state. The bandwidth will be reduced, which means that law enforcement public safety will have to reprogram or change out their radios to allow the FCC ruling. The technology being used now in public safety is 1960's technology. **Chairman Burtenshaw** thanked **Mr. Charboneau** for his presentation.

Chairman Burtenshaw introduced **Brent Reinke**, Chairman of the Idaho Criminal Justice Commission. He discussed the Commission's role in the juvenile justice and criminal justice systems. **Mr. Reinke** stated that these issues are very current and that Governor Kempthorne wanted to make sure they are addressed this session. The commission consists of 23 members and their purpose is to provide policy-level direction related to the State's criminal justice system. Funding is provided from the Department of Corrections, Department of Juvenile Corrections, State Judiciary, and the State Police.

Communication and cooperation of various facets of the community of

criminal justice professionals is of utmost importance in promoting efficiency and effectiveness. It is key he stated, and in the years to come we will not see expanding state budgets and we will be faced with real challenges. The Commission worked tirelessly to review the most significant criminal problems facing Idaho. Those problems are sex offenders, methamphetamine, gangs and prison population growth. He outlined the short term and long term goals and strategies of each, which the Commission will be working toward and their recommendations to the Governor. As for the future of the Commission, they will meet six times during the year to continue working on the four topics. Additionally, they will keep a close eye on core areas and begin to review other interrelated criminal justice issues across the state. A concerted, concentrated effort must be made as they look to the future regarding these issues.

Senator Darrington commented that he strongly recommends the committee view the DVD **Mr. Reinke** has on methamphetamine. This DVD was made by Dr. Mary Holley whose brother committed suicide as a result of methamphetamine. It is dramatic and makes it clear what this drug does to the body. **Mr. Reinke** added that Dr. Hobbs actually breaks down what happens in the brain the first time you use methamphetamine. This drug is something we will have to deal with in each community in Idaho. The DVD helps to fund Mothers Against Methamphetamine in the national effort.

Senator Stegner added that he would encourage the council to publicly emphasize the tie between substance abuse and mental health. There is a high percentage of dual diagnosis within the correction system. He stated that he believes it would be important to recognize that this is a common occurrence, and not necessarily two separate topics. He asked **Mr. Reinke** to consider taking this suggestion back to his commission for consideration. **Mr. Reinke** commented that there is no one answer to deal with this. He feels what is lacking are services at the local level.

Senator Little asked what resources are available from the state to help with early intervention regarding gangs? **Mr. Reinke** replied that it is one of the things that need to be developed.

Mr. Reinke deferred to **Mr. Charboneau** at this time and he stated that they are in the middle of trying to work all of this out. There is a group called GREAT which is Gang Reduction Education And Treatment. It is a boiler plate being looked at as a model. Education is on their agenda as a key issue in making sure that the next generation will not become gang members. Schools and the community are components in providing after school activities. It is a complex question with no simple answer.

Senator Darrington stated that denial is a huge problem in approaching the gang problem. **Senator Little** added that early intervention is needed.

Chairman Burtenshaw asked what is the average age of gang members? **Mr. Reinke** responded as young as 9, 10 and 11, but the bulk of the group are probably 18 to 25 years of age.

Senator Malepaei asked **Mr. Reinke** if refocusing our attention to resource officers as a line of communication to law enforcement and school officials in working with gang members, would this help to assist

and prevent the young to falling into this trap before they graduate into the next level of group activity? **Mr. Reinke** replied whatever we can do to assist is important. **Mr. Charboneau** added that he doesn't disagree with **Senator Malepaei** and whatever we can do to impact them at an early age and provide role models will lead us into a future of non-gang members. A sustainable program and message must be developed to continue year after year for continued reinforcement. This may or may not work in all communities. **Senator Geddes** asked **Mr. Reinke** what normally comes first, the mental illness or the chronic drug abuse? **Mr. Reinke** stated he was not qualified to answer that question. **Chairman Burtenshaw** thanked **Mr. Reinke** for his presentation.

ADJOURN: There being no further business before the committee, **Chairman Burtenshaw** adjourned the meeting at 9:10 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: January 25, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: None.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

CONVENE: **Chairman Burtenshaw** called the meeting to order at 8:05 a.m.

GUBERNATORIAL APPOINTMENTS: **Chairman Burtenshaw** introduced **Randolph J. Hill** appointee to the Idaho Energy Resources Authority and asked **Mr. Hill** why he would like to be a part of the Authority. **Mr. Hill** stated he was approached by Bob Mooney, Chairman of the Authority and Ron Williams following the enactment of the statute. He believes that his experience in the energy industry over the last 9 years will add some value as well. **Chairman Burtenshaw** asked **Mr. Hill** to give the Committee an overview of his experiences. **Mr. Hill** claimed his biggest claim to fame is the fact that he attended college with **Senator Little**, at the University of Idaho. He graduated from George Washington University and received his law degree from Georgetown University. He was employed with the firm of Cravath, Swaine & Moore on Wall Street for approximately 10 years, doing transactions for financing and developing a number of different power generation facilities throughout the United States and other parts of the world. He represented both developers and contractors such as Westinghouse and financiers such as GE Capitol. **Mr. Hill** moved back to the Boise area in 1990 where he continued to do that kind of work and hooked up with a newly formed entity called Ida-West Energy Company. In 1993 he joined the company and was Vice President, General Counsel and then President and CEO in 1997. In 2004 IDACORP decided to get out of the wholesale power market and he joined Washington Group International, Inc. where he is responsible for the major transactions within the company, and works on project development with a bigger emphasis on the power arena. Currently he is involved in developing a number of power facilities throughout the world including Germany. He has a long history with the power industry as a lawyer, consultant, and a business man.

Chairman Burtenshaw asked the Committee for any questions. **Senator Darrington** asked **Mr. Hill** about his term. **Mr. Hill** responded that he

believed they set up staggered terms but expected a renewal. **Chairman Burtenshaw** stated that Idaho is the third largest growing state in the nation and that before long we would be feeling the power crunch. What does he see in the foreseeable future that might come on line to help with that situation? **Mr. Hill** replied that the Authority is in a unique position to assist and facilitate low cost financing for much needed transmission projects. This will probably be the major focus but what he sees as the biggest problem for the Western United States is that the grid is inadequate. We need transmission projects to transverse states as well as internally. The ability to obtain low cost financing will assist in making the decision to make a capitol investment to build the needed facilities.

Senator Little stated the Committee will be addressing eminent domain. Given his legal experience does he have any counsel as far as the concept of eminent domain and how we can add to the grid and increase the capacity and not trample on private property rights? **Mr. Hill** replied that the power of eminent domain has existed for a number of types of entities. There is authority under the Federal Power Act under certain circumstances, and it is a necessary power and designed to serve the citizens. It is a necessary evil, but he personally believes in private property rights.

Senator Little asked if there was a proposal to expand federal authority, what was the proposal, and if it made it into the final energy bill? **Mr. Hill** answered yes, he believed that it did. The proposal was to expand the ability to foster transmission systems in interstate commerce because the administration recognized that the grid is inadequate.

Senator Davis stated that a piece of legislation being printed on the House side would put a constitutional provision banning takings for any commercial enterprise. He asked **Mr. Hill** if he had looked at it, and if so, what kind of adverse impact does he believe it would have on the effectiveness of the energy authority? **Mr. Hill** answered that he has not had an opportunity to look at that legislation. **Senator Davis** said he would appreciate his input on that.

Senator Davis asked **Mr. Hill** to speak to the issue of conflict with the Washington Group, and if they are in the process of bidding on the construction of transmission projects, how will he approach this area of conflict? **Mr. Hill** replied that it was a very appropriate question. The Washington Group focuses primarily on power generation and the transmission work they currently do is in Iraq. It is not something they are doing here in this part of the country. If anything were to come about where the Washington Group was a bidder on a project that the Authority were to finance, he would simply disclose the matter and not participate in any way.

Senator Geddes stated that he sees Idaho as a magnet for companies who want to come here and develop power generation. He asked **Mr. Hill** if he could explain why this is happening now? What is the attraction? **Mr. Hill** replied that there are developers who are proposing power plants in virtually every state where there is a perceived need. The developers

believe there is a need for additional generation in this state and it is solidified by frequent requests for proposals. He stated further he didn't think there is anything in Idaho that is enticing developers, it is the market and Idaho is not alone. **Senator Geddes** replied that he liked his answer.

Senator Davis asked **Mr. Hill** if coal fired generating facilities are exempt from federal law under the Clean Air Act? **Mr. Hill** answered they are not exempt from regulation. Coal fired power plants have to go through a fairly rigorous process to get air permits. **Senator Little** stated he believed there was an exemption for the permitting of larger plants in the Clean Air Act.

Chairman Burtenshaw thanked **Mr. Hill** and advised him that the Committee would be voting on his appointment next meeting.

Senator Stennett asked to address the Committee briefly and stated that the EPA has concluded that fossil fuel combustion waste does not warrant regulation as hazardous under subtitle c of the Resource Concentration Recovery Act. He will email this to the Committee.

Darrell Kerby was introduced by **Chairman Burtenshaw** to address the Committee regarding his appointment. **Mr. Kerby** stated that he was approached also by Bob Mooney. His involvement in the utility business spans 20 plus years in the municipal area for electrical generation and transmission. That is his focus in terms of the energy area. **Chairman Burtenshaw** commented that he has a lot of support here and we will hear from them to get a handle on the Authority and the members. He asked **Mr. Kerby** what he thought we would be looking at in the future for new generation? What is his thinking on nuclear energy? **Mr. Kerby** replied that in the near future Idaho will be facing scarcities in acquisition and new resources. It will not be any less difficult to construct plants primarily for environmental concerns. The nuclear energy field will continue to have waste issues that are not going to go away either. It will depend a lot on the political issue and the resolution, as to whether or not nuclear energy will be a major source of new generation for consumers in our region of America.

Senator Davis asked **Mr. Kerby** what he perceives is the role of condemnation and transmission, if he can connect the need for the two, and whether there should be some new or additional prohibition in that area? **Mr. Kerby** stated that transmission facilities are nothing more than conduits or highways for transportation. There is a need for public highways and other public transportation systems that need to be filled, and in order for health and safety to continue in our economy we need for eminent domain to remain. In Idaho, he believes that there are enough safeguards in place that add an additional level of safety.

Chairman Burtenshaw stated he read that Canada is proposing to build a transmission on another transmission line and export energy into the United States. Does anyone know about that? **Mr. Kerby** said he isn't aware of this, but he does know that transmission is the biggest issue

facing Idahoans and the rest of the grid in the Northwest region. There is a surplus that cannot get to areas that need it, so that is the greatest bottleneck in getting energy to consumers. **Ron Williams**, attorney for the Authority addressed the Committee and stated that he is familiar with the Canadian Company called Northern Lights Transmission Project that is proposing a Western regional transmission line. **Chairman Burtenshaw** asked if it were a possibility in the future? **Mr. Williams** replied there have been discussions of some large generation projects. Northern Lights has 2 proposals. One comes from Alberta through Bonners County and connects to the mid Columbia and he believes is predominately hydro based.

Chairman Burtenshaw asked **Representative Eskridge** to speak on Mr. Kerby's behalf. **Representative Eskridge** stated that he supports Mr. Kerby as a board member of the Authority. He has known Mr. Kerby for some years. The city of Bonners Ferry is a customer of Bonneville Power Administration and this is when he first became acquainted with him. He worked with him on power supply issues, electric grade issues, and other issues that involve service from a retail utility to the retail customer. Bonners Ferry has its own electric generation facility, a sizeable hydro project. Mr. Kerby was responsible for the recent upgrade and financing to the facility. He will be a valuable addition to the Energy Authority.

Representative Anderson spoke to the Committee and stated that he agreed with Representative Eskridge, and said that he pretty much summed up his feelings as well. He would feel comfortable dealing with him on any issue. He is a great choice for this Authority. **Senator Keough** addressed the Committee and stated that the strengths of Mr. Kerby have been outlined eloquently. She too supports Mr. Kerby and he is an excellent addition and strong player in the start up of the Authority.

Chairman Burtenshaw advised **Mr. Kerby** that the Committee will vote on his confirmation at the next meeting.

PRESENTATION: **Director Reinke** from the Idaho Department of Juvenile Corrections presented the DVD Mothers Against Methamphetamine to the Committee.

ADJOURN: There being no further business before the committee, **Chairman Burtenshaw** adjourned the meeting at 9:25 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: January 27, 2006

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: Senator Geddes.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

CONVENE: **Chairman Burtenshaw** called the meeting to order at 8:05 a.m.

MINUTES: **Chairman Burtenshaw** welcomed everyone to the meeting and asked for approval of the minutes for Friday, January 20. **Senator McKenzie** made a motion to approve the minutes and **Senator Stegner** seconded the motion. The motion was carried by voice vote.

GUBERNATORIAL APPOINTMENTS: **Chairman Burtenshaw** requested a vote on the confirmation of Randolph J. Hill and Darrell Kerby. **Senator Little** made the motion to confirm both Mr. Hill and Mr. Kerby to the Idaho Energy Resources Authority. **Senator McKenzie** seconded the motion. **Chairman Burtenshaw** asked for any discussion on the motion. The motion carried by voice vote.

Senator McKenzie stated that he would be happy to sponsor Mr. Hill. **Chairman Burtenshaw** commented that **Senator Keogh** asked to sponsor Mr. Kerby, and the Committee gave their approval.

RS 15779 **Chairman Burtenshaw** asked **Eugene Baker** of the Racing Commission to address the Committee regarding RS 15779 which relates to horse racing. **Mr. Baker** stated that S 1261 and S 1262 were rewritten to include both statutes as spelled out in the Statement of Purpose. **Chairman Burtenshaw** asked the Committee if they had an opportunity to review the legislation? **Mr. Baker** suggested that RS 15779 go to print. **Senator Stegner** moved to print RS 15779 and **Senator McKenzie** seconded the motion. **Chairman Burtenshaw** stated that RS 15779 had been moved and seconded to print and asked if there was any further discussion. He asked **Mr. Baker** if he had any feedback from **Senator Davis**? **Mr. Baker** replied that there was discussion regarding the term pro rated vs. weighted. It was decided to leave the term as written. The motion to print RS 15779 was carried.

S 1294 **Senator Stennett** stated that the Tax Commission was here and he

wants the experts to make sure we are doing what he thinks will be accomplished. Since the wholesale deregulation of power was given to us by the Federal Government, merchant plants have not had a taxing structure set up for them. The plants that are located in the county will have a much larger impact and all of the tax revenue will stay within the county. The bill attempts to treat a merchant plant just like a public utility. They would be assessed by the Tax Commission and apportioned across the lines of all the counties that they serve. The intent of the bill is not to treat merchant plants any differently than a utility plant for taxation purposes.

Senator Stegner asked **Senator Stennett** why he limited the bill to coal plants and not just state utility generating plants? What is wrong with applying the same standards to a gas plant or any other type of utility plant? **Senator Stennett** replied that he has a narrow focus with this bill. At this time he does not have an answer for him. Most smaller plants being built in Idaho would fall outside of this.

Senator Little commented that he is not familiar with Section 63-405 of Idaho Code, and assumes that like a hydro power facility that the taxes are shared with all the counties served. He asked if the bulk of the taxes are paid wherever they are located? How are the current public utilities assessed? How will this be different, and if we didn't make this change, how would this plant be taxed? **Senator Stennett** deferred this to **Dan John** from the Tax Commission. **Mr. John** stated the Tax Commission would go in and value the utility everywhere, not just in Idaho. Then they would apportion the amount of value that belongs to Idaho versus other states. The value would then be allocated to the various taxing districts and the allocation formula is weighted toward where the generation is. They would get more because it is based on a line mile formula and the formula relies heavily on distribution lines versus the lines that go out to houses. They get a bigger share, but not all of the value. **Senator Little** asked for a ball park figure as far as difference, and how would a merchant plant be taxed prior to adoption of this code change? **Mr. John** answered that a merchant plant would be assessed where it sits and taxed only in the few taxing districts where it resides. This bill would treat them as a public utility and weight the value where it sits, and then spread some of the value out to the other taxing districts. The numbers have not been run.

Senator Little asked for the definition of a merchant plant. **Mr. John** answered that a merchant plant is a non-utility, it is not a public utility. They can virtually sell to anyone. **Senator Little** asked if they sell their power to anyone, can the Public Utilities Commission (PUC) have some jurisdiction over it if it comes back? **Mr. John** stated he is not an expert, but that he didn't think so. He believes that the PUC would have control over the company the merchant plant is selling to.

Senator Davis wanted to know how other states handle this property taxation on merchant plants. **Mr. John** replied that he was not familiar with that, but would find out. **Senator Stegner** asked if we have covered all the bases? What about gas generation, is it covered under thermal or

are we just adding coal now? Will the modification being made apply to all generating capacities? **Mr. John** replied that they will do that analysis and bring it back to the Committee.

Senator Davis wanted to know why the distribution formula for thermal generation is different than the proposed language for coal generation?

Senator Stennett stated that there is a difference between a coal fired and gas fired generation plant, and the intent is to make sure that the coal plant which has approximately 20 times the value and impact is treated differently. Currently there are no coal plants in the state, and they are just being planning for the future. **Senator Davis** stated he just wants a parity in the tax and not establish a standard intended to provide a chilling impact on an industry that might have opposition to it. Additionally, he just wants to understand the difference between the two and why we treat this type of utility operation differently than other businesses with equipment located in the county.

Senator Stegner stated he believed that paragraph 3 of Section 63-405 was originally added in the 2003 session. He added that it was to ensure that a city located close, but not containing a power plant, would get some benefit from the facility in their close proximity. He would like the Tax Commission to explain the language regarding thermal generation and coal. **Chairman Burtenshaw** suggested that the Tax Commission staff return next Friday, February 3, to allow time for research and analysis.

ADJOURN:

There being no further business before the committee, **Chairman Burtenshaw** adjourned the meeting at 8:30 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 1, 2006

TIME: 8:00 a.m.

PLACE: The Gold Room

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

MEMBERS ABSENT/ EXCUSED: None.

CONVENE: Joint meeting with the House Committee; **Chairman Deal** called the meeting to order at 8:02 a.m.

PRESENTATION: **Chairman Deal** introduced **Mark Hanneman**, Senior Counterintelligence Officer for the U.S. Department of Energy who did his presentation on Terrorism 101, The Threat We Face. Mr. Hanneman's office provides Counter Intelligence support to the Department of Energy and contractor organizations in the Pacific Northwest and Hawaii. Mr. Hanneman has 30 years experience conducting felony investigations and counter intelligence operations throughout the world.

Mr. Hanneman's thought provoking, energetic and sobering presentation covered the following topics:

- ! The concept of terrorism.
- ! Terrorist's operational vulnerability.
- ! The Religion of Islam.
- ! The history of Usama Bin Laden and Al Qaida
- ! Terrorist attack case studies.
- ! Al Qaida Jihad training manual excerpts.
- ! Post 9/11 activities.
- ! Surveillance and the latest Al Qaida recruitment video.

Chairman Deal asked if there were any questions for **Mr. Hanneman**. **Senator Geddes** asked if the American Civil Liberties Union website was one he suggested we take a look at? **Mr. Hanneman** said yes, and another one is the Department of Justice. **Representative Hart** asked if there is any financial incentive for any of them to carry out their terrorist act? **Mr. Hanneman** stated that the hard core Al Qaida members are paid by the organization. The ones who commit the homicide acts are told their family will be taken care of financially.

Senator Burtenshaw asked if there are cells in the U.S., and how do you go about monitoring them or stop them? **Mr. Hanneman** answered that he is not aware of any cells in the U.S. He suggested talking to the

Joint Terrorism Task Force locally. **Senator Burtenshaw** stated there are so many places they could penetrate. He asked if they could circumvent our security and still get in? **Mr. Hanneman** replied it is always a possibility. It is a complex problem and the best thing from his perspective is having citizens reporting suspicious activity.

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

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 3, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: Davis.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

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

MINUTES: **Senator Stegner** reviewed the minutes from January 23, 2006 and moved to approve them as written. **Senator McKenzie** seconded the motion. The motion carried by voice vote.

Senator McKenzie made a motion to approve the minutes from January 25, 2006 as written. **Senator Stegner** seconded the motion. The motion carried by voice vote.

Senator Little read and reviewed the minutes from January 27, 2006 and moved that they be accepted as distributed. **Senator McKenzie** seconded the motion. The motion was carried by voice vote.

S 1317 **Chairman Burtenshaw** introduced **Jack Baker** from the Racing Commission and he stated that line 28 and 29 regarding Section 2508 has to do with the Commission becoming the custodian of the accrual of monies from simulcast. It is spelled out on the second page, on lines 24 through 32. There was discussion about the interest that accrued and there is a .07% management fee and the fund earns 2.5%. **Chairman Burtenshaw** commented that he discussed this with the Treasurer and he was told that there are several funds that are set up this same way. **Mr. Baker** continued and stated that the second issue was on line 3 and 4 which described the number of race days determined by the handle or tracks. Anyone over five million in gross handle have a minimum of 46 days. The next section in line 10 to 25 deleted the 90% law with the inception of simulcasting where they had to run 89% of the race days ran that year. The Horsemen and the track asked the Commission to change it to 46 days to cover any new tracks that open.

Senator Little commented that by combining the two bills the problem

has been addressed. He made a motion to send S 1317 to the floor with a do pass. **Senator Stegner** seconded the motion. **Chairman Burtenshaw** asked if the track shares in the purse the same percentage that has no more than 2 races? **Mr. Baker** replied that they share in the commission's distribution based on the number of race days that they ran. Less than 2 race days was never addressed prior to this so the Horsemen and management wanted a number certain that they had to run 2 race days. It is spelled out that anything over five million had to run 90% of what they ran in 1989 which equated to 46 days. The minimum amount was never addressed for the small tracks.

Senator McKenzie commented that he sent a letter to the Attorney General's office regarding any conflict between the principal, and any interest that remains in the fund, and the Treasurer's authority to charge a fee. He received a reply that stated there is no conflict and that there are a number of funds like this. **Chairman Burtenshaw** asked if there was any other discussion. There was no other discussion so the motion to send S 1317 to the floor with a do pass carried.

RS 15800

Senator McKenzie addressed the Committee and stated that RS 15800 relates to fees that the County Recorder charges for records. The statute provides a fee schedule for copying of records to reflect the cost associated with it. They are stored digitally and provided to the public, mostly to land title companies. The question is whether or not the County Recorder should charge \$3.00 per page for the electronic transmitted records. This would provide that the charge to the public for electronic records would relate to the actual cost of creating the duplicate.

Senator Stegner moved to print RS 15800 and **Senator Stennett** seconded. It was moved and seconded to print by voice vote.

RS 15872

Senator Hill introduced RS 15872 and stated that in February 2005 a new device was introduced in the United Kingdom, and in the United States this past summer. It is called Alcohol Without Liquid (AWOL). This device vaporizes alcohol and is ingested through the mouth and nose much like an inhaler. It is then absorbed by the blood vessels in the mouth and nose. The result is ten times more potent than if you were to drink the alcohol. In addition to that, you become intoxicated very quickly, there is high impairment, and the real problem is that the blood alcohol level can still be below the legal limit. Legally you can drive because the blood alcohol level is low, yet there is high impairment. Additionally there is high risk for brain damage. Legislatures around the country are scrambling to get laws passed to outlaw these devices.

Senator Geddes moved to print RS 15872 and **Senator Stegner** seconded the motion. The motion to print RS 15872 carried by unanimous voice vote.

S 1294

Senator Stennett addressed the Committee and stated he wished to withdraw S 1294.

ADJOURN:

There being no further business before the Committee, **Chairman**

Burtenshaw adjourned the meeting at 8:20 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 6, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: Malapaei.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

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

Chairman Burtenshaw introduced **Senator Brandt** and he stated that there are four bills regarding eminent domain. He asked the Committee to hold S 1243 and S 1273 until he has an opportunity to discuss them with some concerned parties. The Committee gave their consent by voice vote to hold S 1243 and S 1273.

S 1246 **Senator Brandt** stated that this bill deals with relocation costs involved in eminent domain cases. The Highway Relocation Assistance Act requires that relocation costs are incurred when a highway is built. There are cases where entities have used eminent domain and there have not been relocation costs given. These bills are to give private property owners more protection. Most property is not an investment property to them, but their residences or their business. They are compensated for the property, but they incur costs due to relocation. The governing entity who is doing the project should make sure that the property owner is compensated.

Chairman Burtenshaw asked **Senator Brandt** if anything other than moving expenses would be included? He replied yes. They are given compensation for that. Additionally, the Idaho Transportation Department (ITD) does this as well; they have to follow the Federal Highway Relocation Systems Act. Other entities addressed in Idaho statutes do not.

Senator Stegner asked **Senator Brandt** if relocation payments and relocation advisory systems were defined anywhere in a statute as it pertains to this new section? **Senator Brandt** answered that he believed they were. **Senator Stegner** asked **Senator Brandt** what he thought relocation advisory assistance would include? **Senator Brandt** stated

any cost incurred to move your residence and personal belongings down the street. If a business needs to relocate, then it should be up and running in the same condition as it was. **Senator Stegner** wanted to know if there were any restrictions as far as reasonable relocation, which were not addressed in the bill. Are they given a blank check to relocate anywhere they want? **Senator Brandt** answered no, that property value in Idaho is not the same as property in Hawaii. It would be true and just compensation for staying in the same area.

Senator Little asked **Senator Brandt** if counties in the Ada County Highway District (ACHD) are covered by the highway relocation act, and also who is not covered? **Senator Brandt** answered yes they are covered. Schools, cemeteries, and any entity that do not come under the highway definition are not covered.

Senator Geddes asked if a business chose not to relocate or reestablish, how does this apply to them? **Senator Brandt** responded that during the process if they decided to not relocate, they could not apply for any relocation costs.

Heather Cunningham, an attorney, addressed the Committee and stated that Title 40 provides relocation assistance if the taking of the property is for a highway. **Ms. Cunningham** said it doesn't matter whether the entity doing the taking is ITD or ACHD. If a person's property is taken for a highway or road where you can no longer reside on the premises, they would qualify for relocation assistance. If a portion is taken and the owner can reside on the premises, then they would not qualify for assistance. In Idaho if property is taken through eminent domain to the degree that relocation is necessary, the relocation or moving costs are paid for by the government. The formulas are computed in accordance with Federal guidelines. Relocation has to be within a certain mile radius or not at all. Moving to another state would not be covered. If the taking is not for a road but for a university expansion, sewer plant, or some other public purpose, the government is not required to pay moving expenses. In her experience, **Ms. Cunningham** stated that sometimes government uses this as leverage and offers to pay relocation fees, if the property owner takes the value they are offered for their property. Under law they are entitled to a jury trial if they decide not to take the offer. If the offer is not accepted, then the relocation fees are rescinded. **Ms. Cunningham** believes that the citizens of Idaho deserve the same protection regardless of why their property is being taken.

Ms. Cunningham stated that all the concerns that were raised last year have been addressed in S 1246. This bill does not change the computation of relocation benefits, nor does it alter or affect the existing statutes in any way. What it does is provide citizens, who are being entirely displaced, compensation for relocation whether or not it is for a highway or some other purpose. Most takings are not total takings of property, but it is a big impact to the affected individuals who are not properly compensated.

Senator Davis asked if Title 40, Chapter 1 only applied to transportation?

Ms. Cunningham answered yes. Title 40 is in the highway section of State Code. **Senator Davis** asked why it was necessary to make any changes to sub part five? **Ms. Cunningham** stated that it is necessary to change the definition of agency within the concept of this section of code. There may be confusion or ambiguity over whether or not it applies to all condemners. It was redrafted to apply to any political entity that takes property. **Senator Davis** asked **Ms. Cunningham** why it was in the transportation title? **Ms. Cunningham** stated that she believed the portion of the code where this was going is under "highway relocation assistance act", and that transportation would not be affected.

Senator Davis stated that the word "persons" was a defined term in Idaho law. He asked **Ms. Cunningham** if there was a different standard for families, businesses, farmers and nonprofit organizations as stated in Section 1 in Idaho Code 7-722 in regards to relocation assistance? **Ms. Cunningham** answered that this language mirrors the language that is found in the relocation code as she understands it. The legislation was drafted in such a way to make sure everyone is covered. They could have stopped at "persons", but chose not to.

Senator Stegner asked **Ms. Cunningham** if changing the language of "agency", would it allow any agency in the state under Title 40 to establish an office of relocation advisory assistance? **Ms. Cunningham** replied that only agencies that can exercise the power of eminent domain will be dealt with. The agencies that condemn property do not set up separate offices to deal with relocation assistance. It is typically done by an independent contractor who specializes in relocation. The main goal is to qualify for federal funds. The Uniform Relocation Assistance Act is a federal law which Idaho has to comply with. The language in Title 40 mirrors that language and matches those requirements. Last year she wanted to move it to Title 7 with the eminent domain laws, but was told it couldn't be done that way because it would adversely affect federal funding. She stated that she believes this is the best way to accomplish the goal. It provides equal rights to citizens without affecting federal funding.

Ms. Cunningham added that 98 to 99 percent of takings in Idaho are not for a roadway. The taking must be total and sufficient enough to warrant relocation. What the bill will accomplish is to provide the same relocation assistance to every Idaho citizen. She added that the legislature can later revisit how relocation is computed, but this is not what this bill is intended to do.

Senator Little commented that in Title 40 of the highway and bridges section, it states that anyone who receives assistance is not subject to state income tax. **Ms. Cunningham** stated that the relocation payment is not taxable income. It is a limited amount of money for a limited purpose. The income from the sale of the property would be taxed. **Senator Little** asked if school districts and universities were part of this process and would they be covered by the highway and bridge title in the condemnation? Would they be comfortable with that? **Ms. Cunningham** answered that the school districts and universities know about the bill and

that the bill addresses the concerns that were raised.

Keith Allred, president of The Common Interest group, addressed the Committee regarding eminent domain. His handout covering their issues was passed out to the Committee. **Mr. Allred** stated that bill S 1246 addresses two issues, 1) the fundamental fairness issue and 2) the abuse issue. One hundred members of The Common Interest have spent about an hour each reviewing the issues and sharing their views. Thirty-three have responded and thirty-two support the bill.

Steve Price, who spoke on behalf of the ACHD, reported that this bill does not impact them. They are already under the relocation act. **Mr. Price** commented that because of the Kelo V. New London case, there are favorable property rights as a result of that decision. The bills being presented are an effort to expand the application of eminent domain. In concept he feels the relocation act works, but he stated he agrees with some of the senators regarding interpretation. There is good public policy for relocation, and it makes sense. **Mr. Price** added that perhaps a relocation act that mirrors the federal law should be drafted to apply to all government agencies, and then adopted as part of the Idaho Code. It is confusing taking it through the transportation law and tying it through Title 40.

Senator Brandt summed up by stating that it comes down to protecting private property and doing it evenly. The bill was drafted to get us from point A to point B and do what is best for the State of Idaho.

S 1247

Senator Brandt introduced S 1247 and stated that it clarifies when a quick take can be used. **Ms. Cunningham** addressed the Committee and said this bill amends the quick take statute when the government takes property they need to build their project. In the 1800's when Idaho condemnation law began, commissioners were appointed to decide the value of the property. If there was disagreement from either side, they could have a jury trial. When the proceedings were concluded, the government could take possession of the property and go forward with their project. The quick take procedure was implemented and adopted in 1969, but the problem is that the old way was not repealed. Educational institutions were left out of the statute when it was adopted in 1969. The old procedure was being used and projects were delayed because of it. A judge ruled that the language in the statute does not apply to educational institutions.

Ms. Cunningham stated that she didn't believe when this was enacted that the intent was to exempt educational institutions. It was an oversight that has been discovered and needs to be changed and fixed. The bill will apply equally to all condemners and improve existing law.

Keith Allred addressed the Committee and stated that The Common Interest reviewed S 1247. It fundamentally raises an issue of fairness.

Eighty-two percent of their members who have reviewed the bill are in favor and 18% oppose it. Eminent domain is covered in their brief and

anything that gives an advantage to property owners will be endorsed. There is no controversy or opposition on these two bills.

Steve Price commented he had two quick points on this proposed legislation; 1) they are not quite sure of its purpose as it relates to other eminent domain bills and 2) why is there an emergency clause attached to this legislation. The rights of the property owner versus the interest of government is a tug of war. **Senator Davis** asked him if he supported the bill? **Mr. Price** answered no, he can't support the bill because he doesn't know how it relates to all of the other bills out there. There will be other legislation that relates to attorney fees as well as determination by juries and judges. **Senator Davis** commented that he thinks this is a pretty good bill and asked what is it he isn't seeing in bill S 1247? **Mr. Price** answered that they use the quick take procedure all the time and it works. He is just saying that there are other bills and it needs to be looked at in the big picture. Other things are being proposed that will change the quick take process.

Senator Davis made a motion to send S 1247 to the floor with a do pass recommendation and S 1246 to the 14th order for amendment. **Senator McKenzie** seconded the motion. The motion carried by voice vote.

RS 15756

Steve Guerber, Executive Director of the Idaho State Historical Society (ISHS), stated that this RS is a return of a bill from last year. It specifically identifies state owned buildings that would be eligible for restoration. The purpose of the bill is to allow the State Historic Preservation Office (SHPO) to do a review of proposed construction on state buildings, and ensure that there isn't an adverse impact. The state does not have anything in place like the federal government does.

Senator Little asked if the language on page 2, lines 8 and 9 were in the bill last year? **Mr. Guerber** stated no, that was one of the clarifications. **Senator Little** wanted to know, if he were a contractor wouldn't he be inclined to have a contingency on the bid stating his costs may increase as a result of a recommendation by the (SHPO)? **Mr. Guerber** replied that the process to follow is that at the time the project is proposed, the notification comes to them to take a look at the project. Their review under this process should take place before the project goes out for bids.

Senator Geddes commented that the concern last year was what the impact would be with respect to the abandoned Ada County Courthouse. He said we still don't know what will be done with it. The legislature may move into that building temporarily when the renovation of the Capitol takes place. He asked **Mr. Guerber** if he saw this hindering the effort for the legislature to move into the courthouse in a timely manner? **Mr. Guerber** answered that basically these are just recommendations. If a decision was made to move into that building, and a renovation would take place, the Historical Society would like an opportunity to review it and make any recommendations that are not binding. It is input only and cannot stop the project.

Senator Darrington made a motion to print RS 15756 and **Senator**

Stegner seconded the motion. The motion passed by voice vote.

ADJOURN:

There being no further business before the Committee, **Chairman Burtenshaw** adjourned the meeting at 9:40 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 8, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: None.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

CONVENE: **Chairman Burtenshaw** called the meeting to order at 8:07 a.m.

MINUTES: **Senator Little** reviewed the minutes of February 1, 2006 and moved that the Committee approve them. **Senator Stegner** seconded the motion and the motion carried by voice vote.

S 1350 **Senator McKenzie** stated S 1350 was sent to print last week without being aware of any objections. There does appear to be some concern and there are several who wish to testify.

Kris Ellis, from the Idaho Land Title Association (ILTA) addressed the Committee. **Ms. Ellis** stated that presently there is not a provision for electronic transmission or duplication of records within the County Recorder's statute. The statute only deals with pages therefore the counties charge \$1.00 per page for a copy on a disk. Some disks hold up to 1,000 pages and they could charge \$1,000.00. These pages are the same pages that the county has already collected a \$3.00 fee to record, file, and scan into their system. This was addressed last year with H 267. The bill was held at the request of the Recorder based on concerns from bankers and land title companies. The ILTA contacted the counties in an effort to work out a solution and they met over the summer. They proposed a draft and sent it to the counties in November asking for comments. Up until yesterday, February 7, there had been no input from the counties regarding the bill. The county has three major concerns. 1) Dealing with the recording fee and input fee, 2) the capital outlay charges, and 3) an electronic fee to be paid up front. Ninety percent of the electronic transmissions are made by the ILTA and land title companies. **Ms. Ellis** asked the Committee to hold S 1350 in Committee for a week to address these concerns.

Chairman Burtenshaw asked **Ms. Ellis** if she had any objection to other testimony? **Ms. Ellis** answered absolutely not, there has been so little

input.

Susan Howard, represented the Idaho Association of County Recorders and Clerks. Ms. Howard stated that the clerks have a statutory duty to keep records of property ownership and transfer within the county, along with other documents that they record. The statute was among the first enacted in the state of Idaho. Procedures have changed to reflect modern technology. The user fee that is charged helps to fund the recording departments. The ILTA proposes that they can charge \$1.00 for copies, only if they are made of paper. Fees for electronic copies are to be charged the actual cost of duplication, not including any capital expense recovery that would pay for the upkeep of software and equipment. No administrative or labor cost can be charged unless the labor exceeds two hours.

Ms. Howard continued by stating that a user fee has been negotiated. They negotiated with the title companies for a charge from 5 cents per page to 25 or 30 cents per page. All counties but one have done this. If the bill passes they can go back to the \$1.00 per page charge and disagree over the paper copies. They do not believe this is a good solution.

Senator Darrington asked **Ms. Howard** why they didn't respond before the legislative session started when they had knowledge of the bill? **Ms. Howard** stated she had received it, but it had to be sent out to the association and voted on by all. **Senator Little** asked if they had examples of what other states charge as an example? **Ms. Howard** answered no, only what they had negotiated within each of the counties. **Senator McKenzie** asked **Ms. Howard** what specific changes would make this bill acceptable? **Ms. Howard** replied that the way the bill is written the clerks can't charge anything for electronic copies.

Nolan Boyle, President of Idaho Association of Clerks and Recorders, stated the facts that **Ms. Howard** laid out are accurate. His concern is that the bill affects anyone that walks through the door. If someone requests a copy be put on a floppy disk for instance, based on the proposed bill, they cannot charge for it. **Mr. Boyle** stated he thinks there are some good things about S 1350, but again there are other issues in terms of documentation, storage, retrieval and the costs associated with S 1350 that need to be addressed.

Betty Dressen, county clerk from Payette, addressed the Committee. **Ms. Dressen** commented that the Code needs to work for everyone. The clerks need time to evaluate this bill and see what will work. She asked the Committee to oppose the bill. **Senator Davis** stated this is not a complicated issue to resolve and asked Ms. Dressen what time frame she was looking at? **Ms. Dressen** replied this year. They will meet this month and again in August, and by then have this handled. Each county is different regarding their needs. **Senator Davis** stated he would like to have this resolved this legislative year and find a remedy that benefits everyone.

Dick Mollerup an attorney for ILTA was introduced to the Committee. **Mr. Mollerup** stated there is a great deal of cooperation between the parties. The existing code under Title 31 states they may charge \$1.00 per page. It is not mandatory. The title companies are not trying to get something for free, but they represent 90% of the users. They are small businesses that perform a service. **Mr. Mollerup** agreed with **Senator Davis** that this could be accomplished this session. The counties have some legitimate concerns and **Mr. Mollerup** suggested a one-week delay.

MOTION:

Senator McKenzie made a motion to hold S 1350 until February 15. It was seconded by **Senator Little**. **Senator McKenzie** commented he was disappointed that the county recorders didn't raise these objections earlier. They have implemented technology and done so to benefit the users. This bill furthers that goal. The motion to hold S 1350 was carried by voice vote.

S 1351

Senator Hill from District 34 discussed S 1351 relating to Alcohol Without Liquid (AWOL), and stated that he first heard about this from his son. A shot of alcohol is poured into the device that works like a vaporizer, and it mixes with pure oxygen. It is inhaled through the mouth or nose, and absorbed through the blood vessels in the nose and mouth. It makes a direct hit to the brain rather than going through the stomach and the blood stream. The hit is up to ten times as potent as if you drank the same amount of alcohol. Sometimes it is referred to as the "crack cocaine" of alcohol. High impairment is quick but the blood alcohol level is low.

Chairman Burtenshaw asked if any kind of alcohol can be used with the device? **Senator Hill** responded any alcohol such as vodka, but not beer or wine. **Senator McKenzie** asked if impairment was from a small amount of alcohol? **Senator Hill** answered high impairment is achieved with a smaller amount of alcohol, but his concern was more about the affect on the brain. **Senator Davis** asked if we need to amend the DUI statutes? **Senator Hill** answered that S 1351 has not been reviewed by the Prosecuting Attorney Association, only the Alcoholic Beverage Control. Most people are not aware of this device, it is relatively new.

Senator Geddes commented that most of the alcohol laws deal with age requirement regarding consumption. He asked **Senator Hill** if there would be a legal age by which you could inhale alcohol? **Senator Hill** answered there is no change in age for consumption. It would make it illegal to use these devices for any age. The penalties would be similar for underage usage. **Chairman Burtenshaw** asked **Senator Hill** if there has been any research on overdosing? **Senator Hill** replied this is such a new device that there isn't enough information, only opinions on the use of this device have been expressed by experts.

Chairman Burtenshaw asked about possession of the device, and if it is the same as other drug paraphernalia whether or not they are intoxicated? **Senator Hill** answered yes. There are laws against possession in current statutes. **Senator Davis** asked **Senator Hill** if he was advocating that it should be made unlawful for possession or use by

anyone because of the adverse effect of the device? **Senator Hill** said yes, that is correct.

Senator Davis moved to send S 1351 to the floor with a do pass recommendation. **Senator Geddes** seconded the motion. The motion passed by voice vote.

RS 15700C2

Senator Kelly presented the RS and stated that it makes an adjustment to the statute relating to lobbyists. The purpose of this legislation is to expand the disclosure requirements for lobbyists to include expenditures for lobbying other state officials in addition to legislators.

Senator Davis moved to print RS 15700C2. It was seconded by **Senator Stegner**. The motion carried by voice vote.

RS 15731C1

Senator Broadsword presented the resolution which acknowledges the impact and importance of immigrant Scots coming to Idaho to make their home. The U.S. Senate adopted April 6, as National Tartan Day in 1998. Many of Idaho's pioneers were of Scottish decent and their families still make Idaho their home. This resolution acknowledges their impact and importance and honors that heritage.

Senator Davis moved to print RS 15731C1 and **Senator McKenzie** seconded the motion. The motion carried by voice vote.

RS 15900

Senator Corder addressed the Committee and stated the purpose of this legislation is to provide the legislature a mechanism for the systematic review of each of the exemptions and credits, quantify the exemptions and credits, and qualify the intended policy.

Senator Darrington asked if this is a broad expansion of the powers of the Office of Performance Evaluation (OPE) and Joint Legislative Oversight Committee (JLOC)? **Senator Corder** answered that OPE and JLOC's function is to do the assessment to determine the intent, amount and recommendation of the exemption. **Senator Darrington** stated he could accept that explanation, but it still seemed to be a grey area.

Senator Little asked **Senator Corder** for guidance on the effect of the analysis on the grey areas? **Senator Corder** stated that there are 100 exemptions. More or less ten of them will be evaluated in a year's time. When an exemption is given now, the analysis is not done. Not all the implications are evident. The proposal gives the opportunity to evaluate and analyze everything that may have an impact. When the exemption is put into place, it is important to do whatever is necessary to determine the impact and implication once every ten years.

Senator Stegner stated he has major concerns even though he agrees with **Senator Corder**. The state of Idaho would be better served by a reformed tax system that didn't award nearly as many exemptions. He said this action may be contrary to movement by the state in that direction. The sales tax burden needs to be spread evenly across the spectrum of commerce. Although he thinks the bill intends to point out the problems, it may cause more harm because it only deals with 10% of

the exemptions each year. The entire system needs to be changed.

Senator Corder responded and stated that doing more than 10% of the exemptions the first year could not be accomplished. They do not have the mechanism in place to evaluate and track the exemptions. The county does not track the information on some of the exemptions. Some things need to be re-coded to be clearly identified as to what the exemptions are. Discussions to understand the basic problem of taxes needs to be addressed. The fix today will be outdated in ten years and we will be talking about the same problems. This mechanism provides the opportunity to have discussions on the tax policy every single year if we evaluate the exemptions on a revolving basis. This will get us where we want and need to be.

Senator Davis stated he has opposition to the RS. This is a major expansion of the OPE and the powers of JLOC. If they begin to make recommendations for repeal or continuance, he sees it as being a problem for the legislature as the years go by. Additionally it would have an impact on business investment and industry.

Senator Little commented he was sympathetic, but his concern is that JLOC is mainly an internal governmental agency audit, and maybe there is a better place for this than JLOC. He said he is behind **Senator Corder** and the direction he is taking, it is just that the "vehicle" it is attached to may have some problems.

Senator Corder stated he believed that OPE is still the right place. He doesn't know if JLOC is, but what he does know is that the process needs to be started.

Senator Davis made a motion to return RS 15900 to the sponsor. Senator Stegner seconded the motion. **Senator Stennett** made a substitute motion to print RS 15900. **Senator Malepaei** seconded the motion.

Senator Stennett stated that an overall view needs to be looked at regarding tax policy. Every year another layer of exemptions are added based on the crisis of the hour. OPE provides a thorough and independent analysis. If fewer people are paying a larger percentage of the tax, maybe that is a policy that needs to be looked at. We need to start somewhere. It is an elegant way to prove the value of exemptions in a systematic way on a year-by-year basis.

Senator Geddes commented that he read the Statement of Purpose, and what **Senator Corder** is proposing is that by looking at the exemptions, it is a way of saying "if everyone paid more we could all pay less." He said he agreed with that. Spreading the tax base out so that everyone paid a fair amount, instead of some groups being exempted. Now if we lift an exemption, the money goes into the general fund.

MOTION:

A roll call vote was taken on the substitute motion.
Senator Darrington - Nay

Senator Geddes - Nay
Senator Davis - Nay
Senator Stegner - Nay
Senator Little - Nay
Senator McKenzie - Aye
Senator Stennett - Aye
Senator Malepaei - Aye
Senator Burtenshaw - Nay
The motion failed 6-3.

A roll call vote was taken on the motion to return the RS to the Sponsor .
Senator Darrington - Aye
Senator Geddes - Aye
Senator Davis - Aye
Senator Stegner - Aye
Senator Little - Aye
Senator McKenzie - Nay
Senator Stennett - Nay
Senator Malepaei - Nay
Senator Burtenshaw - Aye
The motion passed 6-3.

H 413

Mike Nugent from the Legislative Services Office addressed the Committee regarding the various codifier corrections to the Idaho Code. **Mr. Nugent** stated that this bill compiles those code sections affected in legislative sessions prior to 2006, that contain conflicting numbering so that the designations may be corrected.

Senator Stegner asked **Mr. Nugent** if there were any new sections and are all the changes denoted by the deletes and strikes? **Mr. Nugent** answered yes.

MOTION:

Senator McKenzie made the motion to send H 413 to the floor with a do pass recommendation. **Senator Stegner** seconded the motion. The motion carried by voice vote.

ADJOURN:

There being no further business before the Committee, **Chairman Burtenshaw** adjourned the meeting at 10:05 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 10, 2006

TIME: 8:00 a.m.

PLACE: Gold Room

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

MEMBERS ABSENT/ EXCUSED: None.

CONVENE: **Chairman Burtenshaw** welcomed everyone to the committee meeting at 8:07 a.m.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

HJR 2 **Pro Tem Geddes**, the sponsor of HJR 2, addressed the Committee and stated that everyone understands the issue that brought us here today. This issue has been dealt with for several years and it keeps returning. To change the Idaho Constitution is a very serious and important matter. There is a process that allows for that change and that process requires that the citizens of our state be involved. **Senator Geddes** continued and said that it is time for the Committee, this Senate, and this Legislature to allow our citizens the opportunity to vote on this issue. This year's proposal is significantly different than last years. The language in HJR 2 defines what marriage is rather than what marriage isn't.

Senator Geddes continued that yesterday on the floor of the Senate something very significant happened. A joint rule was supported. That rule instructs our courts to focus on the language of the bill, and to look at that language as the intent and the meaning of legislation that is imposed, rather than the Statement of Purpose. There are many who are more concerned about the Statement of Purpose with respect to this proposal, than perhaps the actual language. What we are doing today is defining what marriage in the State of Idaho is. The question before us is whether or not the people of Idaho should have a chance and an opportunity to validate that definition. What we are looking at today is a simple statement. Marriage between a man and a woman is the only domestic legal union that shall be valid or recognized in this state. Those words are difficult to confuse and it is easy to understand them. The people in the State of Idaho would like an opportunity to vote on this constitutional amendment.

TESTIMONY: Twenty-nine people testified in favor of HJR 2 and twenty-one were opposed to it. Copies of testimony that was provided to the Committee members are on file in the Committee Office.

DISCUSSION: **Pro Tem Geddes** thanked the citizens of Idaho for attending the Committee meeting. He stated that the testimony was impressive on both sides and that approximately fifty testimonies had been heard. This is a small cross section of Idaho. For two years now we have struggled with this issue, and for two years it did not go to the floor of the Senate. Last year it went to the floor of the Senate and 60% of the senators felt it should be brought to the people. This year this resolution originated in the House of Representatives. It cleared the House Committee, and 77% of the House members felt that it should go before the people for a vote. He continued and said that history has repeated itself, and history will continue to repeat if this issue continues to come back to the legislature, and we don't allow the people of Idaho to express their will and give the legislature the direction as to what they want to happen with the Constitution. He urged the Committee to send HJR 2 to the floor with a do pass recommendation, and allow the people of Idaho the opportunity to express to the legislature what they want to happen with respect to what marriage is.

MOTION: **Senator Geddes** moved that HJR 2 be sent to the floor of the Senate with a do pass recommendation. **Senator Davis** seconded the motion.

There was discussion on the motion and **Senator Little** stated that this legislation is an improvement over last year. He is however still uncertain as to what a domestic legal union is. **Senator Little** asked **Senator Geddes** what domestic legal union means? **Senator Geddes** answered he wasn't sure if he could satisfy **Senator Little** with a definition of what domestic legal union is. Most people would take those words on their face value, and when they relate that to marriage, it would constitute a union between a man and a woman. **Senator Little** asked if there would be a statutory follow up that will define what a domestic legal union is before it gets to the courts? **Senator Geddes** replied he wasn't sure if in the future it would be required to define it in the Idaho Code.

Senator Little stated he still has concerns. **Senator Geddes** stated that the people will decide what they want in the Constitution. The benefit of this language is to avoid allowing judges to determine what the policy of the State of Idaho is. The language in the proposed amendment is clear enough that the people will be able to decide if it meets what they would regard as a proper definition for marriage.

Chairman Burtenshaw asked for a roll call vote on HJR 2.

Senator Darrington - Aye
Senator Geddes - Aye
Senator Davis - Aye
Senator Stegner - Nay
Senator Little - Nay
Senator McKenzie - Aye
Senator Stennett - Nay

Senator Malepeai - Nay
Senator Burtenshaw - Aye
The motion carried 5-4.

ADJOURN: There being no further business before the Committee, **Chairman Burtenshaw** adjourned the meeting at 10:45 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 13, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: Stennett.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

CONVENE: **Chairman Burtenshaw** called the meeting to order at 8:05 a.m.

MINUTES: **Senator Geddes** stated the minutes for February 3 represents what the Committee discussed and he moved to approve the minutes. **Senator McKenzie** seconded the motion. The minutes were approved by voice vote.

RS 15494 **Senator Cameron** presented **RS 15494** to the Committee and asked for consideration to print. He stated that last year 7.2 million dollars were used by the state out of the liquor dispensary funds that were deemed excess funds. The funds were used to purchase water rights and to allow the State General Fund to remain intact. The Liquor Dispensary has had dramatic growth over the past few years, and has asked for additional liquor stores from the Joint Finance Appropriations Committee (JFAC). The Committee has been reluctant to build more stores unless a better form of distribution has been established. The legislation defining liquor store management was established in 1939, with the state receiving approximately 50% of the funds. The counties and cities receive the balance. **Senator Cameron** continued and said mostly the counties and cities were held harmless and the state was subject to the growth in the liquor dispensary. At some point the legislature determined that the state needed to be protected, and the cities and counties needed to receive the growth in the liquor dispensary. Since that time, liquor sales have escalated and there has been dramatic growth in the amount of revenue generated. **RS 15494** will accomplish the following: 1) pay back the 7.2 million dollars over a four year period, 1.8 million each year to the counties and cities; 2) change the structural distribution in a gradual adjustment phased in over a period of ten years, wherein it reverts back to a 50-50 percent. Based on conservative estimates, the counties and cities will still receive an increase over the previous year. The only time there is a slight dip is from the fourth to the fifth year after the 7.2 million dollars is repaid. In real terms the counties and cities will participate in

the growth as well as the state. That will help the funding of Substance Abuse Treatment Centers etc.

Senator Stegner moved to print **RS 15494** and **Senator Little** seconded the motion. The motion carried by voice vote to print **RS 15494**.

RS 15873C2

Senator Werk was welcomed to the Committee and he presented **RS 15873C2**. **Senator Werk** stated that there are six athletes representing Idaho in the 2006 Winter Olympics at Torino, Italy. The purpose of this concurrent resolution is to provide an opportunity for the legislature and the people of Idaho to recognize and honor these committed and talented athletes in their respective athletic competitions.

Chairman Burtenshaw asked **Senator Werk** if he is asking the Committee to send **RS 15873C2** straight to the Senate floor? **Senator Werk** answered yes. **Senator Little** moved to send **RS 15873C2** to the floor and **Senator Malepeai** seconded the motion. The motion carried by voice vote.

S 1355

Steve Guerber, Director of the Idaho State Historical Society addressed the Committee. **Mr. Guerber** stated that **S 1355** adds to existing law by requiring a review process, when construction or renovation takes place on existing buildings owned by the state that are of historical significance. The recommendation of the preservation office would be used as a planning tool to avoid unnecessary loss of state historic structures, and to minimize the potential adverse impact on state owned historic buildings. This process will not delay or halt a project.

Chairman Burtenshaw asked **Mr. Guerber** if this bill would have any effect on the old Ada County court house? **Mr. Guerber** answered that the only requirement would be that the Historical Society be notified when a proposal is made. As to what to do with that building as far as restoration or renovation of it, the society would have thirty days to respond with their recommendations.

MOTION:

Senator Davis made a motion to send **S 1355** to the floor with a do pass recommendation and **Senator Little** seconded the motion. The motion carried by voice vote.

S 1365

Senator Kelly presented **S 1365** and stated this bill further defines the definition of lobbying and the people who are included in the definition. In particular, it expands the definition of public office and clarifies that it includes those who are elected to statewide office. **Senator Kelly** said that it is important to point out that the changes do not expand the definition of lobbying. Lobbying is limited to lobbying for legislation.

MOTION:

Senator Stegner moved to send **S 1365** to the floor with a do pass recommendation. **Senator Little** seconded the motion. The motion carried by voice vote.

H 434

Karl Dreher, Director of the Department of Water Resources presented **H 434** to the Committee. **Mr. Dreher** stated this is a simple piece of legislation. The only change to existing law is in line 36. Basically what

this provides is that under existing law the State Treasurer is directed to invest idle monies into a number of interest bearing instruments such as bonds and treasury bills. There is a limitation that the investment cannot be held beyond seven days. **H 434** proposes to remove the seven day limitation so the State Treasurer can purchase revenue bonds such as those issued by the Idaho Water Resources Board.

Senator Little asked **Mr. Dreher** if he discussed this with the Building and Housing Authority? **Mr. Dreher** answered no, but that he has talked with the Bankers Association. He said that the State Treasurer supports this legislation although no one is represented here today. The water board is interested in this because it increases their flexibility in financing debt.

MOTION:

Senator Little moved that **H 434** be sent to the floor with a do pass recommendation and **Senator Stegner** seconded the motion.

Senator Davis commented that he is concerned about the fiscal short term impact of this. He asked **Senator Little** for counsel in this regard. **Senator Little** replied that the state only buys instruments that fit into the cash flow program. This just gives them another option as far as bonds to buy. The time frame of the bonds need to be programmed as to when they need the money and that is the cash flow statement they follow. **Senator Davis** asked **Senator Little** if there should be some limitation in anticipation of this? **Senator Little** answered the treasurer wants a good bond rating so it will be dictated that the state use the most prudent practices.

The motion carried by voice vote to send **H 434** to the floor with a do pass recommendation.

H 435

J.M. Nally, Superintendent of the Idaho Liquor Dispensary presented **H 435** and stated that this amends Section 23-203 of Idaho Code. **Mr. Nally** said this section does not state that the Idaho Liquor Dispensary (ILD) can't sell related products, it just doesn't state that they can. Closely related non-liquor products such as mixers have been sold since 1972. The ILD is not trying to compete with the private sector. The sales tax collected from these products goes into the liquor fund.

Senator Davis stated that the phrase "reasonably related" is broad, and asked **Mr. Nally** to explain. **Mr. Nally** answered that some states do not have any limit on what they allow the liquor stores to sell. Oregon has a system where they have two types of stores. They have a list that is approved as to what items can be sold. Idaho stores have a limited amount of room and they make their money on distilled spirits. They do not want something that takes up space that doesn't generate a lot of revenue. The ILD does not want to be in the business of being a Circle K or Seven 11.

MOTION:

Senator Stegner made a motion to send **H 435** to the floor with a do pass recommendation. **Senator Malepeai** seconded the motion. The motion carried by voice vote.

ADJOURN: There being no further business before the Committee, **Chairman Burtenshaw** adjourned the meeting at 8:35 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 15, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: None.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

CONVENE: **Chairman Burtenshaw** called the meeting to order at 8:05 a.m.

RS 15804 **Senator Little** presented **RS 15804** to the Committee. He stated this legislation is important and it will be even more important when a particular piece of legislation from the House passes. Currently if you look at Section 33-1103, Idaho Code the limitation on bond indebtedness is based on the market value. Section 63-602G, Idaho Code is the 50-50 homeowner's exemption. In a fast growing school district where most homes are between \$80,000 and \$200,000, that takes a significant amount off the tax rolls. In the Middleton School District without raising taxes to the homeowners, we can probably keep up with the growth if we don't have to cope with 63-602G. **Senator Little** further stated that in a district that has medium priced homes it is a huge percent of it. Because of the growth in Middleton the district, trustees and superintendent are confident that they can pass a bond issue, without having an increase in taxes. What this bill does is give all the assessed value because of a 5% cap. In code, 5% of the market value is all that can be bonded.

Senator McKenzie moved to print **RS 15804** and **Senator Geddes** seconded the motion. The motion carried by voice vote.

RS 15994C1 **Senator Stennett** addressed the Committee regarding **RS 15994C1** and he stated that it proposes to amend Section 67-6509, Idaho Code. This section of the code deals with the planning and zoning commissions' recommendation, adoption, amendment, and repeal of the plan. Through the initiative process, if any citizen wants to amend, repeal or change any part of the comprehensive plan, they could do so.

Senator Darrington asked **Senator Stennett** to explain what "and not otherwise" meant? **Senator Stennett** replied that he asked that same question and he was told that the language mirrors the language that is found in 31-717, Idaho Code. **Senator Darrington** asked if it meant that

the local plan could not be amended any other way by the commissioners? **Senator Stennett** answered possibly if the initiative were to strike the entire comprehensive plan. The question before the voters would be based on the specific question that was put to them. It doesn't take away any power from the county. The power resides ultimately with the people and the people would have the opportunity to put a vote on the ballot.

Senator Little asked could the citizens in Valley County amend the land use plan and disallow the Tamarack exception? **Senator Stennett** answered he believed they could if it were for a zoning ordinance.

Senator Little stated that most of these special use permits are laddered. There is phase 1, phase 2, etc. so he asked **Senator Stennett** if this was going to the true democracy model? **Senator Stennett** replied that he was correct.

Senator Stegner stated that he was still troubled by the language "and not otherwise." He asked **Senator Stennett** to explain the intent of that language. **Senator Stennett** answered that he had asked the drafters for an explanation. The drafters stated that it is a mirror of what appears in 31-717, Idaho Code. **Senator Stennett** continued and said he believes that "and not otherwise" means if a measure is passed or if it fails, that it is the vote and it would become the law. **Senator Stegner** asked **Senator Stennett** if he thought the language prohibits the local authority from overriding and changing of what was passed by an initiative? **Senator Stennett** said he can't answer that question. He is relying on the recommendation and authority of the drafters.

Senator Malepeai moved to send **RS 15994C1** to print. **Senator Stennett** seconded the motion. The motion failed by voice vote.

S 1350

Kris Ellis from the Idaho Land Title Association (ILTA) addressed the Committee. **Ms. Ellis** stated that the Committee had given her and the recorders a week to work the issue out. They have made an agreement with the county clerks and she asked that **S 1350** be sent to the amending order.

Senator Little asked **Ms. Ellis** if he were to request 99 pages would the cost be \$99.00? **Ms. Ellis** answered that decision would be up to the county clerk. **Senator Little** asked would they be authorized to charge this amount? **Ms. Ellis** stated that this will automatically apply to title companies and businesses who request copies of records on a weekly basis. For those who do not fall within that, the counties are authorized to charge up to \$1.00 per page. **Senator Little** asked if individuals are given the same deal as the title companies? **Ms. Ellis** answered not necessarily. It would be easier for the clerks to put the records on a disk rather than printing numerous pages.

Chairman Burtenshaw asked **Susan Howard** to enlighten the Committee in this regard. **Ms. Howard**, the clerk from Gem County, stated that initially the clerks were against this proposed bill because it didn't give them the authority to charge anything. The clerks and the ILTA

met and compromised on this. The law currently states that they can charge up to \$1.00, and this wording gives them the authority to do what they are already doing. Nothing in the Idaho Code addresses electronic means, so again this allows us to do what the clerks are already doing. Additionally the clerks will have the authority to charge what it actually costs for the recorded documents.

Senator Little asked if there are only two counties that are charging \$1.00 per page for volumes of material? Also, will this amended language in **S 1350** help other parties and not just the title companies? **Ms. Howard** answered that it was determined that there was only one county charging \$1.00 per page. This county is small and collects a small amount on a weekly basis that doesn't cover their actual costs. Overall this will be fair and equitable for all the counties.

Senator Geddes commented that as he understands this, anytime someone comes in for more than 100 pages to be copied, that you will have to negotiate a price whether it is for electronic or standard paper copies. He asked **Ms. Howard** if that would be a burden for the clerks, based on the fact that one county has special circumstances? **Ms. Howard** replied that the agreement and negotiation will stand for anyone who is in the same capacity as a title company.

MOTION: **Senator McKenzie** made a motion to send **S 1350** to the amending order. **Senator Stegner** seconded the motion. The motion carried by voice vote.

H 477 **Representative Eskridge** presented **H 477**. He stated that basically this bill corrects an oversight in the original legislation. It transfers the powers and duties relative to real and personal property, from the Department of Health and Welfare to the Division of Veterans Services. The amended language allows the administrator of Veterans Services to exercise control over property that should be held under them.

Senator Davis asked if there is any property being held by Health and Welfare that they are unwilling to convey back to the State of Idaho or to the Division of Veterans Services? **Representative Eskridge** replied that this is an agreement between the department of Health and Welfare and it relates only to property that should now be under the Division of Veterans Services. Health and Welfare has no desire to keep it. They are in agreement to transfer it to Veterans Services where it would have normally been transferred.

MOTION: **Senator Little** made a motion to send **H 477** to the floor with a do pass recommendation. **Senator Darrington** seconded the motion. The motion carried by voice vote.

H 488 **Representative Boe** addressed the Committee and presented **H 488**. She stated that this bill expands legislation that was passed in 1999, when Representative Bieter was killed in an automobile accident during the legislative session. This legislation will provide for an interim emergency replacement.

Representative Boe yielded to **Representative Bayer** the co-sponsor and he added that this will facilitate a gap which we all know can happen. It does not interfere with any existing facilitation for a temporary substitute.

Senator Little asked if this would create a situation where legislators are bequeathing their seat to their preferred candidate, or if they were thinking about resigning early, could they circumvent the county central committees? **Representative Bayer** answered that this is meant to address a situation that occurred last year. The process that is currently in place will continue. We can have the substitutes via our priority list filed with the Secretary of the State. This in no way interferes with the committee process and subsequent appointment. **Senator Little** stated that in an event of death he could see this, but wondered if this might inspire some to resign early. **Representative Bayer** stated once again that the intent of **H 488** is when the legislature is in session, and they need to facilitate representation.

Senator Davis asked how many other states provide a mechanism where a legislator can take off for a period of time and designate someone to fill their seat? **Representative Bayer** replied that he did not have that information. He is only familiar with what is facilitated here. **Senator Davis** stated that he worries that this does the opposite of what the target is. If a district is without representation perhaps there may be a greater likelihood to hurry the matter along. **Representative Bayer** commented that he believes this will simply facilitate that few and far between circumstance in the best interest of the constituents.

Chairman Burtenshaw asked **Representative Bayer** if the replacement is sworn in as a senator or representative can he vote? **Representative Bayer** answered yes that is correct and it is done to facilitate the process. **Chairman Burtenshaw** asked if the concern was more about a death rather than a resignation? **Representative Bayer** answered yes.

Senator Stegner stated that on a resignation or death, the district committee has 15 days to make an appointment. After they forward 3 names, the Governor has another 15 days. So potentially there is a month. The legislation meets for approximately 70 days. Some districts do not have representation for nearly half the time, and this simply allows that someone be appointed almost immediately until the process works its way through the time frame. He added that he sees no downside to that clarification. **Senator Davis** added that when someone dies there is no choice. A resignation is an act of volition so they need to take into account the impact it has on their constituency. **Senator Davis** added that he wasn't sure if that distinction justifies holding **H 488**. But there is a potential policy difference between the two points. He is not a fan of the list, but if we are going that way he doesn't see a problem with **H 488**.

MOTION:

Senator Davis made a motion to send **H 488** to the floor with a do pass recommendation. **Senator Stegner** seconded the motion. The motion carried by voice vote.

ADJOURN: There being no further business before the Committee, **Chairman Burtenshaw** adjourned the meeting at 8:50 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

- DATE:** February 17, 2006
- TIME:** 8:00 a.m.
- PLACE:** Room 437
- MEMBERS PRESENT:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, Malepeai
- MEMBERS ABSENT/ EXCUSED:** None.
- GUESTS:** Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).
- CONVENED:** **Chairman Burtenshaw** called the meeting to order at 8:05 a.m.
- RECOGNITION:** Senate Page, Jill Marotz was recognized for her service to the Committee for the first half of the legislative session. The Committee presented her with a Senate watch and letter of recommendation. The new page, Emily Kuhl, was introduced. She will be providing her services to the Committee for the second half of the legislative session.
- MINUTES:** The minutes for February 8, were moved and approved as written by **Senator McKenzie**. It was seconded by **Senator Malepeai**. The minutes were approved by voice vote.
- RS 15950** **Tim Flaherty**, a student from Boise State University, presented **RS 15950** to the Committee. **Tim** stated that this resolution would allow students to more actively take part in the debate concerning their education.
- Chairman Burtenshaw** asked **Tim** to explain to the Committee why he feels this is important? **Tim** answered that there is a perception on college campuses that there is disconnection between the legislature and the State Board of Education and the students. He continued and stated that he believes this resolution will give them some connection, and an opportunity to provide information that the State Board of Education would not get otherwise.
- Senator Geddes** asked **Tim** how they would select one student to represent the whole student body and be the voice for all the universities? **Tim** deferred to **Ryan Sargeant**, the Idaho State University (ISU) lobbyist. **Ryan** addressed the Committee and said that according to the language in the bill it will be made by the Governor. But as a non-voting member it would not require a senate confirmation.
- Senator Malepeai** asked if there was discussion to rotate the position

within the student body? **Ryan** answered that they do not want the student body president because they want to make sure that the student is a resident from the state of Idaho, and sometimes the student body president isn't always an Idaho resident. **Senator Little** stated that the Board of Education has other responsibilities outside of higher education. He asked Ryan if a 1 year tenure will give a student ample opportunity to understand the scope the state board has? **Ryan** replied that they think it has value because it will be a student's perspective. The student may not be as educated on the issues, but they support them being a non-voting member as a voice in the debate, and to be able to sit on the Committee.

Senator Stegner asked **Ryan** if this position would be burdensome for the student to maintain given their busy schedules? **Ryan** answered that although this is his first year being involved in student government he managed to make the dean's list last semester. He added that maybe sometimes student's capabilities are underestimated. There are multiple students that would make great members on the state board.

Senator Davis asked **Ryan** if he felt that students have been excluded from participating in the debate? **Ryan** answered that right now the time allotted to student government is only 5 minutes during gallery comments, before the state board meeting convenes. That is why they want to be able to participate in the debate. The most important reason they want to be on the board is to ask the administration questions. **Senator Davis** asked **Ryan** if he wanted to be able to attend executive committee meetings? **Ryan** answered yes it is one of the things they would like. But the most important part of this bill is to allow them to speak to their administrations. Additionally, they feel they could have a more effective voice by being present in the meetings.

Senator Davis made a motion to print **RS 15950**. **Senator Malepeai** seconded the motion. The motion carried by voice vote.

H 414

Ben Ysura, Secretary of State, addressed the Committee and stated that lines 36 to 40 reflect the change in the bill. They relate to the disposition of unexpended balances by candidates that need to be accounted for, until they reach a zero balance. This is a way to make sure, post-election, that there aren't any contribution limit situations. The fiscal impact will be minimal to file these extra reports. This is the same type of reporting for all candidates.

Senator Geddes asked **Secretary Ysura** how this works regarding deficit spending, and would it also have to be brought to zero? **Secretary Ysura** answered yes, it is correct. Any debts outstanding would have to be zero before the campaign could be terminated.

MOTION:

Senator Little moved to send **H 414** to the floor with a do pass recommendation and **Senator Stegner** seconded the motion. The motion carried by voice vote.

H 556

Secretary of State, **Ben Ysura** presented **H 556** to the Committee. **Secretary Ysura** stated that it gives his office, as well as candidates some guidance. Personal use restrictions were introduced in 1997. The

legislation mimics federal law and the reason is they have had experience with this since 1972. This will give parameters on campaign expenses. It is the first time federal law has deemed certain expenditures to be for personal use.

Senator Darrington asked about contributions made to charitable organizations? **Secretary Ysura** answered that as long as there isn't any personal benefit, it shouldn't be a problem. The irrespective test should be applied and, in his opinion, when in doubt, don't do it. The statute lists all the non-profit types.

Senator Stennett asked if it would be prohibitive to use campaign funds for a golf tournament. **Secretary Ysura** answered that charity golf events and things of that nature fall under line 20 and 21 if they are non-profit. The over-riding precedent is if there is any relationship between the event and the office holder duty.

MOTION:

Senator Stegner moved to send **H 556** to the floor with a do pass recommendation. **Senator Little** seconded the motion. The motion carried by voice vote.

S 1388

Senator Stegner presented **S 1388** to the Committee. He stated that **S 1388** deals with distribution of liquor dispensary profits or excess revenues. **Senator Stegner** said that 7.2 million dollars were used from that revenue last year as part of the water settlement. The state of Idaho shares the revenue with the counties and the cities. Initially it was a 50-50 share and over the years it has been modified. This bill is another adjustment to that distribution formula. Currently approximately 8.5 million dollars goes to the state, and anything above that goes to the cities and counties. This bill is an attempt to return to the 50-50 split. It also takes into consideration the repayment of the 7.2 million dollars over a 4-year period back to the cities and counties. After that the rate is adjusted over a period of time until 2014, and then it returns to a 50-50 split.

Senator Stegner continued and stated that the problem with the distribution formula now is that the state receives one third, and the cities and counties receive two thirds. A new warehouse is needed to cut costs and increase profits. Additionally there is market demand for new stores. ILD would like to do this but they would have all the risk, and not receive any of the profits. Under the current formula all profits go to the cities and counties. This legislation is fair and the cities and counties would continue to receive an increase in revenues and be paid back the 7.2 million dollars.

Senator Corder addressed the Committee and said he could not add more to the facts, but that there is one more thing to consider. As the legislature goes through the process of trying to resolve property taxes for counties, it will need to come up with a solution for meaningful tax relief. Some may argue that adjusting this formula would be taking away money from the counties that they could use. That is not tax relief. He continued and said that, in his opinion, it is better to adjust this formula and bring transparency to those dollars and what to do with them. Then the tax

problem can be resolved.

Senator Bunderson addressed the Committee and stated that many of the bills coming from the House are shifting state dollars to pay for dollars that are spent at the local level. It is called property tax relief and this bill goes in reverse. This is a property tax increase bill. The liquor fund has 8.3 million that is fixed in current statute, and that amount has not increased for a number of decades. The bill before this Committee only increases it for the general fund. The 7.2 million was not borrowed, it was an appropriation. **Senator Bunderson** said he doesn't disagree with **Senator Stegner**, that the formula needs to be moved to a percentage relationship. The question is which percentage is the right percentage.

Senator Bunderson stated that he has two proposals. 1) not to be so heavy-handed on the counties and the cities who have a larger proportion of the costs, in dealing with the law enforcement associated with the deputies. 2) hold the bill and look at the whole issue. Create an interim committee to review the increase in mind altering substances. He added that the problems are more on a local level rather than the state level.

Tony Donelli, from the Association of Idaho Counties, stated that the Association were in all the discussions. In the beginning they were concerned, but the state should share a reasonable amount. The association supports this legislation. They recognize that over the last few years the legislature is moving in a positive direction to support some health care issues, which in turn helps law enforcement.

In summary, **Senator Stegner** stated he doesn't believe this is a property tax bill. They have made sure not to harm local governments and be fair to them, and not result in the need to raise property taxes. He added that he agrees with **Senator Bunderson** on the need to look at some of the other target areas. The beer and wine industry is under-taxed in terms of their contributions to the problems of substance abuse it creates in our state.

MOTION: **Senator Stegner** made a motion to send **S 1388** to the floor with a do pass recommendation. **Senator Little** seconded the motion. The motion carried by voice vote.

ADJOURN: There being no further business before the Committee **Chairman Burtenshaw** adjourned the meeting at 9:40 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 20, 2006

TIME: 8:30 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: None.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

CONVENED: **Chairman Burtenshaw** called the meeting to order at 8:32 a.m.

MINUTES: **Senator Malepeai** stated that he reviewed the minutes from February 10. They are in order and he moved to accept the minutes as written. **Senator McKenzie** seconded the motion. The motion carried by voice vote.

Senator Darrington moved to approve the minutes of February 6. **Senator Malepeai** seconded the motion. The motion carried by voice vote.

H 454 **Representative Deal** presented **H 454** to the Committee and he stated that in 1992 the Reciprocal Interstate Shipment Act was passed. It allowed Idaho wineries to ship wine to consumers. Twenty three other states have the same reciprocal act with the state. Most of the Idaho wineries are small and do not have a relationship with a distributor. In May 2005 a Supreme Court decision stated that there has to be equal treatment of in-state and out-of-state direct shipment wine to consumers. **H 454** closely follows a model act that has been approved by the National Council for Sale of Liquor (NCSL). Under this act Idaho will go from a reciprocal status to a permit status. This particular bill would allow wineries not to ship more than 24 cases annually, direct to any resident of Idaho. Under the current reciprocal act there is no limitation. Wineries must obtain a permit from the Director of Law Enforcement through the Alcohol Beverage Control (ABC). There is a registration fee of \$50.00 and \$25.00 for renewals. This money is shared between the State Police and the Idaho State Tax Commission. Each shipment requires proper labeling of the contents and a signature from a person of 21 years of age or older.

Representative Deal added that this bill would increase tax revenues, as

the out of state wineries must pay sales and excise tax on the wine shipped into Idaho. It is estimated that amount will be about \$250,000.00. He stated he thought this system would be better than the reciprocal system, and that the small wineries in Idaho need the opportunity to ship their wine direct to consumers.

Senator Stennett asked **Representative Deal** why the limitations on cases of wine needed to be made in the legislation? **Representative Deal** answered that two entities are able to direct ship to consumers. One are the wineries which the limitations are outlined on page 1, lines 26 to 31. On page 2, Section 7, lines 38 to 44 has to do with retailers. The intent of this bill is only to deal with wineries. **Senator Stennett** commented that he thought it was an arbitrary limitation, and he is just curious why it is there for retailers if they are shipping to individuals.

Senator Darrington asked **Representative Deal** if the fiscal impact had been worked out with the ABC and the Idaho State Police? **Roger Seiber**, from the Wine Institute, answered that because of input from the Tax Commission and the Idaho State Police (ISP) through the ABC, they made a change and increased the permit fee. The Tax Commission and ISP will split those fees to run their programs.

Senator Davis stated that as he understands this, as a result from the U.S. Supreme Court decision our current statute would not survive constitutional muster. **Representative Deal** commented that 15 states have already gone through permit status, and so another way for the state of Idaho to match up the permit system, seems to be the only way to do this. **Senator Davis** asked if an opinion from the Attorney General's Office regarding the constitutionality of the current statute as well as the proposed legislation, would satisfy constitutional muster? **Mr. Seiber** answered and said no not to his knowledge. The view of the industry is that the reciprocal agreements do not pass constitutional muster based on interstate commerce. Because we allow Idaho wineries to ship unlimited amounts and we have limitations on out of state shipments, that this is how we got to where we are now.

TESTIMONY:

Former **Senator Ringert** stated that he retired about ten years ago and now has a vineyard. He operates Cold Springs Winery in Hammond Valley. The grape industry is a great alternative for the state of Idaho's agriculture production. Marketing is the most difficult aspect he deals with. He has a relationship with a distributor who sells wine from other states as well as international. Because his production is small, it is difficult to persuade the distributor to push his product. The small producers in the state would be able to compete nationwide with this legislation.

Senator Little asked **Senator Ringert** if state tax was collected on out of state wine shipments? **Senator Ringert** answered that there is no mechanism to require out of state shippers to collect tax. **Mr. Seiber** stated that sales and excise tax is not currently collected. With the passing of this bill it would be collected.

Bob Corbell addressed the Committee. He represents the Idaho Grape Growers and Wine Producers. **Mr. Corbell** stated this bill is beneficial to the small wineries. It is about a 55 million dollar industry. Major sales come from tourism through the reciprocal agreement.

Bill Roden, who represents the Idaho Beer and Wine Distributors Association, stated that they are not in opposition to the legislation. It has merit, but there is some misunderstanding with regard to a few things. The Supreme Court case states that the state has a number of options open to how it regulates the sale, importation, and distribution of alcoholic beverages into and out of the state.

Mr. Roden continued and said that the association and distributors in Idaho believe that the wine industry is extremely important. It is important for the producers to have access to as broad a market as possible within the scope of the laws. The reciprocal arrangement allows Idaho producers to ship to other states and not pay the Idaho state tax. Likewise, other states can ship into Idaho and not pay tax. Idaho law does not permit an Idaho winery to direct ship to consumers. They can sell to consumers at their retail location. The association does not object to the change. The concern is shipments of 24 cases at one time and the enforcement mechanism. Sales to minors is the biggest concern of the ISP. The restriction of 2 cases that is still in the law refers to retail sales. Direct shippers can ship up to 24 cases and this may provide a distribution route for persons under age. The 2 case limit should be retained for direct shippers. The other suggestion is that direct shippers provide a monthly report of sales to the ISP and ABC, just like the wineries and distributors.

Senator Geddes asked **Mr. Roden** how do we define personal use when an individual purchases the 24 case limit? **Mr. Roden** answered the bill states it is for personal use and not for resale. It would not prohibit the individual from giving it away.

Senator Davis asked **Mr. Roden** if he thought the current structure was unconstitutional? **Mr. Roden** replied he does not. **Senator Davis** asked if his concern is for a status quo on distribution? **Mr. Roden** answered yes.

MOTION:

Senator Little made a motion to send **H 454** to the floor with a do pass recommendation. **Senator Stegner** seconded the motion. The motion carried by voice vote.

GUBERNATORIAL APPOINTMENTS:

The former **Governor, John Evans**, addressed the Committee regarding his appointment. **Governor Evans** stated it is an interesting challenge here in Idaho. We are in need of additional power and transmission lines. His banking and finance background will contribute to the Authority.

Senator Stennett asked **Governor Evans** what the Authority anticipated building and where, etc.? **Governor Evans** answered that the Authority has only had an organizational meeting. They need to get the financing in place. A geo-thermal plant is in the development stages that could

possibly be financed. Studies need to be made, so it is early to give any concrete answers. **Senator Stennett** asked how much emphasis or direction will he be able to give towards alternatives? **Governor Evans** answered that it is one of the provisions within the law. It would give the Authority the opportunity to finance wind generation, solar generation, geo-thermal, and a broad range of opportunity to go to those types of energy sources.

Senator Davis asked **Governor Evans** to comment on Sempra and what kind of challenges it will pose for him individually? **Governor Evans** answered the Authority will not have anything to do with the Sempra program. They will not be providing financing. They have their own financing to move ahead on it, so it separates his personal view from that development. **Senator Davis** asked if the Energy Authority would be involved in any transmission related issues to Sempra if it was cited and built? **Governor Evans** answered he didn't think there would be a transmission line.

Senator Stennett asked **Governor Evans** what role if any has he played in Sempra? **Governor Evans** answered that it has only been a voluntary effort. Many have spoken up in opposition to it.

Chairman Burtenshaw stated that the Committee would not be voting today on **Governor Evans** appointment and thanked him for speaking to the Committee.

Hyong K. Pak was reappointed to the Idaho Commission on Human Rights and **Mr. Pak** stated he wished to continue and serve for 3 more years. He came to Idaho in 1972 from South Korea. All of his secondary education was completed in Idaho and he received his law degree from the University of Idaho.

Senator Geddes commented that he noticed **Mr. Pak** did not note whether or not he had any political affiliation. **Mr. Pak** replied that he is an independent.

Senator Darrington asked **Mr. Pak** if he is satisfied to do his work on the Commission without subpoena powers? **Mr. Pak** answered that as an attorney he has civil subpoena power.

Chairman Burtenshaw asked **Mr. Pak** how many terms has he served on the Human Rights Commission? **Mr. Pak** stated that his first appointment was to finish a term for another member. This is the beginning of his second full term. **Chairman Burtenshaw** thanked **Mr. Pak** and told him that the Committee would vote on his reappointment at the Committee's next meeting.

ADJOURN:

There being no further business before the Committee, **Chairman Burtenshaw** adjourned the meeting at 9:45 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 22, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: None.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

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

GUBERNATORIAL APPOINTMENTS: **Senator Little** moved to approve **Governor John Evans** to the Idaho Energy Resources Authority and **Senator Stennett** seconded. The motion carried by voice vote.

Senator Malepeai moved to approve **Hyong K. Pak's** reappointment to the Idaho Commission on Human Rights. The motion was seconded by **Senator McKenzie**. The motion carried by voice vote.

Candice Allphin addressed the Committee regarding her appointment to the State Building Authority. **Ms. Allphin** stated she has done a lot of volunteer work for the community. She has been in the banking industry for 27 years and she would be able to add her expertise to the Authority.

Chairman Burtenshaw asked **Ms. Allphin** if she lived here in Boise? **Ms. Allphin** answered yes and that she was born in Idaho. **Chairman Burtenshaw** asked if she has any political affiliation? **Ms. Allphin** replied that she is an independent.

Senator Darrington asked **Ms. Allphin** if she would have any conflict being affiliated with the bank? **Ms. Allphin** answered no, that her responsibilities at the bank are to oversee the retail operations in small business lending here in the valley.

Chairman Burtenshaw advised **Ms. Allphin** that the Committee would vote on her appointment at the next meeting.

H 415 Secretary of State **Ben Ysura** addressed the Committee concerning **H 415** with amendments on lines 9 and 2, page 2. The contribution limits were added by the legislature in 1997 and they have become meaningless as splinter groups are allowed to have their own contribution

limits. This legislation is similar to other states and the federal government that have contribution limits. From 1974 through 1997 there were no contribution limits. It was decided in 1997 to amend the law and put in contribution limits. Once that was done, affiliated contributions should have been included. If disclosure is enough, then we need to repeal the limits. What was done in the past was not illegal, it was proper under the rules at the time. **H 415** will change the rules to make it clear that affiliated entities are going to be aggregated in the sense of contribution limits.

MOTION:

Senator Little moved to send **H 415** to the floor with a do pass recommendation. **Senator Stegner** seconded the motion and the motion carried by voice vote.

H 476

Bill Von Tagen, Deputy Attorney General representing the Attorney General's Office, presented **H 476**. **Mr. Von Tagen** stated that a non-consensual common law lien is sometimes referred to as a frivolous lien. *It is a lien that is defined in Idaho Code, Section 14-1701, and has no basis in law.* Basically it is made up in order to harass someone, generally a public official. In 1996 the Attorney General proposed the legislation adopting the common law lien statute which is now in Chapter 17, Title 45, Idaho Code. The problem then was liens against real property of public officials. Since that time the problem has migrated from the county clerks to the Secretary of State. What **H 476** specifically does is amend 14-1704 and 14-1705. The second part of the statute in Section 2, 14-1705 deals with filings with the Secretary of State, and specifically the coverage of liens against personal property. **Mr. Von Tagen** continued and said that penalties and liabilities are outlined in **H 476** on page 1, lines 40 and 41, and on page 2, lines 1 through 6 for damages for documents filed.

Senator Davis asked **Mr. Von Tagen** what happens to people who put liens on their own property for various purposes? Has this been addressed in prior statute? **Mr. Von Tagen** deferred to **Chuck Goodenough**, Deputy Secretary of State from the Commercial Division. **Mr. Goodenough** answered yes, that had been taken care about 4 years ago. The statute allows for rejection of any liens filed by the individual who is both debtor and the secured party.

Senator Little asked **Mr. Von Tagen** where non-consensual common law liens are defined in the code? **Mr. Von Tagen** answered in Section 45-1701, sub-section 3.

Senator Davis stated there are 2 types of liens. Some are granted by statute such as a mechanics' lien. Every time you sign a security agreement or a mortgage you consent to the lien being placed on your property. As he understands the bill, there are individuals who fictionally create asserted common law liens to make the lives of public officials and others miserable. As long as the lien meets the requirement of the statute the recorder's office records it. The Commercial Division needs this additional tool to be able to recognize when this situation occurs. **Mr. Von Tagen** stated that **Senator Davis** is exactly right.

MOTION: **Senator Davis** moved to send **H 476** to the floor with a do pass recommendation. **Senator McKenzie** seconded the motion. The motion carried by voice vote.

ADJOURN: There being no further business before the Committee, **Chairman Burtenshaw** adjourned the meeting at 8:20 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 24, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: Davis.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

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

GUBERNATORIAL APPOINTMENT: **Senator Little** made a motion to confirm **Candice Allphin** to the State Building Authority. **Senator McKenzie** seconded the motion. The motion carried by voice vote.

HJM 16 **Representative Stevenson** presented **HJM 16** to the Committee. This joint memorial is designed to support the State of Idaho in an effort to improve and reform the Endangered Species Act (ESA).

MOTION: **Senator Little** made a motion to send **HJM 16** to the floor with a do pass. **Senator Stegner** seconded the motion. The motion carried by voice vote.

H 574 **Representative Eskridge** addressed the Committee and stated that **H 574** amends Section 66-901 Idaho Code, to allow the admission of spouses of eligible veterans to the state veterans home. As of February 6, 2005 the overall census report to the Idaho Division of Veterans Services was approximately 86% in terms of occupancy. The reasons for doing this is out of consideration to the veterans and their spouses. Additionally empty beds generate no revenue for the state. A bed occupied by a veteran's spouse could generate as much as \$190.00 for private medical, and \$160.00 under medicaid reimbursement. **Representative Eskridge** continued and said that they lose on average 1 to 2 residents in the homes each week. The impact of the bill is to increase occupancy rate and thereby reduce per person expense on the home.

Senator Little asked **Representative Eskridge** if he knew what other states do? **Joe Bleymaier**, Administrator for Division of Veterans Services, told the Committee that a survey was done last year and, out of the 23 states that responded, 18 admit spouses. No one indicated any negative feedback, they all viewed this as a positive.

Senator Lodge stated that this legislation would ensure that the state's veterans' homes are filled to capacity, thereby generating revenue for the homes.

Senator Little asked, if the homes are filled to capacity, what kind of number is the state looking at for the general fund? **Mr. Bleymaier** answered that it is \$220.00 per bed space per day for a veteran. For a spouse it would be \$160.00 for a medicaid reimbursement and \$190.00 for private.

Senator Stegner asked **Mr. Bleymaier** if he had knowledge of any current cases where spouses can't be together? **Mr. Bleymaier** stated he had knowledge of a case last month where a couple came to the Pocatello home seeking admittance. When they were told only a veteran could be admitted and not the spouse, they went elsewhere. **Senator Stegner** commented that, in addition to the financial consideration the state would gain in terms of occupancy, there is a significant argument for keeping spouses together. **Mr. Bleymaier** added that yes, it is a positive reflection on the home and their attempt to better service the veterans and their spouses.

Senator Little asked approximately how many are spouses versus widowers? **Mr. Bleymaier** answered that most of them are widows, and that federal law states that it is the surviving spouse.

MOTION:

Senator McKenzie made a motion to send **H 574** to the floor with a do pass recommendation. **Senator Stegner** seconded the motion. The motion carried by voice vote.

H 571

Representative Bolz presented **H 571** to the Committee and stated that **H 571** is a veterans preference bill. This legislation revises the current statute dealing with veterans preference in hiring practices within state government. The revisions were needed because they were simply outdated. Changes are more in line with the federal government and clarification of definitions and other issues are also included.

Senator Little asked **Representative Bolz** who is required to give preference? **Representative Bolz** answered that basically any public entity.

Senator McKenzie asked **Representative Bolz** what is the procedure to enforce a civil liability? **Representative Bolz** deferred to **Oliver Chase**, Management Assistant for the Division of Veterans Services. **Mr. Chase** stated that if the entity has an appeal process in place they would have to exhaust that. **Senator McKenzie** stated that it looks like the language says "may file an appeal", rather than "shall file an appeal". He questioned if they can file in district court? **Mr. Chase** answered it is not mandatory, if they choose to, they may file an appeal.

MOTION:

Senator Geddes moved to send **H 571** to the floor with a do pass recommendation. **Senator McKenzie** seconded the motion. The motion carried by voice vote.

RS 16077

Kelly Buckland, Executive Director of the Idaho State Independent Living Council addressed the Committee. **Mr. Buckland** stated that in 1990 President Bush Sr. signed into law The American Disabilities Act (ADA). Since that time a number of Supreme Court decisions have weakened protection for persons with disabilities. This bill would ensure that the state government is liable for discrimination against individuals with disabilities in the same way as any employer, any business or any level of government. It will provide people with disabilities the same legal protections and remedies in dealing with the state as exists with every other level of government or private business. **Mr. Buckland** stated that the state should not be held to a different standard than every other employer in the state of Idaho.

Senator Stegner asked **Mr. Buckland** for more detail as to who was involved with his group? **Mr. Buckland** answered that he did not have the list of committee members with him today.

Senator Little moved to print **RS 16077**. **Senator Stennett** seconded the motion. The motion carried by voice vote.

S 1406

Christian Busardo a student from Boise State University addressed the Committee. He commented that the whole process was a great educational opportunity on how a bill becomes law. Initially **Christian** discussed **H 820** from 1992 which was vetoed by the then Governor. The concerns **Governor Andrus** had then are the same concerns the Committee has now, and **Christian** stated that he feels the concerns have been addressed in **S 1406**. **Governor Andrus** had vision for the State Board of Education to separate higher education from K-12 and what they governed. Unfortunately, that hasn't been done yet so they are still looking for representation on the State Board of Education. **S 1406** is a reformed bill that provides that representation on the board. **Christian** continued and said they are not against reforming the State Board of Education and making it two separate entities. For now, this is what student lobbyists can do to help the college and university students, by giving the student's perspective a voice and clarity.

Senator Darrington asked **Christian** if the student could be from any of the colleges or universities of Idaho? **Christian** answered yes, that is correct. **Senator Darrington** asked if it were for a 1 year term appointed by the Governor, with no requirements to the Governor as to who the student might be? **Christian** answered yes, somewhat. The average student would not be applying for this, nor would they be appointed by the student body president. The student body president would nominate the individual. **Senator Darrington** stated that the legislation doesn't state that. **Senator Darrington** asked if the student would sit in the executive session of the board? **Christian** responded that the student would have to be a resident of Idaho and yes, they would attend the executive meetings.

Given the confidentiality of the meetings, **Senator Darrington** asked **Christian** if the position was an "at will" appointment? What if the person walked out of the session and violated the confidences, could the

Governor replace him immediately? **Christian** answered that the legislation does not provide for that. He would hope that would not be the case, but that the Governor would replace this individual and seek action.

Senator Geddes commented that in the Governor's veto message from 1992 it stated that the board has broad responsibilities for general supervision, government and control. He asked **Christian** how he feels the student involvement could help with respect to vocational education, Idaho Public Broadcasting System, School for the Deaf and Blind, and the State Library? **Christian** answered that they had addressed this however he would like to defer at this point to **Ryan Sargeant**. **Ryan** stated that the student wouldn't be limited to merely representing students, but that they would also be accountable to the citizens of Idaho, just like other board members. This is another reason why they are not asking that the student be a voting member. They understand that there are more qualified members to make decisions, they just want the student to be there. The student would be acting as a liaison from the State Board of Education to the students and the associations on campus. **Senator Geddes** added that the Governor felt in 1992 that students did have an opportunity to be involved in the affairs of the board, and could attend meetings and communicate. He asked **Ryan** if the board was supportive of this legislation? **Ryan** answered that the board told them they have taken no position on this legislation.

Senator Stegner asked **Ryan** why the Committee should consider changing the general function of the board for advocacy positions? **Ryan** answered that it was not their intent. They want to improve relations between campus and the State Board of Education with this position. **Senator Stegner** commented that the Statement of Purpose seems like advocacy initiatives to him. He asked **Ryan** to elaborate on why he feels he is limited now in expressing his views to the board? **Ryan** replied that it wasn't their intent to state that the board doesn't care about student issues. Their intent is to grow a better relationship with the board. If a student representative is on the board, he feels they will be able to foster real relationships between the student associations and the State Board of Education.

Tim Flaherty addressed the Committee and stated that he believes **S 1406** will improve education in the state. He asked the Committee to send **S 1406** to the floor with a do pass recommendation. **Chairman Burtenshaw** commented that the Committee appreciated the student's interest and ability to present themselves before the Committee. These are some of the tough decisions the Committee have to make.

Senator Geddes stated that he truly is impressed with the quality of these students. They are passionate about representing themselves and the students on the State Board of Education. He appreciates the efforts that they brought to the Committee and their display of leadership.

MOTION:

Senator Geddes made a motion to hold **S 1406** in Committee. **Senator Stegner** seconded the motion. The motion carried by voice vote.

MINUTES: **Senator Little** moved to approve the minutes from February 13. **Senator Stegner** seconded the motion. The motion carried by voice vote.

Senator Stennett moved to accept the minutes from February 15.
Senator McKenzie second the motion. The motion carried by voice vote.

ADJOURN: There being no further business before the Committee, **Chairman Burtenshaw** adjourned the meeting at 9:20 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 27, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: None.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

CONVENE: **Chairman Burtenshaw** called the meeting to order at 8:05 a.m.

H 591 **Larry Johnson**, Manager of Investments for the Endowment Fund Investment Board addressed the Committee. **Mr. Johnson** stated that he was also here as Chairman of the Endowment Reform Review Task Force. This group was appointed by the Governor last September to examine the overall management of the state's endowment assets. Some technical adjustments to existing statutes need to be made in order to eliminate ambiguity, improve implementation, and reduce the likelihood of litigation to clarify the meaning of the statutes. The changes to **H 591** also ensure the provisions are in line with the constitution. This legislation was developed and unanimously endorsed by the task force.

Mr. Johnson continued and said that **H 591** is a technical adjustment to Section 57-724A, Idaho Code, and does not change the intent of the existing statute. The original legislation that was adopted in 2004 states that when the public school permanent fund generates a gain, then the definition of endowment earnings will change. Currently cash returns and capital appreciations are considered separately. When the public school fund hits its gain benchmark, then cash returns and capital appreciation will no longer be considered separately, but measured together as part of the whole return of the fund. The task force believes that the change in definition should be separate for each endowment, rather than being tied solely to the public school fund. Having the definition change for all endowments at the same time slightly increases the risk of a shortfall in the appropriated endowment distributions. The task force recommends doing it on an endowment by endowment basis.

Senator Little asked **Mr. Johnson** if he had a number as to what the difference would be? **Mr. Johnson** answered that cash earnings in the fund are about 20 million dollars a year. The change in definition won't be implemented until the permanent funds hit their benchmark. **Senator Little** asked if, given the current market, will we hit the benchmark faster or slower with this change? **Mr. Johnson** responded that it won't make a difference how fast they hit the benchmark, the legislation states that it hit each separately, as opposed to hitting the public school fund and then implementing it all the way across. Because of the shortfall last year in the earnings reserve, **Senator Little** asked if the task force made any recommendation about pooling the endowments together? **Mr. Johnson** answered that it would be easier if all the assets were pooled and the board is working on options to do that, but there is no simple solution.

Chairman Burtenshaw asked **Mr. Johnson** if the endowment investments lose money to a certain extent, does the state have to make up those losses? **Mr. Johnson** answered only for the public school endowment fund, which is the largest fund. The statute requires that the loss be made up. **Chairman Burtenshaw** asked **Mr. Johnson** if the Public Employee Retirement System of Idaho (PERSI) fund was involved? **Mr. Johnson** responded no, only the public school endowment fund.

MOTION:

Senator Little made a motion to send **H 571** to the floor with a do pass recommendation. **Senator Stegner** seconded the motion. The motion carried by voice vote.

H 592

Mr. Johnson stated that **H 592** is also a technical adjustment which does not change the intent of the existing statute. It clears up ambiguities and it aligns with the constitution. The existing statute is vague on how gains in the endowment are determined. To achieve a gain, the funds must be adjusted for inflation. The current description is ambiguous and complex. A three year average calculation has been changed to a simple annual inflation number.

Senator Little asked **Mr. Johnson** if the new consumer price index (CPI) number being used will be a larger number? **Mr. Johnson** answered it is identical at this point in time. The one year CPI number will react to inflation must faster than the three year number. When inflation is relatively benign like the last three years, it doesn't really matter if a one year or three year average is used.

Chairman Burtenshaw asked **Mr. Johnson** if the state has ever had to make up funds for losses in the school endowment, and where are we now in relation to that? **Mr. Johnson** responded no, they have never had to make up a loss. The public school endowment fund surpassed the benchmark in October. If the fund can maintain that figure through the end of the fiscal year, then the 10 year clock will restart.

MOTION:

Senator Little made a motion to send **H 592** to the floor with a do pass recommendation. **Senator Geddes** seconded the motion. The motion carried by voice vote.

HCR 39

Representative Mathews addressed the Committee and stated that **HCR 39** commends the Idaho Medical Association (IMA) for the commitment and support of military personnel and their families, by accepting military health insurance. Additionally, it calls on all Idaho medical providers to do the same.

Senator Darrington commented that the statement of purpose references the IMA and not all physicians belong to the IMA. He asked **Representative Mathews** what the thinking is on that? **Representative Mathews** answered that the intent was that the majority of the physicians in the state of Idaho are members of the IMA. This is a commendation resolution, and the physicians have done great things in working towards all providers to accept the Department of Defense's medical coverage.

MOTION:

Senator Davis made a motion to send **HCR 39** to the floor with a do pass recommendation. **Senator McKenzie** seconded the motion. The motion carried by voice vote.

S 1243

Senator Brandt presented **S 1243** and stated that it deals with having the condemner file all the rights they want to take from the private property owner. **Senator Brandt** deferred to **Heather Cunningham**.

Ms. Cunningham, an attorney addressed the Committee and stated that Section 7-707, Idaho Code, sets forth guidelines for what a condemner needs to include in a complaint. The problem that exists is in paragraph 5 which only deals with taking land in fee simple or ownership. You can condemn other property rights such as easements, access rights or anything that is a property interest. An order of condemnation that the condemner enters into defines exactly what they need to acquire through the process. They may need to file a complaint to do that. **Ms. Cunningham** continued and said that the problem is the complaint does not always mirror the order. The government has the power of condemnation. They have the responsibility to exercise that power appropriately and define exactly what they are taking. When a complaint is filed, that is the date when the property rights have been taken. If the property rights have been taken then there is no justification for allowing the condemner to amend them. It is the condemner's obligation to define what they are taking in a complaint, which is binding. This legislation is reasonable and fair to both sides, which will result in less litigation because the ambiguity of the taking will no longer be an issue.

Senator Darrington asked **Ms. Cunningham** if she were suggesting that when a condemnation takes place, that it isn't always clear to the one being condemned? **Ms. Cunningham** answered yes that is a problem that she has seen.

Senator Little asked **Ms. Cunningham** what about a right of way for maintenance of canals? **Ms. Cunningham** responded she didn't believe it would affect canals. If an easement is condemned for maintenance you don't have to define the easement. You do have to set forth exactly what is being taken. This doesn't change anything, the problem is that condemners do not reflect the changes properly in the legal documents. **Senator Little** asked **Ms. Cunningham** if she was saying that you do not

have to have any specificity for maintenance? **Ms. Cunningham** answered no, that is not what she is saying. If the taking is a maintenance easement it needs to be defined in the scope, meaning how wide it is. There are rules that involve each type of easement. This bill isn't affected because it is specific to condemnation. **Senator Little** asked **Ms. Cunningham** if there will be a lot more fee simple condemnations? **Ms. Cunningham** answered no, the result of this will be that the order of condemnation that is entered into will be required to be attached to the complaint, so that there is consistency with what was determined. The problem now is that the order of condemnation isn't attached to the complaint, and a judge decides the issue of ambiguity.

Senator Stennett asked **Ms. Cunningham** what effect will there be on the U.S. Forest Service for obtaining temporary access through his property? **Ms. Cunningham** answered that there would be no effect unless the U.S. Forest Service uses the power of condemnation to do it. The U.S. Forest Service is defined by federal standards and they have to define what they are taking. Federal takings are not affected by Idaho law.

Senator Davis asked **Ms. Cunningham** if there is a federal equivalent standard in a taking? Is there a requirement to make a similar declaration in the complaint? **Ms. Cunningham** responded that her recollection is that a federal entity has a similar requirement that the taking is defined in the complaint. In her research many states use this exact type of language. **Senator Davis** stated that in his experience sometimes the administrative level is not as careful to put into words what the intended taking is. He asked if they could make a correction to their order, an amended order of taking, and then file a motion to amend the complaint? **Ms. Cunningham** said yes they could do that, but they could enter an amended order before the taking, before the filing of the complaint as well. **Senator Davis** asked **Ms. Cunningham** if she believed that the language in **S 1243** gives the court the discretion to amend a complaint? **Ms. Cunningham** responded that any complaint can be amended, so adding this language doesn't enact a rule that the complaint cannot be amended. "I believe you are saying that the complaint has to include a clear statement that mirrors the order of condemnation."

TESTIMONY:

Keith Allred, representing the group The Common Interest, stated that eminent domain is one of the issues they have invested in this year. The members are in support of this bill by 96% and 4% are opposed. Out of all the eminent domain bills proposed this session, this is the one that they give the highest score. The general concern is how do we balance the power that the government has to condemn property, versus the very fundamental individual property value issue. The results of the membership as a whole recognize the importance of the power of eminent domain, and whether it is an appropriate power for the government to have.

Dick Orr a concerned citizen, stated that his sister won a case in McCall regarding eminent domain. He supports the bill and indicated that it will provide the best coverage for the side of the citizen, so they will be

protected.

Karl Vogt, from the Idaho Transportation Department, stated that **Senator Davis** is essentially correct. What this legislation essentially does is turn condemnations in the state of Idaho into a “code pleading” state versus a “notice pleading” state. The difference is that 100 years ago, all states in the U.S. were basically code pleading states. Allegations are very specifically plead as opposed to notice pleading states, which virtually all the states in the union are now. The judicial process figures out the specificity of it. This is the reason states went away from code pleading and it is a very good reason not to adopt this legislation today. **S 1243** does cause problems for eminent domain attorneys, not just agency attorneys, but attorneys on both sides. It will cause cases to be restarted, increase litigation, and increase expenses for the property owners and the state. The long term effect is that agencies will take more than they need, to avoid those inherent problems of construction. The nature of the game is that sometimes you have to change the take and amend, and change the amount of the property that is needed.

H. Scott Brown, a resident of Idaho, addressed the Committee regarding his opposition to **S 1243**. **Mr. Brown** stated that at this time the government is trying to take 6 more feet of his land on the Knudsen Lateral. Last year 9 of his neighbors were forced to sell and move, so a road could be built down that lateral. They have taken 15 feet on each side of the lateral. One hundred seventy-five wells dried up in 1993 because the Knudsen Lateral did not run.

Terry Yost, an attorney representing the Southern Idaho Appraisal Institute, addressed the Committee regarding the eminent domain bills. **Ms. Yost** stated that she agrees with **Mr. Vogt**. Because Idaho is a pleading notice state, attorneys do not have to put forward everything they are asking for in detail in their complaints. **Ms. Yost** suggested that the bill goes too far because basically they are being told they are locked into what they are told. They can amend a complaint, but it is not an easy task especially by order of resolution. If you have an order of resolution, that means you have done research, and there is no need to add that into the complaint. It binds the litigation. Upon review of this, in terms of what the government or the agency is taking, this will result in overtaking. The agencies, appraisers, and engineers will have to determine what they are taking, and they will be on the cautious side. From an appraisers standpoint, they are the ones who go in and determine what is fair compensation for what the take is. There are several things that have to go in the order of resolution that would inevitably change throughout the course of litigation. This is why Idaho is a notice pleading state, because of the difficulty in making those determinations. This Committee has the power to keep the judicial system the way it is and let the attorneys practice law the way it is set in Idaho.

Senator Davis stated that Section 7-707, Idaho Code outlines several things. When the government wants to take your property, he added, the burden should be tougher than a notice pleading designation. He leans in

favor of the government knowing what they are going to take, defining it, and encouraging those on the appraisal side as well as the taking side, to tell the people what is actually going to be taken from them. **Senator Davis** asked **Ms. Yost** to help him understand that. **Ms. Yost** answered that she believes the way Section 7-707, Idaho Code, is currently drafted it already gives the government the responsibility to do that. What she believes **Senator Davis** is asking, is if the statute already requires them to define what they are taking in a legal description sense. They are putting the property owner on notice of what they are doing in the complaint. The language that has been added in the provision, is that an order of condemnation or resolution, is going to become binding on the government. In Section 7-707, Idaho Code, it is required to state in the complaint that you want permanent easements, and the legal description of the property. The agency is bound to very specific details of what exactly they are going to take, in the order of resolution or condemnation in the complaint.

Ms. Yost stated that basically the property rights are being diminished before they receive the complaint for condemnation. Adding this specific language asks the agencies to do more than they can actually pragmatically do. **Senator Davis** asked if **Ms. Yost** knew if other states have similar standards assuming they are notice pleading states? **Ms. Yost** answered that she doesn't know about other states, but that most states are notice pleading states to keep litigation costs down. She added that if states have not adopted such language in their statutes, it is to keep the agencies from overtaking.

Senator Little asked if there is a quick take provision where a highway department or county could go in and amend the take to acquire more? **Ms. Yost** answered yes, there is that provision. But adding this provision will only muddy the waters by putting in the complaint exactly what is being taken. By putting this language in, the ability to do a quick take action would not be there.

Senator Stennett asked about easements to access property for personal use. If the value of the property is based on that access, which is not prescriptive and the access point is going to be extinguished, hasn't there been a taking? **Ms. Yost** replied absolutely. The appraisers do not know they are taking it. If it is the only access point for the property owner, he is going to let them know that through the process of litigation. The prescriptive easement issue is going to come up when the access point is presumably diminished.

Tony Orman, an appraiser for the Southern Idaho Appraisal Institute, addressed the Committee. **Mr. Orman** stated that, out of 30 or 40 projects for the state of Idaho, he has yet to do one that did not have changes. Things happen that are unknown and to lock the agency into exactly what happens today is not practical. If it becomes necessary to re-file a complaint when something changes, it is going to slow the process and be very expensive. The Idaho Chapter had a meeting last Friday to discuss these bills, and they are against the legislation because it will put a huge burden on the agencies.

Senator Little stated that it may well be a good idea to look at the quick take provision. The value has been established and the quick take allows the project to continue. He asked **Mr. Orman** if had any experience with that? **Mr. Orman** replied that he is an appraiser, and that he agrees with **Ms. Yost** that agencies will be cautious. It just seems that this is an extra step in the process and that would increase costs.

Senator Stennett asked **Mr. Orman** if he used title reports when making an appraisal? **Mr. Orman** answered yes. **Senator Stennett** asked if he ever saw recorded access on property? **Mr. Orman** answered that the access is part of the property.

Steve Price, an attorney for the Ada County Highway District, stated that when one looks at the entire package regarding eminent domain, there are several things going on. All of this is taking advantage of the movement that is associated with the Kelo case. It is kind of a “carpe diem”, seize the day opportunity to come in and change the rules, because there is a certain favorable climate for that. As an attorney who deals with eminent domain, it is a very technical and procedural process. **Mr. Price** continued and said that we are trying to strike a balance between society’s interest versus private property rights. The constitution says if society goes through the exercise, than the land owner is entitled to just compensation. In **S 1243**, it is a procedural issue that gives the defendant counsel more leverage in negotiating a case. The quick take procedure is not quick. The current process already allows access through litigation. In the determination of just compensation those issues are flushed out. To require government to define precisely what they are taking is not practical in all cases. Legislation needs to make sure that the procedure is fair to protect the balance between government’s needs, society’s needs, the private property owner, and make sure that the land owner gets just compensation.

Senator Little asked **Mr. Price** to explain the legal fees incurred for his example regarding moving a road over 2 feet to avoid a hedge? **Mr. Price** answered it was merely an example to show that sometimes there are decisions that need to be made after construction is started. The value of the land is the date of the take. When you have to start over and get a new order, than a new evaluation of that take is made. There are a lot of unforeseen circumstances that are in projects.

Senator Little asked what about the increase in value, shouldn’t the property owner be paid more because the value has increased? **Mr. Price** stated that he has never seen that situation. We are talking about minor adjustments for a project. This is a procedural change, it doesn’t affect what a land owner is able to do once proceedings have started. They can argue for just compensation.

Senator Davis stated that if there is a change of circumstances, then he is a little fuzzy about the target that **Ms. Cunningham** has. If the bill is amended and the language is added, he isn’t changing anything that **Ms. Cunningham** has proposed. He is only adding something at the very beginning that says as follows: except when impracticable or when

circumstances are unseen. **Mr. Price** commented that he agrees with that and that **Ms. Cunningham** has a good point. Governmental agencies have a duty to do a better job. This bill requires an exact science. **Senator Davis** commented that he believes there is a solution to this, short of the Committee laboring for additional time over this.

MOTION:

Senator Davis moved to hold **S 1243** to allow the players to see if they can find some language that contemplates the concerns that have been expressed. **Senator Brandt** stated that is exactly what has been done. He does not have an issue with the suggestion to hold **S 1243**. **Senator Davis** withdrew his request and moved to send **S 1243** to the 14th order of business, amending order, and **Senator Stennett** seconded the motion.

Senator McKenzie stated that the proposed language would engender more litigation. They are easily interpreted in different ways. It sounds to him like the parties are deadlocked and going to the 14th order would open a pandora's box with that particular language.

Senator Stennett stated he seconded the motion to keep it in play and put pressure on those who are on opposite sides. If the language can be cleaned up to identify the flags, then he believes it should be sent to the 14th order for possible amendment.

Senator Stegner opted for a substitution motion and moved to hold the bill in Committee. It was not seconded. The substitute motion died for lack of a second.

Senator Davis stated that **Senator McKenzie** is correct. He is hopeful they will try again with the encouragement of the Committee to find a solution. **Senator Geddes** stated that he supports the motion to send **S 1243** to the amending order. "If your property is being taken you have a right to know what is being taken. How can you expect to be adequately compensated if you don't." Senator Geddes further stated that he feels a better job can be done to ensure that the government is doing its due diligence in developing the information beforehand to the best of their ability, so that just compensation can be reached. **Senator Stegner** stated he would vote against the motion. "Too many times things move to the amending order and are forgotten for a time. The amending order is a poor place to contemplate fine language and alterations to a bill. A better suggestion is to hold the bill in Committee and make the interested parties come to some kind of consensus."

Chairman Burtenshaw asked for a roll call vote to send **S 1243** to the 14th order for possible amendment.

Senator Darrington - Aye
Senator Geddes - Aye
Senator Davis - Aye
Senator Stegner - Nay
Senator Little - Aye
Senator McKenzie - Aye
Senator Stennett - Aye
Senator Malepeai - Aye

Senator Burtenshaw - Aye

The motion carried 8-1 to send **S 1243** to the 14th amending order.

S 1245

Senator Brandt stated that there is still some opposition to **S 1245**. However he believes there is a good amendment proposed to the bill on page 1, line 19. He asked the Committee to send **S 1245** to the amending order to change the word offer to appraisal. In the event an appraisal has been done then litigation can begin. If the condemning agency would like to add to an original offer, they can do so and it will not inhibit them in court.

Senator Davis asked if there is still some opposition to the bill even after the proposed amendment? **Mr. Price** responded that he wasn't quite sure what the changes are, but that he would like the opportunity to meet with **Ms. Cunningham** and discuss it. If what **Senator Brandt** indicates is to replace the pre-litigation offer to pre-litigation appraisal, he believes there is some working area there.

Senator Little suggested holding **S 1245** for a day and then have it come back through the committee process. **Ms. Cunningham** added that everyone was encouraged to participate in these bills. She believes this is the right thing to do to provide bills that address the problems that need to be discussed in legislature. Some entities are not participating even when they address their concerns and state they are still not going to support the bill. **Senator Davis** interrupted **Ms. Cunningham** and asked if they have actually stated so, or is she inferring it? **Ms. Cunningham** replied that it depends on the entity. She added that she is willing to do whatever is needed to resolve this. **Senator Davis** commented that he will vote for this bill the way it is written unless the parties can find a solution. What he understands is that striking the word offer and inserting the word appraisal is something that they are more than casually interested in and likely to embrace. But if they can't come to some agreement, he will make the motion to send it to the floor with a do pass recommendation. Additionally, he does not have a problem holding this for one more day.

Chairman Burtenshaw asked **Senator Davis** if it would require drafting a new bill? **Senator Davis** answered no, he is not suggesting a formal committee amendment. He is suggesting they can work this out, and send it to the 14th order. If not, then he has a motion to make.

Senator Brandt asked that they put **S 1245** on Friday's agenda. He would like to move forward and have hard copies and, if possible, amendments for any of the bills. **Chairman Burtenshaw** commented that he believes **Senator Brandt** wants to change the wording from offer to appraisal and that it would do great things for his bill. **Senator Brandt** stated that, with the support of leadership, a privileged committee could print a new RS and send it directly to the floor.

MOTION:

Senator Stegner stated he understands that the sponsor is willing to hold this until Friday and he asked for unanimous consent that **S 1245** be held. The motion carried by voice vote.

ADJOURN: There being no further business before the Committee, **Chairman Burtenshaw** adjourned the meeting at 10:15 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 1, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: None.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

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

MINUTES: **Senator Malepeai** moved to accept the minutes of February 20 as written. It was seconded by **Senator McKenzie**. The motion carried by voice vote.

RS 16164 **Senator Broadsword** addressed the Committee and stated that this RS is regarding genetic privacy testing. The results are to remain private under certain circumstances so that employers cannot use the information against their employees. Additionally, the employers cannot use the information to raise their employees insurance rates.

Senator McKenzie asked **Senator Broadsword** if this leaves the decision in the hands of the person having the tests done, and is it their decision to release the information to an insurer, employer or doctor? **Senator Broadsword** answered yes it is up to the individual who has the testing done. There are some exceptions as outlined on page 2, Section 8. On the employer portion, from line 33 and down it outlines what information an employer can access.

Senator Darrington asked **Senator Broadsword** if there is any provision by which a laboratory could release the results of genetic testing to anyone other than the provider, the doctor, or the individual? Does this apply equally to private and public facilities? **Senator Broadsword** responded that the laboratory cannot by law release information to anyone other than the provider or the patient without a signed release. They do occasionally release information, but it would have no name attached and used for statistics only.

Senator Geddes asked if the Committee had seen this bill earlier this session? **Senator Broadsword** answered yes, that is correct. **S 1361** was the original bill and the issues were resolved. All of the insurance

portion is handled under Title 41 instead of Title 39 where it was in the original bill. The enforcement and private right action is less stringent.

Senator Davis asked **Senator Broadsword** what was removed other than the language that is in Section 2, and what other compromises did they compel you to buy off on? **Senator Broadsword** replied that a \$100,000.00 punitive damage amount was removed. The insurance portion was changed to be more generic on the last page, in lines 38 to 42.

MOTION:

Senator Stegner moved to print **RS 16164** and **Senator McKenzie** seconded the motion. The motion carried by voice vote. **Senator Broadsword** added that she has the support of the American Cancer Society and the American Heart Association as well as the American Association for Retired People (AARP).

S 1401

Senator Sweet addressed the Committee and he asked that **Brian Judy** from the National Rifle Association (NRA) make the presentation. **Mr. Judy** stated that he is speaking today on behalf of the Idaho members of the NRA. The recent events in New Orleans in the aftermath of Hurricane Katrina demonstrate that the right to bear arms is especially important during times of emergency. The very basis for the second amendment is the empowerment of individuals with the ability to provide a means of self protection. Self protection is no more important than in a time of emergency when law enforcement resources are stretched beyond their limits. **Mr. Judy** continued and said that **S 1401** is a relatively simple bill that will protect law abiding citizens from experiencing the blatant violation of their constitutional rights, unlike the law abiding citizens of New Orleans. In the aftermath of Katrina, citizens were stripped of their rights, and their firearms were taken with force by over zealous government officials. The NRA filed a lawsuit to stop the confiscation of firearms and to ensure they would be returned to them. This bill simply clarifies that during a state of disaster or emergency that no government official shall impose restrictions on the lawful possession, transfer, sale, transport, storage, display or use of firearms or ammunition.

Senator Davis asked **Mr. Judy** if the state of Louisiana has a similar constitutional provision? **Mr. Judy** answered that he didn't know exactly how the state of Louisiana's constitutional amendment provision reads. With respect to Idaho's constitution, it is fairly clear with respect to possession and confiscation of firearms. The other aspects of this bill are not covered. In the wake of the Rodney King trial, verdict and subsequent riots in Los Angeles, there was total unrest and breakdown of civilization. Law enforcement left the area because they were overwhelmed and could not handle the situation. The importance of the second amendment and not being able to acquire firearms was at issue. Under existing law the sale of firearms to lawful citizens can be restricted. One of the aspects of this bill in addition to protecting possession, is that it protects the ability of a law abiding citizen to purchase a firearm.

Senator Davis commented that he had just answered his question regarding drought. He asked if it would it apply? Because you are doing

nothing more than adding language to the statute that is already in the constitution, you are just statutorily codifying the language of the constitution. So the definition of emergency is almost irrelevant and needs to be defined in the language of the bill. **Mr. Judy** replied he wasn't clear on **Senator Davis'** point. **Senator Davis** clarified and said that he had asked **Senator Sweet** if he could help him understand if this would apply in a drought emergency. He continued and said that something **Mr. Judy** said triggered the thought if you have the right, whether it is for an emergency or a non-emergency, the definition of the emergency is irrelevant. **Mr. Judy** said he thinks that is correct regardless of what has transpired. It is the position of the NRA that citizens should not be stripped of their arms rights. Amending this section is when the Governor declares an emergency situation. Possession should be protected, but also for the ability of a citizen who does not have a firearm, to be able to obtain one. It is pertinent and it is necessary.

Senator Stegner stated that the statement of purpose states "to re-establish the right of the people", that implies that it has been lost somehow. He asked **Mr. Judy** if he thought it had been lost somehow? In Idaho is there any loss of the right of the people to keep and bear arms? **Mr. Judy** answered that he did not draft the statement of purpose, but that it hasn't been lost in the state of Idaho. The whole point of this bill is to ensure that it is not lost. Maybe protect would be more appropriate. **Senator Stegner** said on page 2, lines 50 through 53, it states "neither the Governor nor any agency of any governmental entity or political subdivision of the state shall impose restrictions on the lawful possession, etc." The Idaho constitution says "nor shall any law permit the confiscation of firearms" and with the wording of the bill one would assume again that the intent is to specify that the restriction could not be allowed. **Senator Stegner** asked **Mr. Judy** if he thought under the current law that we have any significant risk of the Governor or agency imposing restrictions on the lawful possession of firearms? **Mr. Judy** stated there is an additional change in the bill on page 2, line 29, firearms is deleted. With regard to possession of a currently held firearm the Idaho state constitution is fairly clear on that.

Senator Little added that in the Louisiana constitution, section 11, it states that "the right of each citizen to keep and bear arms shall not be abridged, that this provision shall not prevent passage of laws to prohibit to carrying of weapons concealed on a person". He asked **Mr. Judy** if one of the ways the NRA won their lawsuit was addressing the language in the Louisiana constitution? **Mr. Judy** answered yes he suspects that was the case. **Senator Little** asked if it were true that firearms were really being taken from citizens in New Orleans, considering everything else that was going on? **Mr. Judy** replied yes it is hard to believe, but it did happen and it is documented.

MOTION:

Senator Darrington made a motion to send **S 1401** to the floor with a do pass recommendation. **Senator Stennett** seconded the motion. **Senator Darrington** stated that the constitution of Louisiana seems very similar to Idaho's; I see no harm, only good with this bill, and most likely some comfort to the people. **Chairman Burtenshaw** asked **Senator Sweet** if

he had conferred with law enforcement. **Senator Sweet** answered yes, and they have no issues with this at all. The motion carried by voice vote. **Mr. Judy** added that he had discussions with **David Hensley** from the Governor's Office and they expressed a concern. I told him we would be willing to work with them if they could come up with some language that addressed their concerns. They don't believe it is necessary, but that it go on record that we are working with the Governor's Office to address their concerns.

H 671

Representative Field stated that **H 671** clarifies the role of poll watchers and challengers in elections. It allows any qualified elector to vote by absentee ballot. Any candidate can authorize one watcher to observe an election and one challenger. But only one of each at any given time and they may work in various shifts.

Senator Little commented that this is a pretty substantial change. He asked **Representative Field** if the school board or superintendents weighed in on this issue? **Representative Field** answered neither the school board or superintendent. The problem is being addressed that they want the poll watcher or challenger to remain there for 8 hours. The law didn't state anything differently, so this will make it easier for them to have challengers and watchers if they desire, and to be able to work in shifts. **Senator Little** commented that the poll watcher is fine and not controversial. He knows for a fact that basically there was a blanket on absentee ballot participation. The change on page 2 is good but school board elections will only have more absentee ballot applications as a result of this. **Senator Little** asked what about the emergency clause and maybe **Tim Hurst** would address this if maybe we are changing rules in the middle of an election?

Tim Hurst, representing the Secretary of State's office stated that the emergency clause is effective for the May school board elections. As far as the challenger section of this bill, it has no impact, it is the same. The school board association contacted us last year when this issue came up, wanting to know how we conducted elections. Under Title 34 we allow people to come in shifts. A certain school board indicated they didn't want that, so this makes it more consistent on how it is handled statewide. **Senator Little** added that it was being used as a barrier to absentee ballots and he applauds **Representative Field** for this.

MOTION:

Senator Little made a motion to send **H 671** to the floor with a do pass recommendation. **Senator Geddes** seconded the motion. **Senator Davis** asked is it in the language as it now reads "a candidate can go sit and watch in a particular precinct while people are casting their votes"? **Mr. Hurst** answered that the candidate can't, but they can designate someone to do that. They can sit in the polling place and watch. **Senator Davis** asked if the way it is written "it shall permit one person authorized by any candidate, I hereby authorize myself"? Is there another prohibition somewhere else? **Mr. Hurst** replied that they interpret that statutorily that you cannot authorize yourself. **Senator Davis** added we want to provide the backstop and protection to the Secretary of State so they don't have to interpret it. The language added on line 21 gives to a

person the statutory authority to authorize themselves to watch the conduct of the election.

Senator Stennett commented that **Senator Davis** has a point. It appears that the amendment added on line 19 changes the law as it previously existed. It appears that a candidate could be present to watch the election and he believed there is a conflict. **Mr. Hurst** stated you are right, I missed it. It does state that any candidate can be present. **Senator Stennett** asked if it was in conflict with the other electionary code which **Representative Field** talked about. **Mr. Hurst** replied we think it is a conflict and in **H 672** we have taken the word candidate out. **Senator Stennett** asked then as I've read it and you have interpreted, it will allow the candidate to be there if he authorizes himself? **Mr. Hurst** responded I believe you are right.

Senator Davis stated in light of that, to achieve the objective that **Representative Field** wants, I move that we send **H 671** to the 14th order for possible amendment. **Senator Stennett** seconded the motion.

Chairman Burtenshaw asked **Mr. Hurst** to go over that again and give the Committee an idea what to do in the amending order. **Senator Davis** added that on that particular point if **Representative Field** and **Mr. Hurst** wouldn't mind pulling together an amendment that hits the same target, we will hurry it through as fast as we can.

Senator Stegner stated we might as well move it to the 14th order to amend it. **Senator Little** asked what is the intent? Is it to put back the language to allow the candidate there, which was the status quo? Or is it to say that we are going to authorize a poll watcher who is not the candidate to be there? Is the intent to change the status quo to whether or not I can designate my spouse, rather than myself to be the poll watcher? **Chairman Burtenshaw** said that is the question. **Senator Davis** added sending it to the 14th order allows **Representative Field** and **Mr. Hurst** an opportunity to come back and say the answer to your question was somewhere else. Then the bill can be pulled from the 14th and run the way it is. At least it is ready to receive an amendment. **Representative Field** added that they want to do what is right. They certainly do not want the candidate or their spouse sitting there.

The motion carried to send **H 671** to the 14th order for amendment by voice vote.

H 672

Mr. Hurst presented **H 672** and stated that it expands the role of poll watchers and challengers and it allows them to participate, but maintain the integrity of the election. Additionally it expands watchers and challengers into issue elections instead of just candidate elections. Watchers and challengers are not allowed to participate in bond and initiative elections. The difference between **H 671** and **H 672** is that the Secretary of State has the authority to issue directives interpreting the statute, and giving further direction clarifying that a watcher or challenger cannot be a candidate or a spouse or children. In section 2 it allows the use of the statewide voter system to notify counties when someone has

registered in another county, rather than having the county clerk review and mail a notice to the previous county. Section 3 deals with a correction in the election register when someone is challenged. They are given an opportunity to appear before the clerk to show that the registration is correct or re-register if needed. They cannot just change the information on the card if they move or have a name change, they must re-register. Section 4 deals with school elections and takes out the requirement that the list be by precinct. There are a number of lists and reports available from the statewide voter registration system.

Senator Davis asked if the language on line 39 would be in conflict with **H 671** ? It states “if watchers are present at the polling place when ballots are counted, they shall not absent themselves until the polls are closed.” **Mr. Hurst** answered no, it would not be in conflict with **H 671**. In a paper ballot county when the poll workers start counting throughout the day, the watcher is allowed to observe the counting process. The reason they are not allowed to absent themselves, is if they watch and see if their candidate is ahead or behind. If they absent themselves they could potentially round up more votes. **Senator Davis** asked what about leaving for a bathroom break? **Mr. Hurst** answered yes, they can, they just cannot leave the polling place. **Senator Davis** asked what about cell phone usage? **Mr. Hurst** answered and said that they can and have asked them to leave their cell phone with the chief judge.

Senator Stennett asked what if the poll watcher keeps a list and checks them off, what is the difference? There seems to be some discrepancy there. **Mr. Hurst** responded and said that is exactly what happens. That is what challengers do, but the can't make the determination of how they are voting. The results cannot be released until after the polls close. So this language prohibits them from going outside and releasing the results as the day goes on.

Senator Little asked who will determine who is designated the “con” poll watcher? **Mr. Hurst** answered that it would be up to the county clerk. **Senator Little** asked if the clerks have seen this, and are they comfortable with the responsibility they are going to have on issue elections? **Mr. Hurst** responded that the clerks have seen this and they agree with it.

MOTION:

Senator Little moved to send **H 672** to the floor with a do pass recommendation. **Senator McKenzie** seconded the motion. The motion carried by voice vote.

RS 16139

Senator Stegner addressed the Committee and stated that this deals with recognizing the discrepancy in pay between the Idaho Tax Commissioners and the other appointed commissioners, in particular the Public Utilities Commission and the Industrial Commission. There have been numerous discussions with leadership and the house regarding this issue. **Senator Bunderson** is the sponsor of this RS and there may be an additional bill coming from leadership. **Senator Stegner** indicated that there may be a conflict, but he moved to print **RS 16139** and **Senator Little** seconded the motion. The motion carried by voice vote.

ADJOURN: There being no further business before the Committee, **Chairman Burtenshaw** adjourned the meeting at 9:00 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 3, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: Malepeai.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

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

GUBERNATORIAL APPOINTMENT: **Ruthie Johnson** who was appointed to the Idaho Commission on Human Rights addressed the Committee. **Ms. Johnson** mentioned that she worked for **Senator Jim McClure** for 24 years. She enjoys helping people and is currently serving her third term on the commission. **Ms. Johnson** stated that there is a significant amount of reading to do, but that she manages to read everything for a better understanding of all sides.

Chairman Burtenshaw thanked **Ms. Johnson** for her time and advised that the Committee would vote on her confirmation at the next meeting.

RS 16159
RS 16160 **Paige Parker** from Legislative Services addressed the Committee and stated that these administrative rules will not go into effect unless they are approved by the legislature. These RS's basically set forth the approval with some exceptions. **RS 16159** would approve agency fee or charge rules that have been adopted during the last calendar year. They were submitted through Office of the Rules Coordinator to the Legislature for review during the current legislative session. **Mr. Parker** added that **RS 16160** deals with the temporary rules adopted by state agencies under the Administrative Procedure Act. By statute they expire at the end of the current legislative session. This resolution would approve and extend agency temporary rules beyond the current session, with some exceptions.

Senator Geddes moved to print **RS 16159** and **RS 16160** and send them to the floor for consideration. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

RS 16188 **Senator Brandt** asked the Committee to hold **S 1273** for a later date. He stated that **RS 16188** replaces **S 1245** with the change on line 19 from

offer to appraisal. **Senator Brandt** added that to his knowledge no one has expressed any other concerns.

Senator McKenzie moved to print **RS 16188**. **Senator Brandt** asked the Committee to send it to the floor with a **do pass** recommendation. **Senator Davis** commented that he liked the first motion. **Senator Geddes** seconded the motion to print **RS 16188**. The motion carried by **voice vote**.

H 621

Brett DeLange from the Office of the Attorney General, addressed the Committee. **Mr. DeLange** stated that they support **H 621** which clarifies that the term “stamping agent”, under Idaho’s Tobacco Master Settlement Agreement Complementary Act, includes those persons who pay the tobacco tax on roll-your-own tobacco. Roll-your-own tobacco is tobacco that is sold in bags and then the consumer rolls the tobacco into a cigarette. Each 0.9 ounce is an individual cigarette. The intent of the Complementary Act is to require stamping agents to report quarterly, to the Attorney General, all cigarette and roll-your-own tobacco sales. The present definition of “stamping agent” speaks in terms of those persons who affix Idaho’s cigarette tax stamp but does not address those persons who pay tobacco taxes on roll-your-own tobacco, but do so without affixing a cigarette tax stamp. The amended language will make sure that all appropriate parties report their cigarette and roll-your-own sales as required by the Complementary Act.

Senator Little commented that he has seen the stamping machine work on packages. He asked **Mr. DeLange** how they did this on the bags of Bull Durham? **Mr. DeLange** responded that the traditional roll-your-own are in baggies and that is probably why stamps are not put on them. The seller reports to the Tax Commission his monthly value of roll-your-own tobacco. Sellers remit 40% of the wholesale value of what was sold during the month. This is what creates the problem because the current statute speaks in terms of stamping agent, even the one who affixes the stamp. It needs to state that it is either the person who affixes the stamp on the cigarette package, or the person who is paying the tax on the roll-your-own tobacco.

MOTION:

Senator Little moved to send **H 621** to the floor with a **do pass** recommendation and **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

H 555

Senator McGee stated that **H 555** is the right bill before the Committee. **Senator Richardson** and **Senator Pearce** have been involved over a period of time since the Kelo decision in June. Many efforts have come together to form one bill, and he believes this is good policy. **Senator McGee** added this is a collaborative effort with the Speaker of the House, the Attorney General, and many others. This is a narrow issue that deserves a narrow response. The safeguards in the bill will allow cities to continue to use economic development tools. At the same time, Idaho property owners will now be protected. Idaho has a strong statute, and strong language in the constitution. This bill will strengthen that language and therefore it is the right approach to fixing any eminent domain issue.

Senator Little asked **Senator McGee** when this goes into effect what is going to change in Idaho? **Senator McGee** replied that it will be a steeper hurdle to jump over for cities, counties, and government entities to use eminent domain in order to take private property. **Senator Little** asked for an example of rats, disease etc. versus not raking your leaves? Give me a magnitude? **Senator McGee** answered that **Senator Richardson** worked specifically on that part of the bill and he can better answer that question.

Senator Richardson stated that his involvement has been primarily with the Institute of Justice. They took the issue to the U.S. Supreme Court. What they had intended to do was to give the attorneys a change to secure a broad federal ruling, that would restrain the ability of government to take private property. From a legal standpoint, at about the time of the Kelo decision New York, Missouri, and Kansas were the worst states for condemnation of private parties. Idaho, Montana, New Mexico, South Dakota, and Wyoming were the best. The bill was good initially but there was certain things that needed to be done, Three efforts came together and other states are doing similar things. In discussions with the Institute of Justice, the main problem lies in the definition of blight. Approximately 80% of eminent domain cases to private property are taken due to blight. The Institute of Justices' definition of blight covers all situations that they have run into over the past year, and they are in the bill.

Senator McKenzie stated that on line 40 of the bill in the urban renewal section, it refers to risks to public health safety. What is actual risk of harm? **David Hensley** from the Governor's Office, answered and stated that **Senator McKenzie** take a look at the three criterium. From the policy perspective of the Governor, we see those as safeguards. The Governor understands the tool of eminent domain, and wanted to make sure that a situation like Kelo would not occur in Idaho. We need to look at the context of our current eminent domain laws to understand this. What we are basically saying is that if an urban renewal area is created, and the agency wants to go in and condemn specific parcels within that area, they have to meet these additional criteria. They have to meet all of them for that individual parcel in order for it to be transferred to another private party. Blight was not used in the Kelo case and no where in Idaho Code is it defined. **Senator McKenzie** asked how the three particular requirements came about that was added to address blight? **Mr. Hensley** replied that through the process of negotiations and collaborations this is what we came up with.

Senator Little asked where it addresses housing authority, urban renewal and economic development on line 33 of the bill, is it a higher standard then what existed before? **Mr. Hensley** answered yes.

TESTIMONY:

Ken Harward from the Association of Idaho Cities, stated the association is supporting **H 555**. It directly addresses the concerns that were raised in the Kelo case, regarding the taking of private property and transferring it to another private property owner.

Keith Allred from the Common Interest Group addressed the Committee. **Mr. Allred** stated that the members support **H 555** by 67% and they feel

deeply about eminent domain issues. This topic was central at the founding of our nation and complaints about eminent domain was one of the core complaints. This bill is a well crafted tailored approach to the problems raised by the Kelo decision.

Michael Bindas an attorney for the Institute for Justice, stated that he has some revisions to **H 555**, which they believe are necessary to close some significant loop holes in the bill. A copy of his written testimony is on file with the minutes in the Committee Office. **Mr. Bindas** suggested the following revisions to **H 555**:

- 1) Entities Subject to the Law's Restrictions (Section 7-701A(1))
- 2) Requiring Public Use and Necessity; Prohibiting Private-to-Private Transfers (Section 7-701A(2)(a) and (b))
- 3) Exceptions to the Prohibition on Private-to-Private Transfers (Section 7-701A(2)(b)(ii))
- 4) Public Use as a Judicial Question (Section 7-701A(4))

Mr. Bindas commented that the Committee is to be commended for its efforts in tackling eminent domain abuse. He added that Idaho has an historic opportunity to join the other states that have passed laws to protect the rights of their citizens, by enacting real eminent domain reform.

Senator Darrington asked **Mr. Bindas** who is the Institute for Justice, Washington Chapter and is there an Idaho Chapter? **Mr. Bindas** answered that the institute is a non-profit public interest law firm dedicated to advancing the role of law. They are funded entirely by private donations and have chapters in several states. A national headquarter's office is in Arlington, Virginia with state chapters in Washington, Minnesota and Arizona.

John Eaton from the Idaho Association of Realtors, stated they have been involved in this legislation, drafting it with the Governor's Office, Senate, and the House. **Mr. Eaton** added that this legislation addresses the exact situation that came from the Kelo case. The National Association of Realtors has been involved with this since the beginning. This type of legislation is what they are recommending the states pursue.

Suzanne Schafer from the National Federation of Independent Business addressed the Committee. **Ms. Schafer** stated that given the timing of Kelo, this is something they talked about all over the state. The issue of eminent domain was the lead issue for this session with an 85% response rate, in support of the state addressing this. **Ms. Schafer** urged the Committee to support **H 555**.

Senator Pearce added that as he sees this, Americans are truly concerned with eminent domain. When the use of the power of government is used to take assets from someone else for their own gain, it is very serious. The takings in Connecticut would not have happened if an endangered species were involved.

Senator McGee stated that what we do have now is an acceptable, fine tuned approach, and most importantly it fixes the problem. He urged the Committee to send **H 555** to the floor.

MOTION: **Senator Darrington** moved to send **H 555** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

H 46 **Senator Pearce** stated that **H 46** is a concurrent resolution proclaiming April 19th as Patriot's Day every year. This day commemorates the beginning of the America Revolution, and to remember the selfless sacrifices made by those who gave their lives for our nation's independence.

MOTION: **Senator McKenzie** made a motion to send **H 46** to the floor with a **do pass** recommendation. **Senator Geddes** seconded the motion and the motion carried by **voice vote**.

ADJOURN: There being no further business before the Committee, **Chairman Burtenshaw** adjourned the meeting at 9:05 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 6, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: Stennett, Malepeai.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

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

RS 16200 **Senator Brandt** addressed the Committee and stated that this new RS replaces **S 1246**, which the Committee sent to the 14th order. **Senator Davis** requested mirrored statements in both titles, and that is what this new RS accomplishes.

Senator Little stated that it appears the target is Boise State University (BSU). Last week they sent him their analysis of the legislation. He asked if the new RS allows for moving and rent expenses? **Senator Brandt** answered that it is reflected in Title 40, Chapter 20 of Idaho Code, which provides a moving expense not to exceed \$300.00, and a dislocation allowance of \$200.00. **Senator Little** commented that in the analysis of BSU a student renter could receive up to \$14,500.00 in cash payments. **Senator Brandt** stated he had a copy of Section 40-2004, Idaho Code, which is the relocation assistance section. **Senator Little** stated that the majority of houses that BSU has condemned are rentals. It wouldn't necessarily be comparing apples to apples if you are moving a student renter, as opposed to relocating someone for a highway project. It is a valid point that BSU makes. **Senator Little** asked if this RS would be printed and return to the Committee for hearing? **Senator Brandt** stated that his preference would be to send it to the floor with a do pass to move things along. BSU has made no effort to contact him to deal with this issue. Whether or not it is being displaced by a university or a highway project, the party should be able to receive something if they are being displaced. **Senator Little** asked **Senator Brandt** if he agrees that it is a little different moving someone out of a rental versus their home? **Senator Brandt** responded yes, on the surface but that he knows some renters who have been renting for many years, and that it is basically their home.

Senator Stegner asked **Senator Brandt** if he had reviewed this RS with

Senator Davis, and does it have his approval? **Senator Brandt** replied that he had given **Senator Davis** a copy early last week, but that he has not had an opportunity to go over it. "I am assuming the RS does what **Senator Davis** had requested". **Senator Brandt** added that he wants good legislation, but if it doesn't address the issues that **Senator Davis** raised, he would request that it die on the floor. However **S 1246** is still on the amending order to fall back on.

Senator Stegner stated he was uncomfortable with sending this new RS direct to the floor and that it should come back and be heard before the Committee. **Senator Little** added that in Section 13 of the RS it talks about the Federal Uniform Relocation Assistance Act. He asked **Senator Brandt** if it was a new part of the eminent domain code? Isn't it a transportation related issue that is being taken out of the transportation code and put in the eminent domain code? **Senator Brandt** answered yes, any highway projects that use eminent domain and federal highway funding has to concur with the relocation act.

Senator Davis moved to print **RS 16200**. **Senator Geddes** seconded the motion and the motion was carried by **voice vote**.

MINUTES:

Senator Darrington moved to approve the minutes of February 22 as written. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

Senator McKenzie moved to approve the minutes of February 24 as written. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENTS:

Blanche Weber addressed the Committee regarding her appointment to the Bingo-Raffle Advisory Board. **Ms. Weber** stated that she has been on this committee for many years, and that this is the first time she has come before the Committee. She is 80 years old but quite capable of doing this. She added that many of the bingo games have been shut down because of the casinos.

Senator Geddes asked **Ms. Weber** if she thought the Lottery Commission is paying less attention to bingo? **Ms. Weber** replied that they are suppose to have 3 meetings a year and that they haven't had one since last May. She feels that bingo doesn't get enough of their attention, and she is disappointed that more isn't being accomplished to continue bingo and compete with the casinos. The older retired community depends on bingo for their entertainment.

Senator Stegner asked **Ms. Weber** how many opportunities are there to play bingo in the Lewiston Valley? **Ms. Weber** answered only one, everyone else has closed. **Senator Stegner** asked if there was a competitor in Clarkston? **Ms. Weber** replied yes. **Senator Stegner** asked **Ms. Weber** why there aren't more meetings, and who is supposed to be calling them? **Ms. Weber** answered that it is supposed to be the chairman of the board, but she has resigned. There are 5 members on the board and that position has not been filled.

Chairman Burtenshaw thanked **Ms. Weber** and advised her that the Committee would be voting on her confirmation at the next meeting.

John Ewing, who was appointed to the State Building Authority addressed the Committee. **Mr. Ewing** stated that he grew up in Meridian, he is married with 4 children and he has 4 grandchildren. Since 1971 he has been in the construction business here in the valley. This is his 3rd term on the Authority. He enjoys working on the committee and they create financing for construction throughout the state. He is the only one on the committee with a construction background.

Chairman Burtenshaw asked **Mr. Ewing** if he is still in the lath and plaster business? **Mr. Ewing** answered no, it was mainly his father and that he is a general contractor. They are working on a sewer plant in Caldwell and in Nampa right now.

Chairman Burtenshaw advised **Mr. Ewing** that the Committee would vote on his confirmation next meeting.

Senator Little moved to send **Ruthie Johnson's** nomination to the floor with a **do pass** recommendation. **Senator Stegner** seconded the floor. The motion carried by **voice vote**. **Senator Little** added that he would sponsor **Ms. Johnson**.

RS 16192

Senator Bunderson presented **RS 16192** and stated that this resolution comes from the joint Legislative Environmental Common Sense committee. It authorizes the Department of Environmental Quality (DEQ) to lead a study to evaluate the need for regional planning of municipal wastewater and drainage treatment systems. The DEQ will report their findings to the 2007 legislative session.

Senator McKenzie asked **Senator Bunderson** if the DEQ could do this study without asking for additional funds? **Senator Bunderson** answered that when the DEQ reports back next year, there may be a request for funding then.

Senator Geddes commented that the DEQ needs to facilitate this and see if there are opportunities to be more regional. **Senator Davis** moved to print **RS 16192**. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

H 695

Michael Kane who represents the Idaho Sheriff's Association, presented **H 695**. **Mr. Kane** stated that this deals with emergency communications fees. Two sessions ago a law passed that allowed charging \$1.00 per month per cell phone to be used, as well as land line telephones for the consolidated emergency fee. This brought in a considerable amount of money to the state. A 911 commission was formed to look at how the fees were spent and to determine fiscal responsibility. The purpose of this bill is to clarify that 911 fees are not to be used to pay for dispatching. The fees may be used to pay for salaries of persons charged with management duties pertaining to hardware and software applications pertinent to 911 centers. **Mr. Kane** asked the Committee to send **H 695** to general orders with a proposed amendment.

Senator Davis asked **Mr. Kane** to explain the difference between management and administrative. **Mr. Kane** answered that it was intended to mean management, maintenance, and operation of hardware and software applications. **Senator Davis** asked **Mr. Kane** to separate administrative of other day to day operational expenditures and maintenance of hardware and software applications for management, maintenance and operations? How do you draw the line between the two? **Mr. Kane** replied that this language is not his, so he is struggling with it himself. But what he believes that it means is hiring and firing of employees, determining schedules and shifts and that sort of thing for administrative day to day operations. Management means the person who literally has the hands on work for the computers and the 911 systems. **Senator Davis** asked **Mr. Kane** if the word management on line 3, means the person who is involved in the management of hardware and software applications? **Mr. Kane** replied yes. **Senator Davis** asked what if I have a large amount of employees to manage, am I an administrator or a manager? **Mr. Kane** answered you are an administrator. That is the way I read this bill.

Senator Stegner asked **Mr. Kane** why are we telling local municipalities that they can't use these funds for dispatch? What is the rationale? **Mr. Kane** answered that is the issue. The counties and cities do not have funds available for hardware and software, except by levying higher property taxes. So the thought was to use the money for the hardware and software, rather than paying the dispatcher salaries. **Senator Stegner** asked **Mr. Kane** if the reason we are doing this is because no one really objected? **Mr. Kane** stated no, we are doing what the 911 commission recommended, that the money be used for hardware and software. The counties and cities would normally be paying for dispatcher salaries.

Senator Stegner commented that this seems like a significant issue. If a county and a city wanted to have efficiency, and the efficiency is the consolidation of dispatch, he asked **Mr. Kane** if this is really necessary? **Mr. Kane** answered that this recommendation comes from the 911 commission which is made up of cities, counties, fire districts and user groups. The money should be used for things other than salaries because some 911 systems are well behind the curve.

Senator Geddes asked **Mr. Kane** if the communities that are using the 911 funds to pay for dispatchers are finding they don't have enough money? **Mr. Kane** answered there is a difference between the have and have nots. The larger population counties will have more funds whereas the smaller counties won't. It is the smaller counties that have the problem funding for hardware. **Senator Geddes** asked if the money paid in goes directly to the county or to the fund? **Mr. Kane** answered that it goes to the consolidated fund which is run by the Consolidated Emergency System. The system is made up of counties, cities and fire districts.

MOTION:

Senator Davis moved to send **H 695** to the 14th order for amendment. **Senator McKenzie** seconded the motion. The motion carried by **voice**

vote.

H 717

Representative Loertscher presented **H 717** to the Committee. He stated that Idaho is changing and that as the state is reapportioned, the districts will get geographically larger. This legislation would allow legislative district central committees to meet in a contiguous county to the district, to accommodate a central location where none exists within the district.

Senator Davis commented that on line 14 of the bill provides that the precinct committeemen within each legislative district shall meet within the legislative district, or at a convenient location in a county contiguous to the legislative district. He added that he wants to vote for this bill, but that it doesn't do what **Representative Loertscher** believes it does.

Senator Davis suggested that they be allowed to meet any place inside the county or provide for a contiguous location. Another suggestion would be to state at a convenient location contiguous to the legislative district. **Representative Loertscher** stated that if it does what **Senator Davis** is suggesting, then he certainly wouldn't object to the change.

Senator McKenzie added that he agreed with **Senator Davis**. "We may do harm if we have to geographically define the convenient location. "

Senator Stegner stated that he agrees with the senators. If you strike the word "county" on line 16 and insert the word "legislative district", then it would pick it back up. **Senator Stegner** added that if the legislative district chairman wanted to make it difficult for people to attend, he could easily ask for a meeting to be held in a county which is not necessarily a convenient location. If it is left up to the legislative district, he is concerned it might create a situation where a district chairman could limit participation by the location of the meeting. He asked **Representative Loertscher** if that concerned him. **Representative Loertscher** replied no, it is not the intent to allow manipulation. The intent of this legislation is make it easier for these central committees to meet.

Senator McKenzie stated that some of the language that **Senator Stegner** suggested fixes the problem in his county. He asked **Representative Loertscher** if county is changed to legislative district would it fix the problem? **Representative Loertscher** answered that yes it would work.

MOTION:

Senator McKenzie moved to sent **H 717** to the 14th order for amendment. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

ADJOURN:

There being no further business before the Committee, **Chairman Burtenshaw** adjourned the meeting at 9:05 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 8, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: Stegner.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

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

GUBERNATORIAL APPOINTMENT: **William L. Swift** appeared before the Committee regarding his confirmation hearing to the Idaho Commission on Human Rights. **Mr. Swift** stated that he was originally from Atlanta, Georgia and he has resided in Idaho for approximately 17 years. His background includes human resources, sales and credit. The majority of his career has been in human resources where he was involved in training and development.

Chairman Burtenshaw commented that he sees that **Mr. Swift** worked at Idaho National laboratory (INL). **Mr. Swift** replied yes in human resources for 11 years. **Chairman Burtenshaw** asked **Mr. Swift** how many cases would have hearings? **Mr. Swift** answered approximately 60 to 100 per month, it is quite a heavy case load.

Senator Malepeai asked **Mr. Swift** out of all the issues which are the most challenging for the commission? **Mr. Swift** answered the ones that deal with disabilities, and trying to determine whether or not a company is implementing the right disability procedure processes.

Senator Davis asked **Mr. Swift** if the resources that are provided also apply to employees of the state of Idaho? **Mr. Swift** answered yes.

Chairman Burtenshaw advised **Mr. Swift** that the Committee would vote on his confirmation at the next meeting.

Senator Little moved to confirm **Blanche M. Weber** to the Bingo-Raffle Advisory Board. **Senator McKenzie** seconded the motion. The motion carried by **voice vote**.

Senator Geddes moved to confirm **John Ewing** to the State Building

Authority. **Senator Malepeai** seconded the motion. The motion carried by **voice vote**.

RS 16222

Senator Geddes addressed the Committee regarding **RS 16222**. **Senator Geddes** stated that this RS deals with the state elected official's salaries. Their salaries can only be adjusted prior to an election. This legislation proposes a 5 percent increase each year for the next 4 years. The concern is that it is more than what has been given to other state employees, but in reality between the years 2003 and 2007, there was no increase granted to our state elected officials. The fiscal note indicates the salaries for each year.

Senator Little asked **Chairman Burtenshaw** if we are sending this directly to the floor after printing? **Senator Geddes** commented that he didn't believe there need be any discussion or hearing on this and he asked that the RS print and be sent to the floor. **Senator Little** moved to print **RS 16222** and send it directly to the floor. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

S 1384

Senator Brandt presented **S 1384** to the Committee. He stated that there are issues with the liquor license program in the state of Idaho. As Idaho grows, mainly in tourism, there are many restrictions that need to be addressed in order to bring business to the state. The ad hoc committee consisted of **Mr. Clements** from the Alcohol Beverage Control (ABC), the City of Meridian, and some hotel owners. They met and discussed ways to address the liquor license in the state. **Senator Brandt** continued and said he knew there would be some opposition from those who have a full quota system. Six banks have loaned money on the right to serve in the state and that piece of paper has become real property. One license sold for as much as \$365,000 in Ketchum. There is a waiting list for a liquor license, and \$182,000 has been paid by the individuals to be on the list to maybe get a license. In Section 23-940, *Idaho Code*, deals with putting the funds into a special account to hire additional officers for the ABC to enforce liquor laws. Both licenses' will require a \$2,500 annual fee. It is also in place to give value to those who have quota licenses. The new license will have strict side boards, such as earlier closing hours. The committee used legislation from Oregon and Washington as a model for this proposed legislation. Additionally, a full service restaurant has to be a fine dining facility, not the local bar or pizza parlor. Alcohol cannot be served off the premises. There are also restrictions on advertising for drink specials such as "Happy Hour". Hotels are set up to be a courtesy for guests with a minimum of 60 rooms.

Senator Davis asked **Senator Brandt** if this dilutes the value of those who have made an investment for their liquor license? **Senator Brandt** answered that to a degree it might in some locations. Anyone wanting to have a full bar and the capability to do catering will have to have a quota license. Some may opt to go this route and sell their license if they close early and the side boards do not apply to their business. **Senator Davis** asked what is the objective on page 1, line 13, sub 4? Why wouldn't it apply to an incorporated city? **Senator Brandt** responded that the intent is to allow some out of city limit locations. Right now if you serve hard liquor, it has to be within an incorporated city. Beer and wine can only be

served outside city limits. It is an attempt to allow more diversity outside the city limits and it allows local control. A city can zero out if they don't want this type of license. This legislation does not affect the statutes that deal with the existing quota licenses. **Senator Davis** stated that the way he reads line 11 on page 3, because of the word "or", a facility could meet that standard by advertising it as an inn, hotel, or public lodging house. He asked **Senator Brandt** if he was misreading the language? **Senator Little** commented that on line 14 it states "and must have a minimum of 60 rooms". He believes the word "or" are qualifiers. **Senator Davis** stated that on page 2, line 39, they could meet the requirements if 60% is the bar and if they serve 5 meals. **Senator Brandt** asked if he was referring to the description of what a full service restaurant is? **Senator Davis** replied yes, **Senator Brandt**. **Senator Brandt** responded that the qualifications they came up with are from the ABC and what they could enforce.

Senator Geddes commented that **Senator Brandt** had indicated that there was a task force that worked on this, yet he is the only contact person or sponsor of this bill. He asked **Senator Brandt** if the other task force members support this legislation? **Senator Brandt** answered yes, no one on the task force opposes this that he is aware of. Although he believes that the Idaho Lodging and Restaurant Association will be testifying in opposition to this bill.

TESTIMONY:

Bill Nary, City Attorney for the City of Meridian, addressed the Committee and stated that he did sit on the ad hoc committee with **Senator Brandt** and the ABC. **Mr. Nary** added that he supports this legislation to create an economic driver for cities. The problem is that because of the quota system for large cities or growing cities like Meridian, the limitation that is in place by the quota system can be a detriment to this type of economic growth. This proposed legislation will create speciality licenses by narrowing and defining the specifics as to use, and it puts some very strict perimeters around them to allow for growth. It is not an attempt to impact the quota system or to eliminate it either. The quota system is a benefit to smaller cities or areas that aren't growing as rapidly as others. The city and the ABC along with **Senator Brandt** looked at ways to allow for growth and to monitor it through the state. The specifics in the bill regarding restaurants and hotels were looked at on a national scale. The bill in general is a positive for cities. The limitations are reasonable.

Senator Davis asked if there is a difference between the traditional liquor license and this license as it relates to who issues the license? **Mr. Nary** answered that the state issues all the licenses, but the cities have the ability to limit them. Is that what you are referring to? **Senator Davis** asked **Mr. Nary** to refer to page 2, line 8, "the county or unincorporated city which issues a full service restaurant liquor license"...**Senator Davis** asked **Mr. Nary** who issues that the state, county, or city? **Mr. Nary** replied that all liquor licenses are issued both by the state and as well as counties or cities within the state. This bill doesn't really change that. They can choose not to allow this type of specialty license. **Senator Davis** pointed to line 13 where it addresses "may limit". He asked **Mr. Nary** if there is a difference between the word "exclude" and "limit"? **Mr.**

Nary responded that obviously there is some difference, but in a practical sense if there would be a significant difference as to whether or not the language would state that the city “may limit”, either word would be applicable in this situation. The city could limit it to zero than the argument could be made that the intent was not to limit it to none, but to one.

Cheryl Brown, the Economic Development Coordinator for the City of Meridian addressed the Committee. **Ms. Brown** stated she was on the ad hoc committee and that she is very passionate about this bill. The City of Meridian has grown from 9,000 in 1990 to approximately 67,000 in population. The Treasure Valley is seeing phenomenal growth, over 50 hotels and upscale restaurants have approached the city for liquor licenses. Lifestyle type centers is the trend right now in development such as Nordstrom’s and Trader Joe’s. Unless they can get a liquor license they will go elsewhere and they do. **Ms. Brown** added that her biggest challenge in dealing with these upscale businesses is what to tell them. In her research of what might be available, some licenses are basically sitting in someone’s drawer waiting for the right price. **Ms. Brown** stated she supports this bill for the economic growth and impact it will have in Idaho.

Rick La Huis from Fruitland, Idaho, who represented the Eckhardt Company, Inc., stated his company is proposing to build a full service restaurant there. It would be an anchor site for a larger commercial retail development. They support **S 1384** because it would bring and promote commerce as well as adding jobs to the local economy in Fruitland. Currently restaurants cannot operate as a bar, and that is not their intent to compete with bars. Being near the Oregon border they have to compete for business only 3 miles away that serve alcohol. There are 3 liquor licenses in Fruitland, and they are number 4 on the list. The population would have to double before they could get a license under the current law. They have been told a license is available for \$130,000, but at that price it is not feasible for them to build.

Senator Malepeai asked **Mr. La Huis** if he knew what the statutes are in Oregon as it relates to what is being proposed in this legislation? **Mr. La Huis** answered that he doesn’t know specifics but that in Oregon all you have to do is apply, and get approval from the local government and the state. **Senator Malepeai** asked if there is a limit to the amount of permits? **Mr. La Huis** replied he isn’t aware of a limit, but only what that particular city sets on their license.

Becky Robinson owner of Ernie’s Steakhouse, which has a full liquor license, stated she is working with **Rick La Huis** in building the restaurant in Fruitland. **Ms. Robinson** added that as a restaurant owner it is difficult on start up without having to pay a phenomenal amount for a liquor license. The restaurant would bring a lot of jobs to the area and she supports this proposed legislation.

John Sanders, the Regional Manager from the Summit Group, spoke in support of **S 1384**. The Summit Group owns and operates 8 hotels in the state of Idaho, and building the 9th one at the airport. From their

perspective **S 1384** is good for them and the state. Marginal and seasonal markets could become more viable as potential hotel and restaurant sites. **Mr. Sanders** added that while job creation and economic expansion are two advantages to support **S 1384**, another one is public safety. This bill clearly establishes the primary business of a restaurant and a hotel and defines the time when alcohol may be served. In today's market, most business travelers regard the ability to purchase liquor by the drink as they do an exercise room in a hotel. They may not be interested in using it, they just want to know it is there.

Kevin Settles, President of the Idaho Lodging Restaurant Association, (ILRA) addressed the Committee. **Mr. Settles** stated that he had requested multiple times through **Bob Clements** of the ABC, to be invited to sit on the panel. He said the ILRA opposes the bill because they are in the restaurant business, they do not want to be in the liquor license business. Their investment in a liquor license was the only way to get into the restaurant business. The current cap on licenses' hurts their industry and the Association doesn't believe this proposal will meet the needs of the state for growth. The Association would like to continue to work with **Senator Brandt** to come up with a way to remove the cap, so that local communities could drive their own future.

Ronald Lundquist, the General Manager of the Ashley Inn addressed the Committee. **Mr. Lundquist** stated that **S 1384** addresses two key issues for the Inn. The Inn has the amenities to attract the income they need, but because they can't offer the proper liquor service for events, he has to turn business away. Competitors in the area that can allow liquor service are taking business away from the Inn. **Mr. Lundquist** added that as a competitor he just wants to be able to stand on equal ground, and the current statute does not allow that. There is no value to a liquor license in a small community. The owners of the Ashley Inn support **S 1384**.

Senator Stennett commented that he is intrigued by the ability for the Inn to go from a 3 star rating to a 4 star rating by the addition of a restaurant liquor license. He asked **Mr. Lundquist** how much value per room night would that add to the overall revenue? **Mr. Lundquist** answered he hasn't run those figures, but it would change substantially by allowing the Inn to do a few things. The Inn is priced well with or without the stars. But for his marketing and sales to increase his footing in the market place, not necessarily their rates, is what the Inn is looking at now.

Senator Darrington asked **Mr. Lundquist** how his occupancy rate compares to an acceptable standard in the industry? **Mr. Lundquist** answered the Inn is down. They are on their marketing plan as far as start up goes. The struggle is mid week, business traveler management meetings that want after hour activities in the dining area. They can cater meetings or events, but they can't provide the liquor for an after hour environment.

John May, owner of the Owyhee Plaza Hotel and restaurant in Boise, presented his testimony in opposition to **S 1384**. **Mr. May** is also on the board of the ILRA. **Mr. May** added that the association was not brought

to the table during the discussions and guidelines to put this together, and that disturbs him. **S 1 384** would create one of the largest exemptions to current law and the guidelines are far from strict in his opinion. It is a back door approach for the state to devalue current liquor licenses at the expense of the current license holders. **Mr. May** continued and stated that the ABC can decide who will get the license and keep the revenue, so what is the incentive for them to not issue as many as possible. Another issue is that the ABC and Idaho State Police completely manage the current system, they police and enforce the laws and regulations, and now they will have the authority to facilitate their own revenue. The general fund receives the revenue now under the current statute. This is just another incentive for them to issue more liquor licenses. **Mr. May** summed up and stated that a more effective job could be done by addressing how the ABC actually issues licenses, what the qualifications are for acquiring one, and holding the license.

Senator Brandt added that he wants to clarify how this progressed. The ad hoc group that he stepped into was a group that had been formed since 1999. The concept that was developed for the specialty license didn't come together until November, 2005. Then it was **Bob Clements**, Legislative Services, and himself that sat down and drafted the bill. The ad hoc group was not present. Once **S 1384** was in hand he went to the Association of Cities and the Counties, the ILRA and asked for their opinion. The cities and counties do not have a problem with this legislation. The ILRA was not satisfied and suggested to make it right. Not every group met at one time. **Senator Brandt** continued and said this does deal with money and those individuals who are sitting on a license, thinking that it is an investment. In Title 23, *Idaho Code*, almost every section talks about limitations, not excluding or approving. **Mr. Clements** came up with this language of excluding/limiting. The Idaho State Police has two underlines, the brand inspector and the ABC. This legislation mirrors what the brand inspector has for a funding source. The ABC has a huge job and as this grows they are going to require more officers. Additionally, they need the ability to hire more individuals to do their job and what is required of them. **Mr. Clements** was involved in all the meetings and he believes that he can enforce the new regulations. The quota system needs to be eliminated in the state of Idaho and allow full liquor licenses'. This legislation helps small businesses and starts down the road of fairness, by allowing the free enterprise system to flourish and not be bogged down by the government.

Senator Little asked **Senator Brandt** how many officers are there right now? **Senator Brandt** replied that he believes there are two, **Mr. Clements** and another individual.

Senator Burtenshaw asked **Senator Brandt** how the issue of minors in restaurants will be dealt with? **Senator Brandt** answered that this issue is addressed the same as any restaurant with a full liquor license. Minors cannot be present in a bar, but if food is served they can be present, and it puts more responsibility or duty on the owner and server. **Senator Burtenshaw** asked how this will affect the smoking law? **Senator Brandt** answered no raw prepared food can be served in a facility that allows

smoking, and no one under 21 years of age is allowed.

Senator McKenzie commented that he does agree with those who testified and stated that this would be a significant step in devaluing their current license. In the overall picture it is a significant step to eliminate the quota system. Some of the limitations are arbitrary and future legislators may agree with that. However, looking at the system we have, it is dysfunctional and it is unfair. This bill is not perfect but it is a step in the right direction to try and create some fairness for businesses.

MOTION:

Senator McKenzie made a motion to send **S 1384** to the floor with a **do pass** recommendation. **Senator Malepeai** seconded the motion.

Senator Malepeai asked **Senator Brandt** if there was anything in this bill that would preclude anyone with an existing restaurant, who meet the criteria, to apply for this license? Would a government entity have no limits as to how many they could issue? **Senator Brandt** answered yes that is correct. **Senator Davis** stated that he is voting against the motion. The ILRA was excluded from drafting this legislation although he does agree with what **Senator McKenzie** said. As legislature we hate being pushed to become the deciding authority for power generation facilities etc. But we do seem to be willing to be the deciding authority by the standard set each year for liquor. He added that he doesn't think this is the right direction to take. **Senator Davis** added that another tool is likely needed, and he is not convinced this is the one because the ILRA needs to be an active participant. Should a task force be appointed, we could have something that provides more sanity, and exceptions won't be presented to the State Affairs Committee every year to deal with. For those reasons he is voting against the motion.

Chairman Burtenshaw commented that the sale or transfer of a liquor license brings a substantial amount of money. In fairness to everyone, is it right to devalue their license. They were bought in good faith to run their business. He added that he agrees with **Senator Davis** and that maybe this needs more light.

Chairman Burtenshaw asked for a roll call vote on **S 1384**.

Senator Darrington - Nay
Senator Geddes - Nay
Senator Davis - Nay
Senator Stegner - Absent
Senator Little - Aye
Senator McKenzie - Aye
Senator Stennett - Aye
Senator Malepeai - Aye
Senator Burtenshaw - Nay
The motion **failed 4-4**.

H 673, H 707

Senator Davis suggested to **Chairman Burtenshaw** a unanimous consent to hold **H 673** and **H 707** because of time constraints. The Committee consented to hold **H 673** and **H 707**.

H 711

Representative McGeachin addressed the Committee regarding **H 711**

and stated that this legislation makes numerous amendments to the city election laws to Chapter 4, Title 50, *Idaho Code*, to extend the absentee voting period in city elections. The current deadline for ballot preparation in city elections is not less than 21 days before the election. This legislation would move the deadline for ballot preparation back to 35 days before the election to allow an additional two weeks for absentee voting. This will make it easier for citizens in the Armed Forces overseas to get their absentee ballots returned by the deadline on election day.

Representative McGeachin continued and added that because the ballot preparation deadline is moved back, this legislation also moves back deadlines for the candidate filing period, approval of elected official salary increases and preparation of sample ballots. To achieve greater uniformity with county-run elections, the legislation also changes the deadlines for publication of the notice of election and sample ballot to not less than 12 and 5 days before the election, and provides for a notice to interested candidates published before the end of the filing period.

Justin Ruen, from the Association of Idaho Cities, added that the main purpose of this bill is to extend the absentee voting period in city elections.

MOTION:

Senator Little moved to send **H 711** to the floor with a **do pass** recommendation. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

H 718

Representative Hart addressed the Committee regarding **H 718** and stated that this legislation will provide for the transmittal of public records in electronic form when requested by any person who has a right to examine such public record. Requests for such public records may also be made in electronic form. When necessary, proof of identification of the requestor may still be in the more traditional form such as a photocopy of a passport or driver's license so that the agency can verify the identity of the requestor. The cities and counties support **H 718** as well as The State Historical Society, The Department of Corrections and the Attorney General.

Senator Little commented that the Senate just sent a bill that was similar to the House. There were issues with that bill regarding the costs of conversion and disputed between the clerks and the title agency. It was amended on the floor.

Senator Burtenshaw asked **Representative Hart** if someone emailed him requesting records, would he email it and how would he collect for the cost? **Representative Hart** answered that if the record existed in an electronic form, and there was no time involved for research, there would not be a cost involved. Current statute regarding public records allows the agency to charge for research time if it is more than 2 hours. Photo copying can be charged if it exceeds 100 pages. The only change in this bill is for the cost portion, to provide for reimbursement to the agency if they have to negotiate a cost for conversion of an old public record.

Senator Burtenshaw asked **Representative Hart** if there are public records is anyone entitled to them. **Representative Hart** answered that

the presumption is that all records are open to inspection unless they are excluded by law.

Justin Ruen advised the Committee that the Association reviewed the bill and they do not foresee any problems, but that he is speaking for the city not the county.

MOTION: **Senator McKenzie** moved to send **H 718** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

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

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 10, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: None.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

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

GUBERNATORIAL APPOINTMENT: The Committee voted on **William L. Swift** to the Idaho Commission on Human Rights. **Senator Malepeai** moved to confirm **Mr. Swift** and **Senator McKenzie** seconded the motion. The motion carried by **voice vote**.

MINUTES: **Senator McKenzie** approved the minutes for February 17 as written. **Senator Malepeai** seconded the motion and the motion carried by **voice vote**.

The minutes for February 27 were approved as written by **Senator Stennett**. **Senator Malepeai** moved to approve the minutes and **Senator McKenzie** seconded the motion. The motion carried by **voice vote**.

Senator Malepeai approved the minutes for March 1 as written. **Senator McKenzie** seconded the motion and the motion carried by **voice vote**.

H 673 **Scott Turlington**, Director of External Affairs for Tamarack Resort, addressed the Committee regarding **H 673**. **Mr. Turlington** stated that this bill would provide lodging, dining and beverage establishments within the boundaries of a four season resort to be eligible to receive a specialty license for liquor. It puts forth the mechanism to allow these companies to make an application with the Alcohol Beverage Control (ABC) for the license. There are two year-round resorts in Idaho that would currently qualify for these exemptions. Tamarack being one of them and the other in Sun Valley. In order to qualify for the license, the year-round resort must request that their license be under the year-round resort exemption. As a ski resort, Tamarack currently has a license under Section 23-903A, *Idaho Code*, because they meet the definition under this code. **Mr. Turlington** continued and stated that the purpose in bringing this legislation to the Committee is because they have entered into an

agreement with Agassi Graf Development and their partner Bayview Financial. Property has been sold to them within the boundaries of the resort to develop and build Idaho's first 5 star luxury hotel. It will be managed by Fairmont Resorts and Hotels, which is an international recognized luxury hotel chain. They plan to break ground this spring, and as part of the process of due diligence, Idaho Code is not currently set up to provide a mechanism for a liquor license. The liquor license will be non-transferable and have zero value to anyone but the license holder. Additionally under this proposed legislation, there is a new fee structure. Tamarack is currently paying \$250 for a license, and the proposal is to increase that fee to \$2500 for lodging facilities. For the smaller leased facilities within the resort, the fee would be \$1500. This fee will only apply to resorts that specifically request to be under the year-round exemption. **Mr. Turlington** added that the first village will have approximately 40,000 square feet for the hotel and about 280,000 square feet for condos. The retail space will have at least one fine dining space and the ability to serve alcohol. Under current Idaho Code, they would not have the ability to license that even though Tamarack Resort owns it. That space will be leased. Crane Creek Market leases space and had to acquire their own beer and wine license. As a lessee, the ability to piggy back off of Tamarack's beer and wine license is prohibited.

Chairman Burtenshaw asked **Mr. Turlington** how many liquor licenses does Tamarack actually have? **Mr. Turlington** answered that they currently have one under the ski resort exemption. They do qualify for up to four, under cross-country skiing, golf, ski resort and water front facilities. **Chairman Burtenshaw** asked **Mr. Turlington** how many are they thinking about acquiring? **Mr. Turlington** replied they only have plans for one for the hotel, which is an immediate need. **Chairman Burtenshaw** asked if Sun Valley has plans as well? **Mr. Turlington** responded that he has had conversations with the Sun Valley company regarding this legislation, and that he received an email from them. They are satisfied that they could qualify for the year-round resort exemption if they choose to.

TESTIMONY:

Rod Nielsen, a restaurant owner from McCall, addressed the Committee. **Mr. Nielsen** stated that as a long time business operator and holder of a liquor license he objects to the changes proposed by this legislation. The state does indeed need to give out more licenses, but it should be at the fair market value of today, \$100k plus, and use the money to fund the understaffed ABC. This legislation appears to open the door for all hotels and to new restaurants. Additionally, it appears that the change is for "special interest", or big corporations with good lobbyists and lawyers instead of taking the time to look at the overall process. **Mr. Nielsen** added that he agrees with **Mr. Clements** and the need for more funding for the ABC, and maybe this is what this legislation should be about.

Senator Geddes asked **Mr. Nielsen** what the value of a liquor license is in Valley County? **Mr. Nielsen** answered that the last one sold or transferred was in 1989 and it was for \$85,000.

Chairman Burtenshaw asked **Mr. Nielsen** if he understood that these

specialty licenses can't be transferred outside of the resort area? **Mr. Nielsen** answered yes. What is worrisome is that there is an unlimited amount of licenses that can be issued.

Senator Little asked **Mr. Nielsen** if he thought the new facility in Tamarack would attract the same clientele that go to the Vigilante? **Mr. Nielsen** replied that he thought the people who come to Tamarack or Brundage will want to explore the area. **Senator Little** asked if he thought the success of Tamarack would help Donnelly? **Mr. Nielsen** answered they just want to protect their investment and they don't want to see it devalued.

Senator Davis stated that **Mr. Nielsen** raised some interesting questions. As he reads **H 673** on page 2, sub part 10, "for each license issued to an owner", then on line 15, "for each beverage, lodging or dining facility", and on line 18 "for each beverage", he believes **Mr. Nielsen** may be right that there is no limitation on the number issued within the definition of year-round resort. He asked **Mr. Turlington** to speak to that quantity limitation? **Mr. Turlington** answered first of all there are no guarantees for anyone in the state to receive a liquor license. The ABC does extensive background checks, fingerprinting, etc., if you don't qualify, you don't receive a license. Over the next 15 years as Tamarack approaches build out, they will have approximately 25 to 30 permanent buildings. It is highly conceivable that they could have more than one restaurant and hotel on site. Because they are the master developer they have the ability to impose and control restrictions on design standards. Tamarack Resort is not interested, nor will they ever inundate the market place with liquor licenses. **Senator Davis** asked how does the State of Idaho know and define what the boundaries are of the facility? How does the state know they are part of the year-round resort? **Mr. Turlington** answered that it is his understanding that it is within the lease holder ownership boundary documents. Additionally, the ABC would require this to ensure that the year-round resorts qualify and meet the definition. **Senator Davis** asked if he meant no? **Mr. Turlington** answered that he means yes, that the ABC would require them to demonstrate that they fall under the definition of a year-round resort. **Senator Davis** asked if it required that the ground be contiguous? **Mr. Turlington** replied that under this legislation it would not. **Senator Davis** asked if there must be some proximity between the various categories that must qualify under sub-section 5 of the bill? Could a company qualify as a year-round resort if they claim they do their mountain biking in Sun Valley? **Mr. Turlington** responded that if it were under your ownership or in your leasehold boundaries, he is not sure if this speaks to the fact that it has to be within close proximity.

Mr. Turlington yielded to **Mr. Clements** from the ABC to address from his point of view this language, and how he interprets it. **Mr. Clements** stated that it would refer back to the premise of the year-round resort. It requires it to be contiguous property. The liquor license would have to be within the premises. **Senator Davis** stated that he thought **Mr. Turlington** told him that they do not have to be contiguous. **Mr. Clements** replied that based on the premise definition, it does mandate that it has to be contiguously leased or owned property. The resort would

have their own license referring to their premise or their boundaries.

Senator Stegner asked **Mr. Clements** if it is possible that the resort could acquire contiguous land all the way to Donnelly or McCall, and would it fall within the definition? **Mr. Clements** answered yes, if they expanded and acquired more property that was still contiguous it would now expand their premise of a year-round resort. **Senator Stegner** stated that since there is nothing in this language that actually suggests that it has to be contiguous, it might not even have to be based on how this is written. **Mr. Clements** responded no, because the definition of a premise requires it to be contiguous property.

Senator Geddes stated that the fee structure seems minimal compared to the fact that the last license that sold in Valley County was \$85,000, twenty some years ago, plus a 10% commission on top of that paid to the state. He asked **Mr. Turlington** if it is an equitable situation for the competition and what other entities have to pay? **Mr. Turlington** replied that he didn't know what the rates were then. What he is proposing is a base fee of \$2,500 instead of \$250. The license at Tamarack would have no negative value on the restaurant owner in McCall or Donnelly, and what they could sell their license for. He added that he understands the question but believes they are 2 different things.

Chairman Burtenshaw asked **Mr. Turlington** if the license would be in Tamarack's name or the lessee? **Mr. Turlington** answered that it would be in the name of the operator, which would be the Fairmont Hotel and it is non-transferable.

Senator Stegner commented that this is a little broader than might be necessary. **Mr. Turlington** has represented the feelings and philosophy of Tamarack as to the restrictive use. This could change over time and this Legislature would be granting a franchise that would be in the statutes of Idaho law. **Senator Stegner** added that he would have more of a comfort level, knowing that there was some limit on how many licenses' that Tamarack could apply for. He asked **Mr. Turlington** what the intention of Tamarack would be for this franchise issued? **Mr. Turlington** answered that a year ago they weren't sure where Tamarack was going, and that it is too hard to predict where they will be 12 years from now. He suspects they will probably need 2 or 3 licenses and maybe more to accommodate hotels and dining facilities. **Senator Stegner** asked **Mr. Turlington** if he would consider it an unfriendly attitude if this legislature decided to limit this for the time being? **Mr. Turlington** answered no, he understands what the intent is with respect to Idaho's liquor law.

Senator Davis asked **Mr. Turlington** if it would be a friendly amendment adding the word contiguous in front of the word boundaries? **Mr. Turlington** answered he would generally agree with that, but that he would like to understand the definition of premise a little more, and maybe make the change from boundary to premise.

Chairman Burtenshaw commented that maybe the Committee needs to

look at the whole licensing procedure. He has received many emails regarding this bill. **Chairman Burtenshaw** suggested sending the bill to the 14th order for possible amendment, with the idea of helping **Mr. Turlington** with this one license. **Mr. Turlington** responded that he understands, but hopes that the momentum can continue, and the ability to provide Fairmont Hotel and Resort with a license to operate.

MOTION:

Senator Little made a motion to send **H 673** to the 14th order for possible amendment. **Senator Stegner** seconded the motion.

Senator Geddes commented that as he looks at these four season type resorts, he wonders what is happening in Sun Valley. He asked **Mr. Clements** to explain what type of liquor licenses' Sun Valley has in regards to all of their locations? **Mr. Clements** stated that he is not familiar with what is involved at the Sun Valley Resort. They do have the license for the resort which would cover their entire premise. Some areas did not qualify for a liquor license and they have only beer and wine. **Senator Geddes** asked **Mr. Clements** if there was more than 1 liquor license to cover all that premise? **Mr. Clements** answered that he believes there is 1 for their entire premise.

Senator Stennett added that he believes Sun Valley had the license before the state initiated the control. The license is at the City of Sun Valley because it is an incorporated city. This differs from Tamarack because they are city licenses'. The company that holds the license run by the River Run Lodge was created as an exemption for the ski resort. There is no liquor license on top of the mountain or at Warm Springs.

Senator McKenzie stated that he agrees with everything **Mr. Turlington** said. These decisions should be driven by the economics of it instead of this artificial limit put on it by the state. He added that his problem isn't with this bill but with the system that is in place. It is not a fair system, and he supports sending this bill to the 14th order.

Senator Malepeai asked **Mr. Clements**, given the man power in the department, and given this is a specialty situation, in his opinion would it make sense for this Legislature to limit Tamarack now? Is it fair that down they road they should have to come back? **Mr. Clements** answered that he understands the economic concern and need for this type of license. He has one officer to cover the whole state of Idaho, so anything that creates more work is a burden. There are about 18 to 20 exemptions to the quota system now. It has created a problem with the system, and there is a need for specialty licenses.

The motion carried by **voice vote** to send **H 673** to the 14th order.

H 707

Representative Clark presented **H 707** to the Committee.

Representative Clark stated that **H 707** is a joint leadership effort, and it would add executive branch lobbyists and lobbying activities to Idaho's sunshine laws. Currently, individuals who are paid to contact legislators outside of public sessions of legislative committees, must register with the Secretary of State and file reports of expenditures on lobbying activities.

This bill would require persons who attempt to influence executive or administrative actions for compensation at the state level, to register with the Secretary of State, as do legislative lobbyists, and to file semi-annual reports of lobbying activities and expenditures.

Senator Geddes asked **Representative Clark** if **H 707** reads that a legislator would have to be a lobbyist? **Representative Clark** answered no, he doesn't read it that way.

MOTION: **Senator Stegner** moved to send **H 707** to the floor with a **do pass** recommendation. **Senator Stennet** seconded the motion. The motion carried by **voice vote**.

S 1429 **Senator Brandt** presented **S 1429** and stated that it replaces **S 1245**. The change is the word offer to appraisal on line 19. **Senator Brandt** added that this satisfies the concerns brought forth.

TESTIMONY: **Kevin Satterlee**, general council at Boise State University (BSU) addressed the Committee. **Mr. Satterlee** stated that his concern is that the Statement of Purpose doesn't match the change. The statement still speaks to the offer. This is an issue because the Idaho Supreme Court states, that in order to testify as to value to a parcel or property, you don't have to be a licensed appraiser in Idaho. Almost anyone can give an informal appraisal as to the value of property. **Mr. Satterlee** added that he just wants to make sure if the statute is clear, that it speaks to a licensed appraisal that's not an issue and can very well say why. When BSU condemns property the first thing they do is obtain a licensed appraiser to appraise the property. They never under any circumstance offer less than appraised value. If the bill says they can never offer less than appraised value BSU is fine with the bill.

MOTION: **Senator McKenzie** moved to send **S 1429** to the floor with a **do pass** recommendation. **Senator Malepeai** seconded the motion.

Senator Davis commented that he will be voting for the motion, but with the understanding that it is exactly what **Kevin Satterlee** has indicated. He added that he believes it is the intent of the sponsor.

Senator Geddes asked if it would be unreasonable to ask the sponsor of the bill to revise the Statement of Purpose to reflect the legislation? **Senator Brandt** stated that it was an oversight on his part, and he will change the word offer to appraisal on the Statement of Purpose.

The motion carried by **voice vote**.

S 1433 **Senator Brandt** addressed the Committee and stated that **S 1433** is a new draft of **S 1246**, which was sent to the amending order. The concern in **S 1246** is that it was referring to another section. This bill deals with relocation and where relocation is defined for highway projects using federal money, they have to provide relocation costs. **Senator Davis** suggested that both sections of statute mirror.

TESTIMONY: **Kevin Satterlee** spoke to the Committee in opposition to **S 1433**. **Mr.**

Satterlee stated that this legislation will increase the costs to BSU to acquire property by eminent domain, but it is not why he is here today. When BSU condemns property they do it pursuant to law. This legislation creates big government for BSU that doesn't need to exist. BSU's job is to teach, unfortunately sometimes they condemn property to carry out that function. The process is simple, they send the notice required by statute, but they also send a representative to sit down face to face with the property owner to negotiate a value. Once agreed upon they buy the property and pay all associated costs. **Mr. Satterlee** added that he thinks it is good small government in action. With this legislation things will change because it will turn them into big government. There will be no need to negotiate with the land owner because a series of statutory minimums will have to be paid in certain circumstances. **Mr. Satterlee** continued and said his real concern is with specific sections. Section 7-727(2), on page 3, lines 39 through 44 of the bill, states any displaced person to receive a minimum relocation payment of \$300 and \$200. In addition, page 5, Section 7-728(2) of the bill, states that if a tenant resides in the property they want to acquire, they have to pay up to \$4,000 of future lease payments. When a rental is condemned, those students will receive a check for \$4,500. The worry is if a student is on a month to month tenancy and the state purchases the property, they have to pay these fees. BSU does a lot of condemnation so they will most likely have to create a relocation assistance office. **Mr. Satterlee** stated he has other concerns as well in proposed Section 7-727(3), page 3 and 4 of the bill. Any person who is a displaced person who runs a business out of that house, will receive a minimum \$2,500 payment up to \$10,000 for relocation of the business. Students at BSU are smart and creative, they will use this to their advantage. The final issue is in regards to the neighborhood property causes of action. In Section 7-725 and 7-727(4) of the bill, creates a cause of action for a neighboring property owner when property is contiguous. This will only cost BSU more to acquire property. Finally, on page 2, lines 35 to 37 of the bill, appears to be an incomplete sentence, it may be an editor's error.

Senator Darrington commented that it appears to be a sentence without a verb. **Mr. Satterlee** added that it appears to be a cut and paste from lines 49 through 51 and completely put in the wrong location.

Senator Little asked **Mr. Satterlee** that when BSU acquires property do they need to evict the tenants immediately? What happens if you allow the students to stay for the remainder of the semester? **Mr. Satterlee** answered that sometimes the students remain until the end of the year or longer. It mainly depends when they plan to develop the property. BSU is the new landlord. The concern is that the statute says that BSU is required to make these payments if the property is acquired under eminent domain. **Senator Little** asked **Mr. Satterlee** if his interpretation of this code change would require BSU to pay the student a relocation payment even though they could remain there indefinitely? **Mr. Satterlee** replied that the statute states BSU has to make up to at least 4 years worth of lease payments, that is on page 5, lines 9 through 24 of the bill. Any student could make a claim for moving expenses for property acquired under eminent domain, for up to 4 years after that under the

prior section, and for lease replacement or for a down payment on a home. **Senator Little** asked **Mr. Satterlee** if relocation is defined as any kind of removal within 4 years? **Mr. Satterlee** answered it states that anyone who is displaced from a dwelling would be entitled to moving expenses of \$500. In addition to that, anyone who is displaced from a dwelling 90 days prior to the first offer to acquire, is entitled up to \$4,000 or up to 4 years of lease replacement costs.

Senator Davis commented that his disappointment is that **Mr. Satterlee** had not been here when the Committee first heard this bill. His perspective on the original bill makes it late in the game to have it amended so we can be where we need to be.

MOTION: **Senator Davis** moved to hold the bill in Committee. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

H 694 **Representative Black** presented **H 694** to the Committee and stated that this simply allow the Public Utilities Commission (PUC) the authority to approve and set just, reasonable and fair rates for energy and other utility facilities under construction and for property that is acquired by a utility and held for future use, such as a substation location. This legislation will help ensure the development of energy and other utility facilities meet the growing needs of Idaho citizens at a reasonable cost. Additionally, property needed for future utility infrastructure can be acquired early in the planning process, which will reduce costs for utility customers.

Senator Geddes asked **Rich Hahn**, from Idaho Power, when the utility companies purchase property for future needs, do they come to the PUC afterward for approval? Or, do they meet prior and justify the need and the cost? **Mr. Hahn** answered they do not have the option now to go before the Commission and purchase land. They do have a planning process with a community advisory committee, which helps to evaluate in advance for future substation sites. So there is a planning process, an acquisition process, and then a permission process for inclusion. Some of these details need to be worked out because this has not been an option available to them. As the economy grows they need to be able to go to the Commission and offer options to reduce the cost for customers in the long run. That is what the main purpose of this bill is.

Senator Stennett asked **Mr. Hahn** if the rate of return given is based on what the PUC allows? If the property sold and it was worth more, what happens to the gain? **Mr. Hahn** answered that the PUC would determine that.

MOTION: **Senator McKenzie** moved to send **H 694** to the floor with a **do pass** recommendation. **Senator Malepeai** seconded the motion. The motion carried by **voice vote**.

RS 16213 **Senator Little** moved to print **RS 16213**. **Senator Stegner** seconded the motion. The motion carried by **voice vote**. **Senator Lodge** thanked the Committee and that she would present the bill after printing.

ADJOURN: There being no further business before the Committee, **Chairman**

Burtenshaw adjourned the meeting at 9:30 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 13, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: None.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

CONVENE: **Chairman Burtenshaw** called the meeting to order at 8:05 a.m.

RS 16225C1 **Senator Little** addressed the Committee and stated that this RS is a Senate Joint Memorial that addresses issues from the time of the Sagebrush Rebellion to a few weeks ago. The federal government has a policy of acquiring land, not so much in Idaho because they own a good portion of it already. The Land-Water Conservation Fund spends between half a billion to one billion dollars a year in acquiring property. **Senator Stennett** and **Senator Schroeder** contributed to this legislation as well, and they are opposed to any proposals that would lead to any significant sale of federal land. Additionally, the federal government has some isolated parcels that should be offered to the state.

Senator Davis commented that before a motion is made, he felt that in fairness to **Senator Stennett** that the Committee should give him an opportunity to speak regarding the memorial. The Committee held the RS until later in the meeting.

RS 16196C2 **Senator Geddes** presented the RS to the Committee and stated that it is a fine tuning to the reapportionment commission. What this provision would do is allow for the six commissioners to represent a broader cross-section of the state, by allowing only one commissioner to reside in any one county. This would give more representation across the state. The previous statute had a restriction as to who could serve on a commission and who would be restricted from entering into the Legislature for a period of time. **Senator Geddes** continued and stated that, in his opinion, the most knowledgeable people to understand the importance of communities are those who are involved in the political process one way or another. This would allow other elected officials to serve and it would continue to bar members of either house of the Legislature from serving in a redistricting commission. Another provision is that it allows a new commission to be appointed if a court action is brought. If the plan is

rejected by the court, the same individual can be appointed or make changes on that commission to get a redistricting plan out in a timely manner. The commission members would serve for 90 days. There is to be a deviation of no more than 10% which has been ruled on. Districts that are oddly shaped have been eliminated. Districts would still include precinct boundaries and the boundaries shall be established in counties of less than 200,000 in population. The last provision is that no district boundary shall be drawn to fully encompass another district.

Senator Darrington pointed to the last page, line 6, regarding district boundaries. It states "district boundaries shall retain local voting precinct boundary lines provided they comply with 34-306, *Idaho Code*." He asked **Senator Geddes** to speak to that and the language used before, "as far as practical". There has been a lot of discussion regarding that due to strange anomalies within the precinct voting lines. **Senator Geddes** replied that the 10% has been established due to the various redistricting proposals over the years. The Supreme Court ruled that any thing more than 10% is not acceptable. He apologized that he isn't familiar with all the provisions in Section 34-306, so he isn't sure how that fits. **Senator Darrington** added that it might pose a bit of a problem in some rural areas.

Senator Malepeai asked **Senator Geddes** to refer to page 2, line 50, of the RS. What is the rationale for that? **Senator Geddes** answered that he doesn't know what an oddly shaped district is, but if you look at the other provisions, it is important that the districts be contiguous and within communities of interest. That particular sentence has little, if any meaning.

Senator Stennett commented that districts within the interior of Idaho are surrounded by other districts. He is curious about the language regarding that in the last provision. **Senator Stegner** stated he could respond to that question. **Senator Stegner** stated that the distinction is that no district shall be drawn to fully encompass another district or single district, so that one does not wrap around another one. **Senator Little** asked what would be the problem with that? **Senator Stegner** said he didn't write it, but that is the idea. **Senator Davis** stated you divide up communities of interest, and by doing that there is an assumption that everyone is a community of interest. What this suggests is that the redistricting commission be sensitive to the area or the region. **Senator Stennett** stated he understands that, however, he believes this would prohibit that.

Senator Little added that **Senator Davis'** point is well taken. But in a larger community where all the rural areas of the county surround it, by changing the language to "shall it" would preclude what looks like a natural apportionment from happening. The rural part of the county would be one legislative district and the city another.

Senator McKenzie asked **Senator Geddes** for clarification regarding no more than 1 member could be from a single county? He is concerned about gamesmanship, and if that would be a problem. **Senator Geddes**

replied that he supposed it could be looked at that way. When this was drafted the intent was to represent a larger cross section, by spreading the positions around and perhaps get more representation statewide.

Senator Stennett asked **Senator Geddes** how the process works when names are submitted? **Senator Geddes** answered that it is whoever appointed a commissioner from that county then any other appointments would have to be from another county. Finding one person to dedicate 90 days or more is not an easy task. He thought this would provide a better balance throughout the state. In sub paragraph 3, line 40 of the RS, that language is to increase the likelihood of finding someone to serve who is qualified and knowledgeable.

Senator Geddes added that he has the section of code that **Senator Darrington** was referring to and it covers clearly what precinct boundary requirements are. Section 34-306, *Idaho Code*, states as follows: "Precinct boundaries shall follow visible easy recognizable physical features on the ground including, but not limited to, streets, railroad tracks, roads, streams and lengths. The exception shall be when a precinct boundary coincides with a city, county, Indian reservation or school district boundary which does not follow a visible feature. In order to achieve compliance with requirements of this section and simultaneously maintain legislative district boundaries, which may not follow visible features, a county may designate sub-precincts within precincts, internal boundaries of which do not follow visible features." **Senator Geddes** stated that defines clearly what a precinct is and if precincts are not disturbed, than communities of interest will be maintained.

Senator Darrington moved to print **RS 16196C2**. **Senator Stegner** seconded the motion. **Senator Darrington** commented that as long as what a reapportionment commission is in place, gamesmanship might not be avoided, but these proposals bring more order to the process and are more consistent than what we have now. He strongly supports this. **Senator Stennett** stated that he supports the Pro Tem to print this RS, but changing the word "should" to "shall" in several cases further makes it more difficult for the commission to come to a conclusion. "We are trying to deliver one man one vote." **Senator McKenzie** asked if the RS would return to Committee. **Chairman Burtenshaw** answered yes. The motion carried by **voice vote**.

RS 16225C1

Senator Stennett addressed the Committee and stated that the proposal to sell off our public lands is a grave concern to the people. This is also timely and that he would like to see this Legislature take a position on the proposed sale of public lands by the administration. **Senator Stennett** added that he thinks it is important to hold a public hearing on this issue.

Senator Malepeai moved to print **RS 16225C1** and **Senator Davis** seconded the motion. The motion carried by **voice vote**.

HCR 60

Representative Henbest presented **HCR 60** to the Committee. This bill is to raise awareness about the issue of hunger in Idaho. Recently the

Idaho Interfaith Roundtable Against Hunger did a Hunger in America 2006 Idaho report. It documented that some 89,000 Idahoans reported hunger and food insecurity on the survey. The food bank here in Boise serves 81,000 people. **Representative Henbest** continued and stated that the essence of the resolution is a declaration of October 2006 as "Hunger Food Security Awareness Month" which would coincide with the efforts of the Idaho Interfaith Roundtable Against Hunger to convene in the Fall 2006 Idaho Summit on Hunger and Food Security. This will acknowledge that effort.

Senator Malepeai moved to send **HCR 60** to the floor with a **do pass** recommendation. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

HCR 47

Carl Bianchi, Director of Legislative Services, presented **HCR 47**. **Mr. Bianchi** stated he was delighted to be back before the Committee. Last session there were other approaches presented regarding the Capitol restoration. **Senator Stegner** came up with a novel idea by adding wings to the Capitol Building. That idea caught on because it promised to keep the Capitol Building a working capitol, a place where people can come and get business done, and not make all the elected officials leave. Additionally, it provided some high speed elevators at the ends of the building. **Mr. Bianchi** continued and stated that a task force was appointed including many members of this Committee. The task force traveled to Utah and Texas to see their capitols. Above ground wings were not feasible due to seismic problems, it was cost prohibitive, and there were architectural limitations. The consultants had another suggestion to build at ground level, to preserve the architectural integrity, reduce the cost and there wouldn't be any seismic issues. The task force came to a general consensus on five key points.

- 1) The Capitol restoration must go forward without delay.
- 2) The need for additional hearing rooms and offices directly connected to Capitol.
- 3) High speed elevators on the east and west ends of the Capitol.
- 4) Any addition needs to provide connectivity to the Capitol Mall properties, such as the Ada County Courthouse and future buildings.
- 5) A modest fix up to the Ada County Courthouse during restoration.

Mr. Bianchi added that what is different this year is that the money is available for the restoration and any additions. At the end of the 2005 session **HCR 386** was enacted which provided money from the additional cigarette tax to the permanent building fund. The monies are to be used for the repair, remodel and restoration of the State Capitol Building and state facilities pertaining to the Capitol restoration, until such time as the Capitol restoration is adequately funded. The estimate for fiscal year 2007 is that there will be about 30 million dollars revenue coming in the first year. The other difference is that the House has agreed to go forward with the restoration. On page 2 of this resolution, it outlines what is resolved to go forward with the restoration of the Capitol Building with no further delay. The estimated cost for restoration is 74 million dollars to the Capitol Building, plus 39.5 million dollars for the 2 atrium wings. House state affairs committee considered a number of different building options. They agreed with the 5 consensus points of the

task force, but in addition, it was important to plan for the future of the nation's 3rd fastest growing state. They voted 15-3 for the two-story atrium proposal to the House floor. One objection that was raised is that there could be water problems. The consultants from the Department of Administration provided written assurances that dispelled these concerns. When **HCR 47** passes, work will begin immediately to hire the architects, construction firms, and issue the bonds for the restoration of the adopted design for the new wings. In the Spring of 2007, everyone will move out of the Capitol Building and the restoration will begin. The 2008 and 2009 legislative sessions will be held in the Ada County Courthouse. If all goes as planned, the 2010 session will be held in the newly restored Capitol Building. **Mr. Bianchi** stated this is a once in a lifetime opportunity to make a lasting impact on Idaho's most important historical building, and keep our statehouse a working capitol. He asked the Committee to send **HCR 47** to the floor with a do pass recommendation.

Senator Darrington asked **Mr. Bianchi** if this proposal would go through the Public Building Advisory Council? **Mr. Bianchi** answered that he wanted to defer the question to **Jan Frew**. **Ms. Frew** replied that, yes, this project will continue to go through the current Building Fund Advisory Council. **Senator Darrington** asked **Mr. Bianchi** if both wings would be below ground level? **Mr. Bianchi** responded that is correct. At ground level no additions will be visible on either side. The view from Capitol Boulevard would not indicate any additions, only an atrium glass projection and some bushes will be seen. The silhouette and the structure of the Capitol Building will remain a distinct building.

Senator McKenzie commented that he has a hard time picturing how large 100,000 square feet is. He asked **Mr. Bianchi** to give him an idea what the new square footage compares to? **Mr. Bianchi** answered that the new hearing rooms will have approximately 35,000 useable square feet. The current hearing room size is around 6,800 square feet, so there will be a considerable increase over what we have now. Hearing rooms at least as large in seating capacity as the Boise City Hall will be added on both sides. **Senator McKenzie** asked how large is this room? **Mr. Bianchi** replied this room is about 618 square feet. **Mr. Bianchi** added that one of the elements is to redesign the rooms for functionality. The high speed elevators would take you down to the hearing room floor, with a corridor available only to legislators, and multiple entrances which is much better with regards to fire code and functionality.

Senator Stennett asked **Mr. Bianchi** what contingency plans have been made for the ground water? **Mr. Bianchi** answered that some sampling was done earlier in the year. The level is currently somewhere around 32 feet and the additions will probably be at 35 feet. It might rise, but we were assured by the consultants that with modern building techniques, the ground water level will not be a problem. **Senator Stennett** asked **Mr. Bianchi** if anyone asked the consultants about earthquakes? **Mr. Bianchi** responded that the Capitol Commission did not look into seismic issues. A seismic problem may be created if the wings were to be built directly up against the existing building.

Senator Little commented that he wanted to respond to **Senator Stennett's** question regarding earthquakes. When they were in Texas, conduit was put around the outside of the building so they could monitor it. The real issue is where it is connected to the building.

Senator Stegner added that the only access to exit the building now is back through the rotunda, or out these windows, which is not the most desirable option. "In the far ends of the underground extensions, we may end up with some above-ground small buildings with elevators or stairway access for escape avenues. This is what Texas did, but it shouldn't be disruptive to the overall appearance of the building."

Senator Geddes commented that when they toured the Texas annex, their situation and geology and hydro-geology is significantly different than what Idaho will encounter. They were on some fault lines that conducted water, but most of their water problems came from the gardening above, not below.

Senator Geddes added that during legislative council meetings with the consultants, they are confident that the technology has improved significantly, even beyond what there is in the tunnel to the parking garage. Buckets are no longer required.

Senator Stennett asked **Mr. Bianchi** if there was discussion about building the two wings and leaving the Capitol alone, then utilizing the wings while the Capitol is restored? **Mr. Bianchi** answered yes, but it was decided not to go that direction. The longer we wait to restore the Capitol the costs continue to escalate, and it would be disruptive as well. The least expensive approach is to do it all at once.

TESTIMONY: **Charles Hummel**, a retired professor of Idaho History, addressed the Committee. **Mr. Hummel** stated that he is delighted to see the results of interim committee. The committee chose the right one, the most logical and cost effective. He trusts that the senators will endorse **HCR 47**.

MOTION: **Senator Stegner** moved to send **HCR 47** to the floor with a **do pass** recommendation. **Senator Geddes** seconded the motion. **Senator Stennett** and **Senator Malepeai** voted no on the motion. The motion carried by **voice vote**.

SCR 130 **Senator Bunderson** addressed the Committee and stated that **SCR 130** is another opportunity to look forward, anticipate problems, and come up with solutions. This concurrent resolution is a product of the Environmental Common Sense Committee. It will allow us to think from a regional perspective in how we should deal with our municipal waste water and water systems in the state. Within the incorporated cities, area of impact or county, development is occurring rapidly. It raises the issue of whether or not we are managing our systems based on the lines or on environmental science. Unfortunately we are managing our systems based on the lines. **Senator Bunderson** continued and said that this resolution allows us to start the process and look at this whole issue, and what makes sense from an environmental standpoint.

TESTIMONY: **Justin Ruen**, from The Association of Idaho Cities, stated that the association supports **SCR 130**.

Barry Burnell, the Water Quality Administrator for Idaho Department of Environmental Quality (DEQ), commented that the agency has discussed this a number of times. The timing is right to engage the cities, counties, water and sewer districts to look at ways to promote regional water and sewer services. **Mr. Burnell** added that he is looking forward to working on this and possible legislation to help promote regionalization of water.

MOTION: **Senator Geddes** made a motion to send **SCR 130** to the floor with a **do pass** recommendation. **Senator Malepeai** seconded the motion. The motion carried by **voice vote**.

ADJOURN: There being no further business before the Committee, **Chairman Burtenshaw** adjourned the meeting at 9:10 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 15, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: None.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

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

RS 16241 **David T. Lehman**, from the Governor's Office addressed the Committee regarding **RS 16241**. **Mr. Lehman** introduced the First Lady, **Patricia Kempthorne** and he added that she is an expert on the issues of families and children, not only in Idaho, but nationally. **Mr. Lehman** continued and stated that the **RS 16241** establishes within the Office of the Governor, The Office for Families and Children. The Governor has placed a significant emphasis on the health, education, safety and well-being of Idaho's children and families over the course of his administration. Together, "partner-shipped" with the legislature, state government agencies, boards and commissions, and community leaders, they have made great progress in improving the effectiveness and efficiency of programs for families and children, both in government and non-government environments. Most recently included are a number of faith-based organizations and initiatives throughout the state.

Mr. Lehman continued, a recent example of this type of collaborative effort is demonstrated in the Tribute to our Troops program, which trained community members from around Idaho to work with returning families and soldiers as they begin the reintegration process back into their normal lives after deployment to Iraq. **Mr. Lehman** added that the Governor's office, the Coordinating Council for Families and Children, Healthy Families Nampa, and Idaho National Guard were engaged in this effort along with community members from around the state. Individually none of these organizations would have been able to put together this type of this event and generate the kind of success that came from this collaborative effort. This is just one example of what can be achieved by coordination at the state and local level and on a statewide basis.

Through the creation of the Governor's Office for Families and Children, these types of coordinated efforts can be expanded. Additionally, we will

be able to develop statewide multi-agency outcome measures for programs impacting families and children. More than 1 billion dollars are spent in Idaho on families and children. This office represents an opportunity to take a detailed look at services for families and children across government agencies, and determine if resources are being expended in the best possible manner.

Senator McKenzie asked **Mr. Lehman** if this bill is contingent on the funding request, and if so, what is the status? **Mr. Lehman** answered the Governor's Office has recommended \$175,000, and 2 full-time employees. The funding has not been acted upon.

Senator Stennett asked **Mr. Lehman** if the 1 billion dollar figure includes public school's? **Mr. Lehman** replied, the medicaid budget spends several hundred million dollars on programs related to children, with significantly more money going towards children's mental health services. **Senator Stennett** asked how the Governor's office intends to plan or coordinate this project with the State Board of Education and Superintendent? **Mr. Lehman** answered that is exactly the role this office will take. Right now these organizations get together and talk about the school budget and how it relates to the education of children. Then they have another meeting and discuss mental health services for children with special needs. The children that move into juvenile corrections are also included in discussions. This office will provide an environment for those organizations to get together and determine a multi-agency path to improving the environment around those families and children. In particular, where money is allocated to children as far as the after effects of that lifestyle. More money is needed to coordinate the services that will prevent those children from entering the correctional system and encountering a lifestyle that promotes substance abuse.

Senator Geddes commented that this organization has been successful so far without this legislation and without the earmarked funding. How has that occurred and how was it funded in the past? **Mr. Lehman** replied that they have worked with different agencies within state government to use half time full time employee's to fund positions that help coordinate these services. The effort regarding the troops was a multiple agency contribution that was successful. What this does is to allow this office to take the next step forward to provide for full-time professional staff, and make sure that those types of coordination efforts occur. Not just in these specific examples but, more effectively, across state government and more state agencies and incorporating more local level support, including faith-based organizations.

Senator Little asked **Mr. Lehman** in what section of the code is the authorization for the Women's Commission? **Mr. Lehman** answered that he didn't know. He will find out, but it is relatively a small section of code, and there is some authorizing language as well as the appointments, but not much else.

First Lady **Patricia Kempthorne** addressed the Committee and stated that this organization started several years ago. The desire of the council

members is to put this in statute. One role they focused on was networking to bring councils together and that all sectors are represented including the Department of Education. They maintain constant communication with all organizations and have created a "kid's template." to develop awareness and secure resources for all committees and groups across the state. The Women's Commission wants to be a part of this group because of the issues surrounding families, and they see this as a real partnership.

Senator Stegner moved to print **RS 16241**. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

RS16250

Senator Cameron stated that **RS 16250** is a proclamation to honor a public servant. Since 1988, **General Woo-Joo Chang** has been Idaho's ambassador in South Korea. He is a great asset to the State of Idaho in recruiting industry and business, and allowing us to market our products in his country. **General Chang** will be here on Monday, March 20, and the intent is to honor him on that day with this Proclamation.

Chairman Burtenshaw commented that **General Chang** is an outstanding individual. He asked **Senator Cameron** if **General Chang** is retiring soon. **Senator Cameron** answered that he doesn't believe it has been officially announced, but it will be a great loss to Idaho when **General Chang** steps down.

Senator Little moved to print **RS 16250**. **Senator Malepeai** seconded the motion. The motion carried by **voice vote**.

H 696

Representative Edmunson addressed the Committee regarding **H 696**. The purposes of this legislation is to amend *Idaho Code*, Section 31-869. This proposed legislation is to establish an electrical generation facility to utilize waste wood from the landfill and wood chips from thinning for forest health in Adams County. Instead of burning slash piles because of environmental concerns, the policy now is to remove the slash. Counties could own or operate a small plant, up to 25 megawatts, that will burn bio mass.

Senator Little asked **Representative Edmunson** if the existing utility vendors wanted the language "sold at wholesale" in this legislation? **Representative Edmunson** answered yes, they will build the facilities and use them for heating and cooling, and the excess can be sold on the wholesale market. **Senator Little** asked if it will have to be run through the grid? **Representative Edmunson** answered that Council School District partner-shipped with the Fuel for Schools Program and the U.S. Forest Service. With the technology of Siemens they built a biomass burner. It heats and cools their buildings at a fraction of what they paid before for fuel.

Senator McKenzie commented that the language states "all the electricity produced will be sold at wholesale." He asked **Representative Edmunson** if the language needs to state "excess energy produced will be sold at wholesale?" **Representative Edmunson** replied that he is

comfortable with the language and that they can sell the excess.

Senator Stennett asked why does the county need this legislation when they are selling it back at wholesale? **Representative Edmunson** answered that with the passage of the Federal Energy Bill, the county is pushing for alternative fuels such as biomass. Incentives are being offered for public entities, such as counties, to own and operate and install these plants. Ada County is currently installing a plant to burn gas from their landfill. This will allow counties to take advantage of all incentives offered through the Federal Energy Bill. **Senator Stennett** restated his question and asked what would prohibit counties, absent of statute for doing this? Is this statute necessary? **Representative Edmunson** replied yes, to his understanding it is necessary.

Senator Malepeai asked if cities are allowed to do this? **Representative Edmunson** answered yes. **Senator Malepeai** asked if there are any cities doing this, and if so, how is this different from the operation that is being proposed? **Representative Edmunson** replied that he believes there are 3 municipalities that are operating power plants, but that he doesn't know where or how large.

Senator Stegner commented that there are more than 3 cities, maybe 6 or 8. He reads this legislation as an expansion of the authority already given to counties. They can already own, maintain, develop and operate geothermal electric systems. This is just expanding the statute to include thermal systems. Co-generation plants contract with a power company and sell it back. They get credit for what they used as an offset. He doesn't think that language would be inconsistent with that. The most efficient way would be to put it in the grid and sell it on the wholesale market.

Senator Stennett commented that he recalls entities are allowed up to 25 megawatts to meter. The meter essentially runs backwards and that is not a wholesale rate, but the rate you purchased power for at the retail rate. Why should counties be treated any differently if they want to build a power plant and run the meter backwards? He asked **Senator Stegner** to defer to this. **Senator Stegner** responded that 1) this clarifies that counties can do this, and it expands that geothermal systems are already authorized. It does put in place the maximum of 25 megawatts; and 2) net-metering costs considerably less, at the kilowatt level and designed to be extremely small. Net-metering is for individual households that have solar systems or small wind systems to allow for their local residential meter to go backwards. **Senator Stennett** added that the statute to be passed, allows for up to 25 megawatts. **Senator Stegner** responded that 25 megawatts is a big power plant. Idaho Falls has the largest and it is probably at around 15 megawatts.

Judy Ellis from Adams County, addressed the Committee and she stated that the prosecuting attorney looked into the statutes to see if counties had statutory power to generate electricity. The counties do under the performance contracting legislation statute in Section 67, *Idaho Code*, and it allows the county to use the power. It doesn't enable the county to sell

the power at wholesale. The reason it is beneficial to sell the power wholesale, is that Idaho Power has agreed to give them a contract for 20 years at 6 cents a day kilowatt. They currently pay around 4.5 cents. To reverse meter in this case, would not be as beneficial to the county as it would be to sell it wholesale and then pay their power bills. **Ms. Ellis** added she does not know anything about reverse metering statutes. Counties have been prosecuted for planning to build generating plants and stopped from doing so. This was either an oversight because technology hadn't existed, or it was just decided that cities could and counties couldn't. **Ms. Ellis** continued and said that the forest service is trying to make use of material that is removed from the forest. If the forest service can come up with an income-generating means for the wood chips, they can remove them from the forest, and the county can afford to pay for the removal of the wood chips. This will create approximately two dozen jobs for Adams County.

Senator Geddes stated that the concern he has with this legislation is that it empowers the commissions to own, operate and maintain a facility rather than the county. He asked **Ms. Ellis** if that were true? **Ms. Ellis** replied she would have to take a look at the language. If it is empowering the commissioners, than it needs to be modified to empower the county. Ada County is currently selling their landfill gas to a private company to be able to generate power. Adams County probably doesn't have a private enterprise to come in and finance it. They would likely contract with a private business to run it.

Senator McKenzie commented that the language is consistent with other code sections that identify the boards of the county commissioners, as those who act on behalf of the counties and contract for them.

Chairman Burtenshaw commented that the biggest cause of smoke is from slash burning. He asked **Ms. Ellis** how this will be set up to burn the wood chips? **Ms. Ellis** stated that if the material is burned in a controlled atmosphere with scrubbers, the air would be cleaner. Some controlled burns will continue.

David Naccarato, from Siemens Building Technologies, stated he wanted to present his perspective from the industry viewpoint. This bill started four years ago when a program was developed, the Rural Community Initiative. There is great disparity between the rural communities, urban communities, and the great economic impact in terms of infrastructure. The interest in biomass is primarily a fuel source. In forest-based communities, they are literally surrounded by oceans of available energy. It is sustainable, renewable and ties into the concept of healthy forest initiatives. The latest federal energy bill named biomass as a green fuel. The concept was letting counties have the option to build small scale generation facilities, using biomass and other available fuels. By generating that power they also have the option to sell it on the wholesale market to pay for these plants, and at some point generate revenue for the communities. What we have at our disposal is our own available sources of energy, and it just makes sense. Under current statute counties did not have that option. It is not always economically feasible.

But allowing communities to come together and study this, work with industry to develop economic feasibility, and actually implement the plan is what this legislation before you is about.

Senator Stennett asked **Mr. Naccarato** if there is anyway coal could be considered biomass? **Mr. Naccarato** said no, not as it is currently defined. Biomass is not a contributor to green house gases. It is a fuel that conservation groups are in favor of.

Senator Geddes commented that sometimes efforts to conserve and to be economical are very expensive. It sounds like in Adams County this might be a 5 megawatt plant per year. He asked **Mr. Naccarato** if it is economical, and what is the payout? **Mr. Naccarato** answered yes, absolutely. The way a plant is sized is by looking at the available fuel resource, and what can be a guarantee in that geographic region. The capitol cost equipment tends to be higher than a natural gas fired plant, and the fuel costs are so much lower, which makes it more feasible economically.

MOTION: **Senator McKenzie** made a motion to send **H 696** to the floor with a **do pass** recommendation. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

RS 16250 **Senator Stegner** pointed out that the resolution needs a correction on line 7 regarding the year. It should read 1988, not 1998. He asked the Committee to approve the correction and have it changed before it goes to the floor. The correction was approved by **voice vote**.

H 696 **Ms. Ellis** announced that the fuels manager, **Jeff Canfield**, from the U.S. Forest Service had just arrived at the meeting. He is also the timber management assistant for the west zone of the Payette National Forest. **Chairman Burtenshaw** commented that it is unusual to have testimony after we have already passed the bill, but he asked **Mr. Canfield** how are the wood chips removed from the forest? Does the forest service do it, or the contractor? **Mr. Canfield** responded that the contractor would do that. **Chairman Burtenshaw** asked what about trees that are cut and stacked, are they part of this as well? **Mr. Canfield** answered yes, they are. There are 3 basic sources of material in the forest. 1) The plantations, 2) the tops of the full sized trees, and 3) the small trees that would normally be cut for slash, piled and burned. They would all be a requirement in the contract to remove it from the forest.

Chairman Burtenshaw advised the Committee that discussion on **H 696** will be continued until the next meeting.

ADJOURN: There being no further business before the Committee, **Chairman Burtenshaw** adjourned the meeting at 8:57 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 17, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: None.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

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

GUBERNATORIAL APPOINTMENT: **Jeffrey L. Bowen** appeared before the Committee regarding his confirmation hearing to the Bingo-Raffle Advisory Board. **Mr. Bowen** stated that he wants to help the state with the bingo games and have some input. His hope is that they can get more cooperation and make things better. The board does provide a service for the community by raising money as well as providing entertainment and fun. Most of the bingo operations in Idaho are very small. They do need to tweak the system from time to time to stay competitive with the Indian casinos, but he realizes it is a totally different league.

Chairman Burtenshaw asked **Mr. Bowen** how long he has served on the board? **Mr. Bowen** answered for about 9 or 10 years. **Senator Geddes** stated that **Mr. Bowen** had indicated that there are some problems between the Bingo-Raffle Advisory Board and the lottery. He asked **Mr. Bowen** to tell the Committee about the frustrations he has experienced. **Mr. Bowen** stated that the statute requires at least 2 meetings a year. They haven't had a meeting for at least a year now. Although the board can have conference calls. The payout levels changed to help entice participation in bingo, but the casinos can afford to advertise where they can't. About a \$30,000 decrease was experienced last year. **Mr. Bowen** added that, if they don't have more support from the lottery, he doesn't see bingo going anywhere. Some lottery directors have supported the bingo board and supported them. Some felt bingo was just a thorn in their side. Unless they have more support he isn't sure if being on the board isn't just a title. **Mr. Bowen** continued and stated that he would like to continue working with the lottery and get things going, but he feels an entity in Boise is needed in that regard. Bingo is charitable money and most of the money goes towards scholarships to support the youth of our communities. He stated that he would just like to see more cooperation from the lottery.

Chairman Burtenshaw advised **Mr. Bowen** that the Committee would vote on his confirmation at the next meeting.

S 1448 **Senator Geddes** stated this is the Senate bill that deals with redistricting and reapportionment. **Senator Geddes** continued and added that when the bill was introduced for printing, there were significant suggestions to the bill. He is not opposed to sending this bill to the amending order to implement some of those changes. **Senator Stennett** had suggested that one member be appointed from each party to represent any single county. He believes that is a good suggestion.

MOTION: **Senator Little** made a motion to send **S 1448** to the 14th order for possible amendment. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

H 743 **Representative Denney** presented **H 743** to the Committee regarding the School Facility Improvement Act of 2006. **Chairman Burtenshaw** commented that some superintendents do not have an opportunity to be here today. He asked the Committee if the bill should be held until next meeting. **Senator Stennett** stated that there was a notice posting issue and he suggested holding the bill until next meeting. **Senator Stegner** suggested hearing testimony today, and hold the bill until Monday to allow for additional testimony before the Committee votes on it. **Chairman Burtenshaw** agreed to do so.

Representative Denney continued and stated that the Idaho Supreme Court has ruled that the Legislature provide for a system that guarantees that students will attend safe facilities. This legislation provides for such a system through the following three-part approach.

- 1) Bond Levy Equalization. This bill removes the cap on bond levy equalization and allows the state to partner with local districts.
- 2) School Facilities Maintenance Fund. Schools are required to deposit at least 2% of the replacement value of buildings in the Deferred Maintenance Fund.
- 3) Public School Facilities Cooperative Funding Program. This legislation provides a 25 million dollar fund as a fail safe method of addressing safety issues in local districts.

Representative Denney continued and stated that this bill sets a levy to help pay for safety issues. The levy is set at the statewide average.

Senator Davis asked **Representative Denney** if he knew how this would compare with the Arkansas plan? **Representative Denney** answered that he is not familiar with that plan.

Representative Bedke addressed the Committee and stated that some points need to be made regarding this legislation. The problem is isolated and not a statewide problem. Not all school districts have facilities issues, so whatever solution that was crafted, needed to be fair to those districts that have bonded or built new facilities.

Legislative Services Office prepared a handout on the School Facilities Cooperative Funding Program regarding budget and policy analysis. The

handout is attached to the original minutes on file in the committee office.

Representative Bedke asked the Committee to refer to the handout and he discussed solutions with the Committee in that regard. Education in Idaho has a state and local partnership. The state side of the partnership needs to be strengthened. Idaho has 114 school districts that are all uniquely different. The bond levy equalization program is the assistance the state provides to school districts as bonds are passed. This legislation takes the bond levy equalization obligation out of the lottery, so that all the lottery money will flow to the school districts.

Senator Stegner asked **Representative Bedke** to point to the language in the legislation that dedicates specific money to the bond equalization portion. **Representative Bedke** replied it is in Section 11, line 43 of the bill. **Senator Stegner** asked if the language in the handout in the 3rd bullet point was the same language? **Representative Bedke** answered yes it is.

Senator Little commented that there is a declining cigarette tax revenue because of the reduced number of smokers. **Representative Bedke** added that with this program they will have a piece of every bond that is passed from now on. "They should have about 25 to 30 million dollars in 20 years, but if Senator Little is asking whether or not this will be enough to fund this, probably not. It will get us through the next decade or so."

Senator Stegner stated he is just trying to understand this. It seems a lot of support is gained across the state by freeing up lottery dollars to go toward the bond equalization. He asked **Representative Bedke** if the funds would go into the facility maintenance fund? **Representative Bedke** replied that school districts are using discretionary funds for their maintenance issues. Money will be dedicated to maintenance and the district can back out their discretionary dollars and use that for other issues. The passage of this legislation along with the public school appropriation, will have the effect in total of giving them a bump in discretionary funds of approximately 5 percent. If all else fails, this allows for an independent third party appointed by the state to assess the needs of each school district. The court is clear, the state is the provider of thoroughness of last resort.

Senator Darrington stated that **Representative Bedke** referenced the lottery several times. The lottery provides that 17.5 percent goes to the school public building fund, and 17.5 percent to the permanent building fund. He asked **Representative Bedke** what does this legislation do to the share that goes to the permanent building fund? **Representative Bedke** answered nothing it stays the same.

Senator Little stated that Idaho County has a declining enrollment. He asked if there are incentives for the school districts to bifurcate or consolidate school districts? **Representative Bedke** answered no, he does not think so. The match is based on the average school district on the wealth index. There is no intentional incentive to do so. **Senator Little** stated he is concerned about gamesmanship and creativity of

trustees and superintendents. If the district is split they could work this, do you see that happening? **Representative Bedke** answered if he were going to game it would be in another area.

Chairman Burtenshaw stated that the Committee would hold the remaining discussion on **H 743** until Monday.

RS 16253

Senator Bunderson presented **RS 16253** and stated that it is a product of the Government and Tax Committee. This resolution calls for a committee to evaluate why property taxes increase. The objective is to get to the core reason.

Senator Stegner moved to print the RS and send it to the floor. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

ADJOURN:

There being no further business before the Committee, **Chairman Burtenshaw** adjourned the meeting at 8:55 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

- DATE:** March 20, 2006
- TIME:** 8:00 a.m.
- PLACE:** Room 437
- MEMBERS PRESENT:** Chairman Burtenshaw, Vice Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, Malepeai.
- MEMBERS ABSENT/ EXCUSED:** None.
- GUESTS:** Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).
- CONVENE:** **Chairman Burtenshaw** called the meeting to order at 8:05 a.m.
- GUBERNATORIAL APPOINTMENT:** **Senator Davis** moved to confirm **Jeffrey L. Bowen** to the Bingo-Raffle Advisory Board. **Senator Malepeai** seconded the motion. The motion carried by **voice vote**.
- H 743** **Representative Bedke** yielded to **Mr. Hancock** and he stated that the handout is information that the Committee had requested. It represents the fund flow of the cigarette tax revenues for the Capitol Restoration and the Bond Levy Equalization. The handout is attached to the original minutes on file in the Committee office.
- Senator Stegner** asked **Mr. Hancock** with the projected revenue of 30 million per year, does that include the revenue from **H 386**? **Mr. Hancock** answered yes, it was the bill from last year. **Senator Stegner** asked if 30 million is an accurate amount? **Mr. Hancock** replied no it isn't, but the 20 to 22 million is the additional 29 cents generated from **H 386**. There is a piece of that going to the general fund. **H 386** made the general fund allocation of cigarette tax monies applicable to FY 2006 only. Any dollars not specifically allocated will flow to the Capitol restoration, which accounts for the 8 million dollar difference. **Senator Stegner** asked if anyone was aware of that. **Mr. Hancock** responded no, it was a surprise.
- Page 2 of the handout is information requested regarding the lottery history distribution. In fiscal year 2006 and 2007 the lottery monies will flow to the public schools for their 50% share of the proceeds. Excess funds have been available for the past 3 years, and in 2007 it will help pay for the bond levy equalization.
- Representative Bedke** added that there are 3 points in this legislation.
- 1) The changes to the bond levy equalization.

- 2) Money will be available for school maintenance.
- 3) A fail safe or back stop provision for accountability.

TESTIMONY:

Representative Shirley Ringo addressed the Committee regarding her concerns of the bill. She presented a survey summarizing responses from 50 school districts. It represented the issues school districts have regarding buildings that are educationally inadequate. She added that **H 743** does not provide options for a school district to seek assistance for dealing with safety issues without the appointment of an individual to take over the project. **Representative Ringo's** handout is attached to the original minutes on file in the Committee office.

Stan Kress, President of Idaho Schools Equal Educational Opportunity (ISEEO) and a Superintendent from Cottonwood, addressed the Committee in opposition to **H 743**. His written testimony is attached to the original minutes on file in the Committee office. His suggestion to change **H 743** is as follows:

- 1) Delete Sections 2 and 6.
- 2) Change in index divisor from 1.0 or the statewide average to 1.25 of the average or at the very least 1.15 of the average.
- 3) Add Free and Reduced School Lunch as an alternative to average income and unemployment data which is county data, not school district data.
- 4) Put more money in the maintenance program.
- 5) Pay for current or old bonds as well as the new ones.
- 6) Reevaluate the Value Indexes and adjust.

Jeff Thomas, Superintendent of Masson School District, stated he has concerns with **H 743**. In his district they have 12 million dollars in repairs, safety, and upgrade needs. The average age of their buildings is 43 years old, with one building that is 80 years old. They receive approximately \$150,000 of lottery money per year, but it is not sufficient. They are accountable to the public and the local elected school board. This bill obliterates any local control which is a serious concern. School districts should not have to sue the legislature for funding especially to make sure buildings are safe.

Bob Huntley, from the ISEEO, stated he is here to do the best for the students of Idaho. Most of his work has been pro bono and everyone he has worked with over the last 16 years have good intentions and care about the issues facing Idaho schools. **H 743** does not do the job and this legislation has the golden opportunity to do something new for Idaho schools. **Mr. Huntley** continued and stated that this bill ignores the backlog throughout the state. In 1992, the backlog was estimated at 700 million dollars and some of that represents technology. In 2002 it was updated to exclude technology and that figure is 620 million dollars. Nothing substantial has been done to take care of the backlog. The problem needs to be addressed and it appears that it has been shifted to safety issues only. The Supreme Court decision is not just about safety issues. There is serious under-funding and new money is needed. Out of 105 legislators, not one has come to the ISEEO to get the data on what the backlog really is. The ISEEO has the research and they want to work

on the problem and find a solution. The children of Idaho deserve to have this problem solved.

Mike Friend, Executive Director of the Idaho Association of School Administrators (IASA), spoke to the Committee regarding **H 743**. **Mr. Friend's** written testimony is attached to the original minutes on file in the Committee Office. The IASA's position is that all of Idaho's children need and deserve to be educated in school facilities that provide a safe environment, conducive to learning. **H 743** is a step in that journey of a state-local partnership.

Cliff Green, Executive Director of the Idaho School Board Association (ISBA), reiterated the fact that ISBA's philosophy is to work with the legislators towards solutions. ISBA is in the middle of this just by virtue of their role. They are not a party in the original lawsuit, so at this point they want to be a partner and work towards a solution. **Representative Bedke** met with the board and allowed input in the initial stages. **Mr. Green** continued and stated that this bill is not a perfect solution, but it is a beginning. The ISBA is for local control and they believe in it. However, along with that comes the prudent and responsible management of resources that are provided to the school districts. **Mr. Green** encouraged the Committee's thoughtful consideration of this bill.

Senator Malepeai asked **Mr. Green** what was the nature of the input that ISBA contributed to this bill? Were they included in the bill? **Mr. Green** answered that it happened at "Day on the Hill." Trustees from around the state and lobbyists met with legislative leadership and asked for their input. **Senator Malepeai** asked if that was the first time the ISBA saw the bill? **Mr. Green** replied he couldn't answer that, but what he does know is that representatives from the legislation visited the executive board in February 2006.

Keith Allred, from the Common Interest Group, stated that thirty-one members of their group reviewed the bill and they think **H 743** makes significant progress. **H 743** doesn't do enough to satisfy the Legislature's constitutional obligation to Idaho's public school students. The Supreme Court was unanimous in finding that the Constitution invests in the Legislature the responsibility to provide "a safe environment conducive to learning." The evidence indicates that our public school system falls far short of this standard in many locations. **Mr. Allred** added that the Common Interest Group hopes that the Legislature will engage in a willing, bipartisan process to find a solution that fully meets this responsibility not only because the Constitution demands it, but because Idaho students deserve it.

John Eiken, Executive Director of the Idaho Rural Schools Association, addressed the Committee. **Mr. Eiken** stated that **Mr. Friend** gave the majority of the testimony that they are concerned with. His concern is that this bill does not provide enough money to handle the problem they are facing particularly in the rural areas. Raising the cap will not solve the problem and that there isn't enough money to set aside to do this statewide. The Association is opposed to this bill.

Senator Stegner asked **Mr. Eiken** if he is suggesting that the bill die this year and nothing be done? **Mr. Eiken** answered any bill probably has some parts that are acceptable. He doesn't believe the first steps will solve a great deal. There is a better bill out there.

Chairman Burtenshaw asked **Mr. Eiken** what the price tag would be on another bill? **Mr. Eiken** responded that he isn't sure what that might include.

Representative Bedke asked how far do we need to go back to be fair to the districts who have passed bonds, that arguably are not part of the problem here. There will be a piece of every bond that is passed from now. Some districts will be helped with the lifting of the interest only provision. There is a state local partnership but at the end of the day the state has the responsibility to provide thoroughness. This bill represents a major departure from how things were done in the past. New money is available, but all the incentives in the world will not address the problem. There has to be a fail safe at some point. The state is the provider of last resort and the court was clear on that.

Senator Darrington stated there were references made as to not using the free and reduced lunch program. He asked **Representative Bedke** to enlighten the Committee in that regard. **Representative Bedke** replied that the bond levy equalization index criteria are three. 1) The assessed value per support unit, 2) the per capita income of that county, and 3) the unemployment rate of that county. In a county wide district it is argued that those numbers are accurate. When you do not have a county wide district that may not take into account the differences between them. The free and reduced lunch criteria is something we should not be using when it comes to this. It can be and is manipulated.

Senator Malepeai asked **Representative Bedke** for clarification if discussions included the ISEEO, school administrators, and superintendents to be a part of this process in arriving at this piece of legislation. **Representative Bedke** replied that specifically, they did not.

MOTION:

Senator McKenzie made a motion to send **H 743** to the floor with a **do pass** recommendation. **Senator Little** seconded the motion.

Senator Malepeai made a motion to hold **H 743** in Committee. **Senator Stennett** seconded the motion.

Chairman Burtenshaw asked for a roll call vote on the **substitute motion** to hold **H 743** in Committee.

Senator Darrington - Nay
Senator Geddes - Nay
Senator Davis - Nay
Senator Stegner - Aye
Senator Little - Nay
Senator McKenzie - Nay
Senator Stennett - Aye
Senator Malepeai - Aye

Senator Burtenshaw - Nay
The substitution **motion failed**.

The roll call vote on the **original motion** was taken.

Senator Darrington - Aye

Senator Geddes - Aye

Senator Davis - Aye

Senator Stegner - Nay

Senator Little - Aye

Senator McKenzie - Aye

Senator Stennett - Nay

Senator Malepeai - Nay

Senator Burtenshaw - Aye

The motion carried to send **H 743** to the floor with a **do pass** recommendation.

H 787

Representative Field presented **H 787** to the Committee. **Senator Stennett** asked for clarification as to why this bill is before the State Affairs Committee. **Chairman Burtenshaw** answered it was assigned to the Committee. **Senator Geddes** added sometimes this Committee is referred to as the "Sin Committee." This issue has been dealt with before in this Committee. When it was assigned, it was accepted by the Senate and there were no objections. The Local Government and Tax Committee was very busy looking at the tax bills. In an effort to try and balance workloads, **Senator Geddes** added that since this Committee has dealt with issues similar to this, the decision was made to help expedite the process.

Representative Field continued and stated that this has been an interesting process. The purpose of this legislation is to raise the tax on each container of moist snuff to a minimum of \$1.00 per ounce and to continue the tax rate of higher priced products at 40% of wholesale price of such tobacco products. Additionally, it will also provide a dedicated revenue source of funding for drug, family and mental health courts to be expended under the jurisdiction of the supreme court.

Robert Shepherd, a partner in a national consulting firm who specializes in tobacco and tobacco taxes addressed the Committee. **Mr. Shepherd** stated he is in support of **H 787** and he represents the U.S. Smokeless Tobacco Company. They are best known as the manufacturers of Copenhagen and Skoal and the only company to sign the Smokeless Master Settlement Agreement. The cigarette market is shrinking, the dollars may be increasing, but there are less packs being sold. Moist snuff is growing and about 5% more cans are being sold every year. The revenues are shrinking and **H 787** will take care of that. When the Other Tobacco Products (OTP) tax, which includes cigars, pipe tobacco, roll your own, moist smokeless tobacco, chew and a variety of things, was enacted in 1972, it was a percentage of the wholesale price. In 1972 that was the right thing to do. Back then there were only a few brands and every company sold it at the same price point. One company decided in 1995 to produce a product that cost less. The retail price was driven even lower than the product because of the tax base associated with it. Around

the year 2000 the first really low end product was introduced. There are five different price points between the high end and the low end. The state receives \$1.20 in excise tax on the high end product and 30 cents on the low end. Every time someone makes a purchase of the low end product over the high end product, the State of Idaho gets 90 cents less in excise tax for virtually the same product. The quality is a little different but the amount is the same. Cigarettes are taxed the same and that is what is being suggested with moist tobacco. The revenue stream is unstable and subject to manipulation. The way to fix this is a weight based tax and **H 787** will accomplish that. The inexpensive products are eating up the marketplace and putting the tax revenues in jeopardy. **H 787** will provide for a dollar an ounce no matter what the price point. Anything under one ounce is brought up to the one ounce level. The unique part of **H 787** is that the high end product will keep the advalorem rate, and it brings the lower end product up to the same level. If there is a price increase on the premium product there is an automatic escalator. It provides stability and predictability of the revenues, and it is not subject to manipulation by companies. The marketplace will determine the winners and losers, not the tax policy and it provides more money for the state. Don't be misled when considering this bill, there is a one ounce minimum, and under this proposed bill they will all be taxed at the 1 ounce level. This is an excise tax and sales tax on top of it.

H 787 will accomplish all the goals needed to fix the problem, and in addition to that it provides \$850,000 extra for drug, mental health, and family courts.

Senator Stegner stated that if the tax remains at 40% would it be safe to say that it is \$1.00 or 40% whichever is higher. He asked **Mr. Shepherd** if that were correct? **Mr. Shepherd** answered yes, that is correct. Anything that has a wholesale price of more \$2.50 per ounce would be at the advalorem rate.

Because of time constraints, **Chairman Burtenshaw** advised the Committee that **H 787** would be held over until Wednesday's meeting.

ADJOURN:

There being no further business before the Committee, **Chairman Burtenshaw** adjourned the meeting at 9:30 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 22, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: None.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

CONVENE: **Chairman Burtenshaw** called the meeting to order at 8:05 a.m.

MINUTES: **Senator McKenzie** moved to approve the minutes from March 3, 2006 as written. **Senator Malepeai** seconded the motion. The motion carried by **voice vote**.

Senator Darrington moved to approve the minutes from March 6, 2006. **Senator McKenzie** seconded the motion. The motion carried by **voice vote**.

Senator Little stated he had read the minutes from March 8, 2006 and submitted that they are fine and moved to approve them. **Senator Malepeai** seconded the motion. The motion carried by **voice vote**.

H 787 **Bob Shepherd** continued with his presentation from Monday, March 20, regarding **H 787**. **Mr. Shepherd** summarized and stated that there is a problem with the excise tax on moist snuff. **H 787** is a compromise bill that corrects it. It levels the excise tax on the product but the cap is still open. Any product that exceeds \$2.50 an ounce would continue to rise as a percentage of the price. This only applies to the excise tax and the sales tax remains at an advalorem rate whether it is premium, mid tier or low tier. Finally, there still remains a significant price gap between the high end the low end product at the street price. The consumer has the choice of how much to spend.

TESTIMONY: **Senator Bunderson** addressed the Committee and stated that his Committee anticipated hearing this bill. **Senator Bunderson** stated that this bill has little to do with tobacco and everything to do with money. The intent here is market share shifting from one producer to another producer. The assertion is that the state will benefit and make more money. It rewards one group at the expense of another. Cigarettes are weight based taxed, and tobacco is priced based. Beer and wine is taxed

by gallons and the excise tax on beer has not changed to date. The erosion in the tax base has moved from 11.2% based on tax to 2% or less which equates to about 85% erosion to the tax base. All products in his opinion should be based on price not on volume. **Senator Bunderson** stated that he opposes **H 787**.

Senator Davis commented that **Senator Bunderson's** opinion helped him to understand **H 787**. In regards to moist snuff he does not want tax policy that advantages the market share of any given competitor. He does want to provide a chilling impact on the consumption of moist snuff by our youth. He asked **Senator Bunderson** if this is a step towards this or away from it? **Senator Bunderson** replied that it is difficult to establish public policy that will achieve all objectives. We need to deal with where is the greater good. Children will buy the cheapest product, and this bill will elevate the cost of the lowest priced product. They will buy less or they will buy something different. If their desire is to buy snuff, it won't matter all that much. Consumption will probably remain the same, but it will probably position one product more favorably.

Senator Little asked **Senator Bunderson** if one product had a higher margin and inclined to spend more on marketing, would it affect the use of the product as a result of the higher margin? **Senator Bunderson** answered advertising makes a huge difference, particularly on impressionable people and it has a huge impact on consumption.

Senator Stennett asked **Senator Bunderson** if the market will be manipulated to enhance the market share of another product? **Senator Bunderson** replied if you look at beer and wine for example, alcohol is defined by the amount in the beverage, less than how it is produced. The spirit industry asserts they are losing market share because of state policy which minimizes the cost of beer and wine. The argument is that Idaho has a favorite beverage, and that our tax policies encourage beer and wine, not spirits. When we establish policy we need to be careful not to create a favored product over another, and strive to create a balanced policy, so that all are treated equally as possible. In this case I don't believe the effect will be balanced and fair. The effect will be a market shift.

Senator Geddes commented that he can't explain why we haven't done what **Senator Bunderson** suggested for beer and wine. But as we look at other tobacco products, cigarettes specifically, he asked if they were taxed on a per package amount? **Senator Bunderson** answered yes, that is correct. **Senator Geddes** asked if this bill is exactly what we do for cigarettes? **Senator Bunderson** answered it is probably closer to the previous bill because it was a fixed amount based on volume. This bill wouldn't be before us if market share hadn't shifted to the lower priced product. They should all be based on price, not volume, in his opinion so we don't have an erosion as inflation occurs. **Senator Geddes** added that Idaho has a number of ways to tax a number of products. The question isn't whether they should all be the same. What it demonstrates is that this Legislature has a responsibility and a duty to evaluate taxes periodically, to make sure they are in line with the policy of what it should

be.

Roger Seiber, from Swisher International, addressed the Committee on his view of **H 787**. **Mr. Seiber** stated that in 2000 a flat weight based tax of 76 cents per ounce was proposed. A \$1.00 per ounce tax was proposed earlier this session in **H 697**, and it died in the House Revenue and Tax Committee. The proponents came back with **H 787** which is the bill you see before you today. **H 787** is designed to “equalize the price” on differing products through tax policy changes, rather than allowing competitive marketplace dynamics to occur. The “bifurcated” approach to taxing like products seems unwise at best, and likely unworkable at the wholesalers level where the taxes must be calculated and remitted to the Idaho Tax Commission. **Mr. Seiber** added that Swisher International welcomes fair and equal competition in the marketplace. However, **H 787** would change the ebb and flow of competitive forces and replace those values with a complex scheme of tax policy changes, to the benefit of one company.

Bill Roden, who represents U.S. Tobacco, stated this bill is not about beer and wine. **Mr. Roden** added we are dealing with a specific product and a situation that has risen over the years. Advalorem taxes on the other tobacco products came about around mid 1970. Cigarettes were taxed, but not the other tobacco products. All products were priced the same at wholesale and were essentially the same quality. They were priced the same at retail as well. In the late 1990's the market changed and products varied by wholesale prices. Today the high end product is declining and the low end market is increasing. **H 787** came about because it takes care of the market, and it removes the market inequities. This bill does not do away with advalorem taxes. A product with a price of \$2.50 an ounce will be taxed at the 40% rate if they raise their wholesale price. Products with a wholesale price below \$2.50 will be taxed \$1.00. In the lower end products it removes the ability to manipulate tax liability based upon a wholesale price. What is important is to not erode the tax revenue by allowing the market share to increase because of tax policy, and derive a lower tax revenue by those who are gaming the system. **Mr. Roden** asked the Committee to support **H 787**.

Senator Davis commented that he is having a hard time with **Mr. Roden's** statement regarding “gaming the system,” if the price on a product is cut by 50 cents they would save 20 cents in tax. **Mr. Roden** replied that if he stated that or implied it, it is incorrect. What happens is that it is a result of price reduction for market purposes of some kind to gain better market share. No one will game the system just for a tax reduction.

MOTION:

Senator Geddes moved to send **H 787** to the floor with a **do pass** recommendation. **Senator McKenzie** seconded the motion.

Senator Stegner stated he is opposing the motion. Technically this is not about beer and wine. We have a tax committee because all of these taxes are interrelated. It is unfortunate that this is not before the tax committee, in his opinion. Taxing a product at 40% is shameful and we

are talking about raising it to a higher rate. Beer and wine is taxed at 2% which is indefensible. It contributes far more to the social problems of the state of Idaho than moist snuff.

Senator McKenzie commented that the current tax policy does manipulate the market. He doesn't see the fix by increasing the rate for a category of products to an even higher rate.

Chairman Burtenshaw asked for a roll call vote on **H 787**.

Senator Darrington - Aye

Senator Geddes - Aye

Senator Davis - Nay

Senator Stegner - Nay

Senator Little - Nay

Senator McKenzie - Nay

Senator Stennett - Nay

Senator Malepeai - Nay

Burtenshaw - Aye

The motion **failed**.

S 1453

David Lehman from the Governor's Office, presented **S 1453** regarding "The Well-Being of Families and Children." **Mr. Lehman** stated that the purpose of this legislation is to effectively and efficiently coordinate services related to families and children both at the state and local level. This legislation was created based on recommendations from statewide Councils, Commissions, Boards, and the volunteers. The members represent all geographic areas as well as public, private and non-profit sectors. Council members include business and community leaders, legislators, judges, educators, law enforcement, doctors, childhood specialists, parents, and grandparents. At the federal level an example of this type of coordinating effort has made improvements in the White House Office on Faith-Based and Community Initiatives. Their responsibility is to coordinate the services of 10 federal agencies and begin to funnel the resources of those agencies to include the faith-based organizations. The common denominator of every community is that there is a church. **Mr. Lehman** continued and said that the faith-based liaison is included because it makes sense when we talk about family community services. There is a natural ally in developing those services at the state and local level.

Senator Darrington asked if the intent of this bill is to include all the budgets of all the programs into one budget? **Mr. Lehman** answered that it is the intention not to bring all budgets into one under the Office for Families and Children.

TESTIMONY:

Dr. Jerry Hirschfeld, a pediatrician and Administrator of St. Luke's Children Hospital, addressed the Committee. **Dr. Hirschfeld** stated he is here to speak in favor of **S 1453**. The demographics of Idaho is very different from many states. Children make up almost 30% of the population and they are enmeshed in a very rich heritage. It must be sustained and enriched in a formalized way to encourage the growth of that heritage. Our best assurance of this is by a coordinated,

collaborative, integrated, and child and family sensitive system which focuses on this as the highest priority. Public and private organizations exist within the state of Idaho, who focus on the well-being of families and children. The coordinating council was developed and given the directive and obligation from the Governor, to define and implement a strategy to focus on the entire state to identify what is essential to the well being of children and families.

Skip Oppenheimer, the co-chair of the Governor's Coordinating Council spoke in favor of **S 1453**. **Mr. Oppenheimer** stated that what he brings to the council is his experience and background as a businessman. He emphasized that there are four reasons why this legislation is important and necessary. A copy of his written testimony is on file with the original minutes in the Committee Office.

Carolyn Terteling-Payne, the co-chair of the Council with **Skip Oppenheimer** addressed the Committee. **Ms. Payne** stated she was born, raised, and educated in the state of Idaho and she is proud of that. Most of her adult life she has volunteered in efforts associated with the well-being of children and families. As caring citizens we must all work together to develop processes and procedures, to allow organizations and groups from all across Idaho to meet and share information and work together. The Governor's Office for Children and Families will allow this effort to continue and grow, increase opportunities across the state, raise awareness, enhance the focus, the efficiency and visibility of all programs that currently exist, as well as any that may developed in the future. **Ms. Payne asked** the Committee to give **S 1453** their serious consideration.

David Moore, Chief of Police from the City of Blackfoot, stated he was here today to testify in favor of **S 1453**. His written testimony is attached to the original minutes on file in the Committee Office.

First Lady **Patricia Kempthorne** addressed the Committee and stated that she would not repeat all the great words from all the volunteers. She has volunteered as well to make this happen over the last few years. It is time to sustain the ability of the work that has already been done for the future of celebrating families and children in Idaho. Bringing this bill to fruition will truly raise that stature of families and children, and assure the value that we all place on them.

Jim Hardenbrook, a minister representing Healthy Families Nampa, stated that he wanted to speak to the provision in the bill that relates to the faith-based initiatives. Idaho is missing opportunities to engage and reinforce faith-based initiatives because we lack a cohesive plan and policy. Every federal cabinet level department has a faith-based community initiative office. Significant funding is coming through the White House faith-based and community initiative office. The leaders of Healthy Families Nampa knew more about the faith-based initiatives available through the federal government, than almost anyone in state government in Idaho. This office and the Governor's Office would provide someone to funnel funds and encourage the faith-based initiatives throughout the state. **Reverend Hardenbrook** encouraged the

Committee to move **S 1453** forward.

Senator Stegner commented that he supports this legislation, but that he has a question as to why a statute was necessary to accomplish all of this. He asked **Mr. Lehman** why can't this be accomplished by an executive order. **Mr. Lehman** responded that clearly the Governor can establish the office through the executive order process. What was decided through discussions was in order to make this a state-wide initiative, it required coming to the Legislature and propose legislation that would establish this office. Additionally, there is a funding request associated with this legislation, so along with the statute change a request for funding in the Governor's budget was necessary. **Senator Stegner** asked what is the status of the funding request? **Mr. Lehman** answered that the Joint Finance and Appropriations Committee (JFAC) tracks legislation that will require additional funding and this is on the list.

Senator Little commented that he is looking at code sections for the Women's Commission. In Section 67-6001, *Idaho Code*, it does not seem dissimilar to what is before us today, and in Section 67-6005 it appears we are duplicating an agency. This particular code section requires Senate confirmation, where the director of the Women's Commission does not. He asked **Mr. Lehman** to explain the difference between them to him. **Mr. Lehman** commented that there was discussion earlier this year in JFAC with respect to the Women's Commission. A funding appropriation bill came out with some level of funding, but he believed the position was limited. The role of the Executive Director in the Women's Commission is to manage the Commission. Since the implementation of that statute, the Commission has received some level of funding but not as significant as what is proposed with **S 1453**. The code section does not seem dissimilar, but complementary.

MOTION:

Senator Stegner moved to send **S 1453** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

RS 16267

Senator McKenzie presented the RS to the Committee. He stated that this proposed legislation would require a taxing district to provide notice, by newspaper or mail, if the property tax revenue portion of its annual budget increases by more than three percent from the prior tax year. This would address property taxes on the spending side rather than shifting tax between tax payers. The hard cap would remain for one year providing a one year transition.

Senator Little asked **Senator McKenzie** if the notice to the school districts would go out when they certify in June? **Senator McKenzie** answered it would go out before they certify. Notice is required prior to certification, but it needs to go out before the budget is adopted.

Senator Davis moved to print **RS 16267**. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

H 714a

Gavin M. Gee, Director of the Idaho Department of Finance presented **H 714a** to the Committee. The bill is a proposed amendment to the Idaho Residential Mortgage Practices Act which governs the mortgage industry. It will authorize Idaho licensed mortgage brokers, mortgage lenders, and mortgage loan originators to readily convert to a uniform nationwide mortgage licensing system. The uniform mortgage licensing project is being developed by industry representatives, the Conference of State Bank Supervisors, and the American Association of Residential Mortgage Regulators. The proposed system is modeled after two very successful national systems in place for the securities industry. The advantages will be a more efficient and uniformed system for the mortgage industry.

Senator Little asked **Mr. Gee** what is the amendment 26-3103 to the bill? **Mr. Gee** replied that it would make it clear that there are no changes to the existing exemptions that exist in mortgage practices.

Senator Stegner commented that on page 2, line one of the bill it authorizes the director to waive the requirements of Sections 26-3108, 26-3108a, 26-3110, and 26-3111. It seems a pretty broad power that the director can waive statute. He asked **Mr. Gee** why would we allow a director to waive statute even though it may be minor? **Mr. Gee** replied that the sections all relate to licensing and they are limited to licensing requirements. As an example, **Mr. Gee** stated that right now the renewal date is on August 31. Under the national system it will most likely go to one day to accommodate for all licensees. This was intended to give authority if needed, to participate in the system to waive the renewal license date. Again, it is really limited to licensing type issues. The securities industry has been very successful using this system. **Senator Stegner** stated he didn't seen anywhere in the bill that this will be cleaned up. It could easily be deleted and put into rule and give the department the authority to modify these issues in rule. **Mr. Gee** responded that this bill will create less confusion in the industry and they will look to the system requirements, rather than Idaho Code sections. Every state has different licensing requirements and the industry has a bill before congress to mandate that the states become uniform. **Senator Stegner** commented that he agrees with this 100%, but that maybe the cart is a little before the horse. He asked **Mr. Gee** if he would be back before the Committee next year with amendments to these sections that are no longer pertinent? **Mr. Gee** answered the system is not in place yet. Idaho is one of 20 states designated as a pilot state to test the system during next year. Depending on the success and how the proposal goes forward, yes, we will be back with the changes that were implemented nationally.

Senator Little commented he is looking at all the fees and he is inclined to send this to the floor, if a report next year states what the impact is on the dedicated funds. There are codes that have been in place for a long time and we would be giving you authority to waive. He concurred with **Senator Stegner** that it seems to be a very broad exemption.

Senator Stennett asked **Mr. Gee** what would prohibit the state from

accepting the federal guidelines? **Mr. Gee** answered we are talking about technical things like renewal dates, filing locations etc. not requirements to get a license. **Senator Stennett** commented he believed **Mr. Gee**, but we are giving you very broad authority. Our citizens rely on the statutes and recognize them as the rules.

MOTION: **Senator Little** moved to send **H 714a** to the floor with a **do pass** recommendation. **Senator McKenzie** seconded the motion.

Senator Stegner commented that he is not comfortable with this and would like more time. He made a substitute motion to hold the bill in Committee until Monday. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

Chairman Burtenshaw asked **Mr. Gee** to work with **Senator Stegner** and present it to the Committee on Monday.

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

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 24, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: None.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

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

RS 16226C3 **Senator Bunderson** presented **RS 16226C3** to the Committee. Initially **Senator Bunderson** commented that on page 2, line 12 of the RS the word "commenced" should be changed to "commences." In 1983 Idaho passed the informed consent law and in 1986 a Supreme Court case invalidated Idaho's law. Subsequently in 1992 Planned Parenthood vs. Casey set forth a provision on how informed consent would conform to the U.S. Constitution. Since that time, there has been additional litigation and evaluated as to how it relates to Idaho law versus the Supreme Court ruling in the Casey case. After careful review we have these amendments before us. National organizations, the Attorney General's Office, and Representative Sali have been involved in crafting this legislation. The Attorney General's Office provided a list of suggestions and they have been incorporated and reflected in this RS. This bill does five things.

- 1) The term "abortion" and "fetus" are better defined.
- 2) The definition of medical emergency is added.
- 3) The parameters of the Department of Health and Welfare are changed with regard to informed consent materials.
- 4) Exceptions for informed consent materials regarding medical emergencies have not been provided.
- 5) A reporting form provision has been added.

Senator Davis commented that he met earlier this year with the Attorney General and he expressed to him that the bills on informed and parental consent should be rock solid as a matter of law. The Attorney General stated he would make sure that the legislation would survive judicial scrutiny through the 9th circuit. He asked **Senator Bunderson** if this RS will survive judicial scrutiny? Do we have that letter and commitment? **Senator Bunderson** answered that he would get the letter requested from the Attorney General's Office expressing their opinion on this.

Senator Davis asked for written assurance from the Attorney General that they have strong confidence in the language of this bill. **Senator Bunderson** replied that he does not have a letter from the Attorney General relative to this RS. If the Committee moves to print the RS he will immediately request that letter from the Attorney General.

Senator Geddes commented that in reviewing the Fiscal Note it looks very broad related to costs. Is that an accurate statement? **Senator Bunderson** answered he isn't sure in a situation like this that he can state what the fiscal cost will be.

Senator Stennett asked how much has the state of Idaho spent over the past few years defending these cases? **Senator Bunderson** answered that he would request that information from the Attorney General.

Senator Stennett asked if the only time a woman can seek an abortion is through a medical emergency? **Senator Bunderson** replied he is not prepared to respond to that right now. **Senator Davis** stated that he could help **Senator Stennett** with that. On page 2 of the RS a medical emergency is a defined term, and it is his understanding that it is the 9th circuit standard. **Senator Stennett** added that the way he reads this a woman would be unable to obtain an abortion in the case of incest or rape, if it were not a medical emergency. **Senator Bunderson** stated that on page 1, line 33, it indicates that it includes, but are not limited to, so it suggests that there are other factors that influence this.

Senator Davis commented that he was disappointed that the Committee did not have the opinion from the Attorney General before we printed this RS. As long as we have assurance from the sponsor that the opinion will be in hand before the bill is scheduled for hearing he will move to print the RS. **Senator Bunderson** replied that the Committee has his commitment in that regard. **Senator Davis** moved to print **RS 16266C3** and **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

RS 16233C4

Representative Sali presented the RS to the Committee. He stated that in anticipation of The Majority Leader's question, he will represent to the Committee that this is an RS for which he does not have a written opinion from the Attorney General. Every concern however has been addressed with the Attorney General's Office and contained in this version. In 1998 the first statute was vetoed, and in 2000 the first parental consent statute was signed by Governor Kempthorne. The statute was adjoined at the District Court level and is pending appeal before the 9th Circuit Court.

Representative Sali believes that it will be overturned, and that the law is on the side of the state of Idaho. The District Court in Idaho disagrees with the Attorney General. They have the final say unless the 9th Circuit overrules him. This is an extremely difficult area of the law and more difficult because we reside in the 9th Circuit. The standards are extremely high to get through the court system at both levels. **Representative Sali** added that he believes the RS will be ironclad. Initially they modeled legislation after Missouri law, and now that Arizona is in the 9th Circuit this is what is at the heart of this RS.

Senator Little commented that there is no fiscal note. **Representative**

Sali replied that there is a section of *Idaho Code, Title 39, Section 261*, that requires the abortion reporting forms to be generated. This deals with the specifics and the forms are the same. They are required and so there should not be any cost. **Senator Little** asked if that part of the code was stayed at this point in time? **Representative Sali** answered that part of the code is not stayed.

Senator McKenzie asked if the arguments in the pending case had been scheduled with the 9th Circuit? **Representative Sali** answered that he doesn't know at this point. He received the brief last week from the Attorney General. **Senator McKenzie** stated if we have confidence that the 9th Circuit will reverse the case pending in District Court, why don't we go with the law previously passed. **Representative Sali** replied that he isn't sure how to respond to that. After the District Court ruled last spring and meeting with the Attorney General Office's, they believed the easy fix would be to change it. They expressed a desire to move towards Arizona law which is being enforced now. He added that he would prefer to stay with Idaho law. The Attorney General believes that Arizona law is more defensible in the 9th Circuit, so that is why this RS is before the Committee.

Senator Davis commented that Section 1 of the RS repeals the current statute. If the Governor signs this the Attorney General's Office will dismiss the appeal because it is moot. He asked **Representative Sali** if he was wrong? **Representative Sali** answered that they will not dismiss the appeal because of the attorney fees being at issue. If the 9th Circuit does overturn the District Court, then there will be a significant amount of attorney's fees that would not be paid. **Senator Davis** asked if he would agree that the argument exists that the appeal is moot? **Representative Sali** answered that was a concern that he had and the Attorney General's Office feels differently. **Senator Davis** asked if he could reasonably assume that he would not ask for the bill to be heard, until the letter from the Attorney General is in hand. **Representative Sali** replied he has addressed every concern that the Attorney General has. Apart from any new issue arising he doesn't believe there will be a problem obtaining the letter he is requesting.

Senator Stennett commented that he challenges the fiscal note. He asked **Representative Sali** how much has been invested so far to get to this point? **Representative Sali** replied that Joint Rule 18 does not allow the challenge of the fiscal note by introduction. Secondly, the fiscal note applies to the legislation before you, so it is zero. **Senator Stennett** asked how many hundreds of thousands of dollars has the state of Idaho spent prior to today to defend this type of legislation? If we lose, will we be liable for those attorney fees as well? **Representative Sali** answered that he doesn't know the total amount, but it is significant.

Senator Davis commented that if we lose on appeal the amount of the check will be even bigger. I don't know the answer to the question that **Senator Stennett** is asking, but he hopes that the Attorney General can help the Committee understand this important question on the appeal. If the appeal would be moot can they proceed to defend for fees, etc. He

does agree with **Senator Stennett** that perhaps at some point in time the fiscal note should address some history and reflect this and make some reasonable projections.

Senator Davis moved to print **RS 16233C4**. **Senator McKenzie** seconded the motion. **Senator Stennett** asked for a roll call vote.

Senator Darrington - Aye
Senator Geddes - Aye
Senator Davis - Aye
Senator Stegner - Nay
Senator Little - Aye
Senator McKenzie - Aye
Senator Stennett - Nay
Senator Malepeai - Nay
Senator Burtenshaw - Aye
The motion **carried**.

RS 16291

Senator Little presented **RS 16291** and stated that this is a joint resolution to amend the Constitution to provide that on or after January 1, 2007, property taxes will not be collected for maintenance and operation of public schools. These funds shall be replaced from the state sales and use tax. Prohibition will not apply to tax levies for indebtedness incurred. The voters should have an opportunity to vote on this and there will be companion legislation to address sales tax.

Senator McKenzie asked if **Senator Little** had spoke with the tax experts? **Senator Little** answered yes, the Tax Commission, Legislative Services, Legislative Budget Office have all had a hand in this.

Senator Darrington commented that as property values increase the school districts receive more money from the maintenance and operations (M & O), is that correct? **Senator Little** replied that the problem is the equalization. **Senator Darrington** asked if there is anything in this proposed amendment to require the state to keep pace with the value or inflationary increase to the school districts? **Senator Little** answered, no and that there isn't anything in the current statute that requires that.

Senator Stennett stated that he understands the implications of this. It appears that if the M & O is removed it is a one to one replacement for property tax, and there is no damage to the school districts, but it will become more difficult for the districts who do not have the ability to raise money to do so. Does he agree with that? **Senator Little** answered I agree 100%, but given the other alternatives, sending this to the ballot is a valuable exercise. **Senator Stennett** stated that if this passes, amending the Constitution is a major change and difficult to undo. **Senator Little** stated this looks like the best alternative out there. This gets us to a place in the road where the people get to make the decision.

Senator Davis commented that he does not have a problem with the Senate as a whole making this decision rather than just the Committee. **Senator Davis** moved to print **RS 16291**. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

RS 16275 **Representative Loertscher** addressed the Committee regarding the RS. **Senator Davis** interrupted and stated that he can do this for the good Representative. The Senate took his bill, hijacked it to fix it, and by the time they finished, it was dead. So we are here with this RS to apologize to **Representative Loertscher**, beg the Committee's indulgence, and move to print it and go direct to the floor with the Committee's **do pass** recommendation. **Senator Davis** stated that this is a motion. **Senator McKenzie** seconded the motion. The motion carried by **voice vote** to send **RS 16275** to print and a **do pass** recommendation to the floor.

HJM 22 **Speaker Newcomb** addressed the Committee regarding the Joint Memorial. This Memorial requests the Idaho Congressional Delegation and U.S. Congress to support the participation of Taiwan in The World Health Organization.

MOTION: **Senator Geddes** moved to send **HJM 22** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. **Senator Geddes** commented that he has done some research on this. The World Health Organization involves 192 countries and because of the conflict with China and Taiwan, Taiwan has never been allowed to join. At one time they were a member, but when China joined they were asked to leave. Taiwan has 23 million people, and their population is 75% larger than the other nations involved in the World Health Organization. The motion carried by **voice vote**.

HCR 62 **Speaker Newcomb** stated that this Resolution requests the legislative Council Interim Committee on Energy, Environment and Technology to develop an integrated state energy plan that provides for the state's power generation needs and protects the health and safety of the citizens of Idaho. The Committee will report back to the Governor and the Legislature on its findings and recommendations. Idaho needs policies to meet their future power needs. **Speaker Newcomb** added that he thinks it is wise to have an interim committee to study this issue and make a wise decision to do it right.

MOTION: **Senator Davis** moved to send **HCR 62** to the floor with a **do pass** recommendation. **Senator Darrington** seconded the motion. **Senator Geddes** commented that he was listening to the radio recently and the commentator was talking about Brazil. Twenty years ago they were importing oil from Venezuela, Russia, and the Middle East. The leadership of Brazil determined it was not in the best interest of Brazil long term. The Middle East is unpredictable and unstable, as well as Venezuela. With the uncertainty or reliability of Russia as a source, they developed their own energy plan. Now twenty years later, Brazil is an energy exporter to the world. They had a direction, they determined what their resources were. Much of that is ethanol and it is working for them. The point is that Brazil recognized a problem and they solved it instead of relying on what is available at whatever cost. **HCR 62** is a tremendous step forward for the state of Idaho. **Senator Stennett** added that he agrees with Pro Tem and that Idaho could actually become an exporter, where now they are an importer. We could do our power with wind and utilize hydro to back it up. Nuclear power should be looked at as well. The motion carried by **voice vote**.

H 714a **Senator Stegner** stated that we had **H 714a** before us at our last meeting. He met with **Mr. McGee** and some modifications were proposed that are agreeable. He asked the Committee to reconsider the bill now and move it to the amending order.

MOTION: **Senator Stennett** moved to send **H 714a** to the amending order. **Senator McKenzie** seconded the motion. The motion carried by **voice vote**.

ADJOURN: There being no further business before the Committee, **Chairman Burtenshaw** adjourned the meeting at 9:10 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 27, 2006

TIME: 8:00 a.m.

PLACE: THE GOLD ROOM

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

MEMBERS ABSENT/ EXCUSED: None.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

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

H 791 **Speaker Newcomb** presented **H 791** to the Committee. **Speaker Newcomb** stated that the purpose of this bill is to place a two year moratorium on applying for or issuance of permits, licenses or construction of certain coal-fired power plants. It exempts the Idaho National Laboratory (INL), because they have some experimental coal gasification that they are doing. It does not apply to coal-fired power plants owned or constructed by a public utility regulated by the Idaho Public Utilities Commission, or by a cooperative or municipality. Additionally, the bill also does not apply to power plants utilizing the integrated gasification combined cycle technology where coal is not burned, but rather is oxidized as a power source. **Speaker Newcomb** continued and stated there are questions that need to be answered. The electricity that is generated by coal-fired plants needs to be regulated by the Public Utilities Commission (PUC), and ensure that Idahoans have first option on the electricity to be used. There aren't many sites where a coal-fired plant should be built. We need to address how we will meet the demand and supply for our power needs in the future. A two year moratorium is needed to study and determine the best public policy for such an endeavor.

Senator Stennett addressed the Committee regarding **H 791**. He stated that he grew up in Jerome County and currently owns a ranch 9 miles from the proposed site in Lincoln County. This proposal would change the Magic Valley significantly and he joins with **Speaker Newcomb** to call for this moratorium. It is a time out to seek answers. As Idahoans, are we willing to give up our air and water resources to produce power for the West Coast. This technology couldn't be built in California or Washington, and Idaho is being asked to utilize our resources to produce power for out of state use. The health risks of mercury is a side effect of burning coal and that study should be done. Agriculture will be affected

as well and should be looked at. It is the biggest industry in the Magic Valley and it is the backbone of our communities. The effect on the economy will be impacted as Idaho is the third fastest growing state in the union. The Speaker talked about deregulation and it brought the opportunity for merchant power plants to locate outside the utility base. Our rules have not caught up with the deregulation because we have never been in this position. There are questions with what the railroad will do. These plants require an enormous amount of coal about 500 carloads a week to be operational. **Senator Stennett** continued and stated that water is the biggest issue. If we hold this to our Idaho PUC it is power for Idaho citizens, and power for Idaho utilities rather than being shipped out of state. Finally, the people have spoken on this issue and they want the moratorium to determine what is the best policy for the state of Idaho.

TESTIMONY: Twenty-three people testified in favor of **H 791**. Copies of testimony that were provided to the Committee are on file with the original minutes.

Chairman Burtenshaw commented that there are many people here to testify, and if it wouldn't upset anyone maybe we could dispense with further testimony. He asked **Senator Stennett** for his opinion.

MOTION: **Senator Stennett** moved to send **H 791** to the floor with a **do pass** recommendation. **Senator Darrington** seconded the motion.

Senator Malepeai offered a substitute motion. He stated that he is in support of the bill, however he is concerned about placing a moratorium on the coal-fired plants. Perhaps we should put all merchant plants that have coal as its basis added to this study as well. **Senator Malepeai** moved to send **H 791** to the 14th amending order to include gasification along with coal-fired on this bill. There being no second on the motion the substitute **motion failed**.

Senator Davis commented that he believes that everyone here today believes what they have shared with the Committee. The proponents of the legislation may not have the answers to the questions that they are proposing, they just want to know the answers. The mercury resolution that was killed on the House side perplexes him. Those issues are substantially related to this. This bill may or may not be constitutional. The Attorney General draws the conclusion that it is possible that it is constitutional. The sponsor provided the exclusion for the INL because of concerns that have been expressed. **Senator Davis** stated that he will be voting in favor of this because of water. Sending water in the form of electricity versus sending it in any other method to another states is problematic and troublesome to him.

Senator Stennett stated he appreciates the Committees indulgence and everyone who supports this. Water is the single biggest issue that Idaho needs to be concerned about. It is important to get the answers and focus attention on developing a plan for the state of Idaho. Coal gasification is the future of coal and ultimately we will find our way there. **Senator Darrington** added that many of the messages he received

indicated that gasification is a technology that is acceptable. He supports **Senator Stennett's** comments in that regard.

Senator Little commented that something needs to be done. It may not be an accident that Wyoming has a billion dollar surplus but they have air quality issues, and there are farmers down stream from that. The result of this bill may be better technology. The energy problem needs to be addressed.

Senator Geddes stated that he received many emails. He does have concerns regarding the message a moratorium sends to businesses and business investors. It seems somewhat hypocritical that we import electricity from Wyoming and Nevada and that we are not willing to take any step to produce some of our own. His district supports industry and they would love to have a facility of this type in the community. There has been good information as well as misleading information presented.

Senator Geddes stated that he is going to oppose the motion.

Senator McKenzie stated that he has concerns regarding the constitutionality of this. The message we are sending half way through the game to a business that is following the rules, is now told we are changing the rules. Sempra not appearing today, clearly indicates what they are going to do. They didn't testify against the bill and we are driving them away. **Senator McKenzie** added that he is not voting for the motion.

Chairman Burtenshaw commented that in a lot of ways, what **Senator Geddes** said is what he thinks. In his area several people would like to put wind generation in, but the power company can't use it because they can't produce power when the wind isn't blowing. **Chairman Burtenshaw** added that a two year study will not prevent someone from doing this, so there is logic in where the plants are cited. He has changed his opinion, and he will be voting for this.

Chairman Burtenshaw asked for a roll call vote on **H 791**.

Senator Darrington - Aye

Senator Geddes - Nay

Senator Davis - Aye

Senator Stegner - Aye

Senator Little - Aye

Senator McKenzie - Nay

Senator Stennett - Aye

Senator Malepeai - Aye

Senator Burtenshaw - Aye

The motion carried to send **H 791** to the floor with a **do pass** recommendation.

ADJOURN:

There being no further business before the Committee, **Chairman Burtenshaw** adjourned the meeting at 10:00 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 29, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: None

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

CONVENE: **Chairman Burtenshaw** called the meeting to order at 8:01 a.m.

S 1462 **Tim Mason**, Department of Administration, presented **S 1462**. **Mr. Mason** stated that S 1462 amends current law to provide for the use of another alternative project delivery method for public works construction described as construction management at-risk services. The Department of Administration, Division of Public Works will manage this system. At the current time, this type of service cannot be used by the State. The difference between this service and other services are:

- 1) Construction Manager Agency
A construction manager is hired by the State but holds no contract. The State still contracts with each separate contractor on the job. The Construction Manager is not allowed to self-perform any of the work. The State provides all administrative services and reporting.
- 2) Construction Manager At-Risk
The construction manager at-risk alternative is under a contract with the State and can self-perform some of the tasks on the project. A construction manager at-risk works from the beginning of the project at the point of design until the projects completion. They also guarantee a maximum price. The at-risk contractor contracts with other contractors performing the work and does all the administration and reporting for those contractors. The State is only responsible for reporting on one entity.

This bill is related only to the Capital Expansion Project and will sunset on June 30, 2010. It has not been decided if this service will be used but, with this bill, it can be added to the list of alternatives to be considered.

Chairman Burtenshaw asked if there would be bidding for the contract? **Mr. Mason** answered that at this point in time it has not been decided

how this would work. **Chairman Burtenshaw** asked if the contractor at-risk had to bid on the portion of the tasks that he performed. **Mr. Mason** replied that there could be one large contract or the project could be broken down into several contracts, where one or more may be a construction manager at-risk. Without this legislation this methodology would not be available. The contractor at-risk would have to bid on the portion of the work he performed, either separately or as a part of the overall contract.

Senator Little asked what would happen if the project went over the contract amount, who would be responsible for the difference? **Mr. Mason** answered that was the purpose of the contractor at-risk. The contractor would pick up the difference because the amount was stated in the contract and the contractor must abide by the contract.

Senator McKenzie asked, if the contract went past June 30, 2010, how would it affect the current contract? **Mr. Mason** responded that they expect to be finished by that date. There would be provisions in the contract to cover this possibility.

MOTION: **Senator Stegner** moved to send **S 1462** to the Senate floor with a **do pass** recommendation. The motion was seconded by **Senator Malepeai**. The motion carried by **voice vote**.

HCR 63 By **unanimous** consent, **HCR 63** was held in committee.

H 570 **Dan Steckel**, Deputy Attorney General, Department of Human Resources presented **H 570** to the Committee. This bill provides for the restricted release of public records obtained during the hiring process, and allows that restricted access to names of applicants will not deny the public necessary information.

MOTION: **Senator Malepeai** move to send **H 570** to the Senate floor with a **do pass** recommendation. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

H 795 **Representative Ellsworth** explained that this legislation provides for the increase of compensation for members of the Public Utilities Commission, the State Tax Commission and the Industrial Commission.

MOTION: **Senator Geddes** moved to send **H 795** to the Senate floor with a **do pass** recommendation. **Senator McKenzie** seconded the motion. The motion carried by **voice vote**.

H 834 **David Lehman**, of the Governor's Office, presented **H 834** which amends existing law to allow that idle funds in the Idaho Guard and Reserve Family Support Fund, be invested and the interest returned to the fund. This fund helps military families with emergency needs.

MOTION: **Senator Malepeai** moved to send **H 834** to the Senate floor with a **do pass** recommendation, **Senator Stegner** seconded the motion.

Senator Geddes asked that this bill to go the **consent calendar**.

SJR 108

Senator Malepeai amended the motion to send **H 834** to the Consent Calendar with a **do pass** recommendation. **Senator McKenzie** seconded the motion. The motion carried by **voice vote**.

Senator Little addressed the Committee regarding **SJR 108**. He explained that the intention of the bill is to change the source of funding for maintenance and operation (M&O) of public schools. Future funds would not be collected from property taxes but would be replaced by sales and use tax revenues.

Senator Stennett asked why the change could not be made by advisory vote or a change in the statute instead of by a Constitutional Amendment? **Senator Little** responded that fundamentally, the property tax problem is the bulk of the tax problems. This would give the people a chance to vote and determine if they want to replace one tax with another. This method of change will open discussion about how to fund the M&O, and whether to leave it in property tax or put it in the sales tax arena.

Senator Davis stated that he would allow this bill to go to the floor. He asked about the relationship between the appropriation on the state level and what M&O receives? **Senator Little** replied that there is an M&O fund with a set amount of money for schools to use. Money is put in the account and smaller school districts put in less than those in high growth area districts. If that fund is used up, the State subsidizes it. Rapid growth saves the State money because they do not have to subsidize the fund. There was further detailed discussion focused on the result of this practice.

Senator Darrington stated that he took some comfort in the amendment in the wording "sufficient." At this time the word sufficient is subjective but in a court of law it could become objective. **Senator Little** responded that the message and the intent is that Education would be held harmless. It is a stretch to think that a school district will get the same percentage of increase that corresponds to the increase in property taxes.

Senator Stegner supports the concept of supporting the schools with sales and use tax, but he disagrees on how they get there. He is concerned with making a constitution change and is afraid there will an argument some day about distribution of the general funds, which could be generated from other than sales and use tax. This could be restricted language and is that what we intend. **Senator Little** stated there aren't adequate funds from the sales tax to replace the M&O fund.

Senator Geddes commented that he heard the concern is the stability of M&O. It is viewed as more stable when tied to property tax than it might be when funded by sales and use tax. Also, by putting this before the people now, it might prevent a bad decision to implement a tax law like California's. People have not suggested reduction in services but they make it clear if any tax law means less taxes "I'm for this." **Senator Little** stated that this approach may not be perfect. People do not realize how M&O affects their property tax and how certification for that funding can be manipulated. Tax laws similar to California's clearly helps one group

of tax payers and penalizes another group. Moving M&O funding to sales and use tax is the best solution. **Senator Little** commented that the cry of the people is lower property taxes, and this will reduce the advalorem and property taxes by 24%.

Mike Friend, Executive Director, Idaho Association of School Administrators (IASA), commented in support of this bill.

Senator Geddes observed that an item for consideration has come forward in this discussion that he really was not aware of. M&O does not have to be 3 mils. The taxpayers are revolting and are saying they are not going to pay the high taxes anymore. What could IASA do to make this a little easier on the taxpayers and what has been tried to reduce the impact on property taxes? **Mr. Friend** answered that there is not enough money to fund all the programs and the IASA sees that every time a school district comes before them for a supplemental levy. They are looking for a stable source of money and if the M&O funding is not going to come from property taxes, and the state supplies a set amount of money, that is the minimum many districts will abide by. The districts will not stay within those caps and so all of that gets shifted to this body as opposed to the market value in those districts.

MOTION:

Senator Davis moved to send **SJR 108** to the Senate floor without recommendation. **Senator Geddes** seconded the motion.

Senator McKenzie stated that he thinks replacing the 3 mils with the sales and use tax is a good idea, but he has concerns with losing the flexibility to rethink that plan if the need arises.

Senator Stennett made a substitute motion to hold **SJR 108** in Committee. **Senator Malepeai** seconded the motion.

Senator Stennett stated that this is a major shift in tax policy, we have a three legged stool and this kicks one of the legs out from under that stool. With a change of this magnitude, we need to slow down.

Senator Stegner stated that he agrees with **Senator McKenzie** regarding concerns in the inflexibility this bill causes, and he will be opposing this constitutional change.

Chairman Burtenshaw requested a roll call vote on the substitute motion to hold **SJR 108** in Committee.

Senator Darrington - Nay

Senator Geddes - Nay

Senator Davis - Nay

Senator Stegner - Aye

Senator Little - Nay

Senator McKenzie - Nay

Senator Stennett - Aye

Senator Malepeai - Senator Aye

Senator Burtenshaw - Nay

The **motion failed**.

A roll call vote was taken on the original motion to send **SJR 108** to the floor **without recommendation**.

Senator Darrington - Aye

Senator Geddes - Aye

Senator Davis - Aye

Senator Stegner - Nay

Senator Little - Aye

Senator McKenzie - Aye

Senator Stennett - Nay

Senator Malepeai - Nay

Senator Burtenshaw - Aye

The motion **passed**.

RS 16280

Senator Bunderson addressed the Committee and stated that this legislation will not advance this year, but it will stimulate discussion between the Idaho Assessors Association and the Tax Commission. There is not enough quality information to make good decisions. There is a sister bill that has already passed that establishes a committee to study the issue. The purpose of this legislation is to open communication between the Assessors and the Tax Commission, and hopefully legislators, in order to come back next year prepared with some legislation addressing these issues.

MOTION:

Senator Stennett moved to print **RS 16280**. The motion was seconded by **Senator McKenzie**. The motion carried by **voice vote**.

RS 16293

Senator Bunderson stated that this legislation arose out of legislation that was before this Committee several days ago regarding smokeless tobacco and excise taxes, and the inconsistencies that have evolved over time regarding the taxing of smokeless tobacco products. This resolution provides for the establishment of a committee to study excise taxes, for all of the tobacco industry including smokeless tobacco.

Senator Stennett asked if this committee was being asked to arrive at a consensus on what to do about the disparities in these excise taxes? **Senator Bunderson** responded that they want some independent minds to have input into the discussions and come to some resolution.

MOTION:

Senator McKenzie moved to print **RS 16293**. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

RS 16299

Senator Bunderson presented **RS 16299** to the Committee. **Senator Bunderson** stated that this is another piece of legislation that will not advance. The intent is to make it available on the internet. The bill is related to performance evaluation for the State Tax Commission and a way to look at exemptions over a period of 10 years.

Senator Stegner wanted to know the purpose of spending the money to have this RS printed. He questioned the necessity and expense to do so.

Senator Geddes agreed with **Senator Stegner** and indicated that he was not sure that this will get the attention it needs. If this were made available to the appropriate organizations in the RS form, wouldn't that get

the attention needed by those organizations and save the printing costs.

Senator Davis commented that they regularly print RS's primarily for the very purpose that **Senator Bunderson** is suggesting. This provides an outlink for an RS and a value to put it out there for review.

Senator Davis moved to print **RS 16299**. **Senator Darrington** seconded the motion.

Chairman Burtenshaw asked for a roll call vote to print **RS 16299**.

Senator Darrington - Aye

Senator Geddes - Nay

Senator Davis - Aye

Senator Stegner - Nay

Senator Little - Aye

Senator McKenzie - Aye

Senator Stennett - Aye

Senator Malepeai - Aye

Senator Burtenshaw - Aye

The motion **carried**.

ADJOURN:

There being no further business before the Committee, **Chairman Burtenshaw** adjourned the meeting at 9:40 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 31, 2006

TIME: 8:00 a.m.

PLACE: THE GOLD ROOM

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

MEMBERS ABSENT/ EXCUSED: Stennett.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

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

MINUTES APPROVAL: **Senator Malepeai** moved to accept the minutes from March 10 as written. **Senator McKenzie** seconded the motion. The motion carried by **voice vote**.

RS 16310C1 **Senator Geddes** presented the RS to the Committee. This Senate Concurrent Resolution directs the Idaho Water Resource Board (IWRB) to establish public policy with regard to future management of the aquifer system, under state water law. The IWRB will implement and develop this plan and report it's progress to the next session of the Idaho Legislature. Adoption of the resolution and direction to the IWRB is critical, to the continued progress to settle a dispute over the use of surface and groundwater hydraulically connected to the Snake Plain Aquifer system.

Senator Davis moved to print **RS 16310C1**. **Senator Malepeai** seconded the motion. The motion carried by **voice vote**.

S 1482 **Senator Bunderson** presented **S 1482** to the Committee. He stated that Idaho does not have an enforceable abortion statute and what **S 1482** does is provide the foundation. This statute has undergone careful legal review and assurances from the Attorney General's Office, and this bill will stand scrutiny by any court. The language will essentially conform to court rulings that have already been established. **Senator Bunderson** continued and stated that there is a packet of information before you, which is provided to an expectant mother. There are a only a few physicians who perform abortions in Idaho, and only certain hospitals provide abortion services. The amendments that were recommended by the Attorney General (AG) are also included, as is letter from the AG's office to **Representative McGeachin**. The efforts of the AG's Office was critical to bring us to this point, and we have a solid bill before us.

Bill Von Tagen from the AG's Office spoke to the Committee regarding **S 1482**. **Mr. Von Tagen** stated that this is not the AG's Office legislation and that they do not have a position on this bill. They were asked to review the bill and provide a legal review. The approach that was taken was extremely conservative. The proponents have accepted all of their recommendations and they are included in the amendments that were brought before the Committee today. The AG's Office opinion is that to the degree that they can predict **S 1482** is constitutional and will withstand a court challenge. The present law is clearly unconstitutional, and will not hold up in court for the principal reason that it does not contain a medical emergency provision. That is the significant improvement that **S 1482** has over the existing statute. **Mr. Von Tagen** continued and stated that the costs involved with the litigation over the years is around 360,000 dollars. If this legislation were to be challenged, the cost on the state side would be about 20,000 dollars at the trial court level, and probably an additional 20,000 at the appellate court level.

Representative McGeachin addressed the Committee and stated that it is important for women who are faced with making this type of important decision in their life, to have access to good information. Two years ago the brochure that the state of Idaho had for fetal development was a brochure that was put out by the state of Ohio. A simple brochure explaining the procedure and risks was another brochure, and along with that information resources that were available were provided. Now what we have is three brochures addressing three different issues. 1) fetal development, 2) facts about abortion procedures and risks associated with each, and 3) a directory of services available all over the state. **Representative McGeachin** added that what she likes about the second brochure is that it states in the inside cover, "It is the public policy of the state of Idaho to prefer live childbirth over abortion." That is current code, *Idaho Code 18-601*. A lot of progress has been made to provide good information regarding abortion to women. **S 1482** corrects what is not in current law of informed consent, regarding an exception for a medical emergency. The loophole will be closed and make it a strong constitutional bill.

TESTIMONY:

Six people testified in favor of **H 791** and three in opposition to the bill. Copies of written testimony that were provided to the Committee are on file with the original minutes.

Senator Stegner asked **Mr. Von Tagen** if the language on page 3, line 29 to 32, of the bill that was stricken, clarifies the exceptions for mental health conditions. **Mr. Von Tagen** answered that on page 5 of the letter to **Representative McGeachin** it clarifies that. "There is nothing in the content of **Senate Bill 1482** that evidences any intent that the "medical emergency" definition should be interpreted to exclude psychological conditions."

Representative McGeachin stated that women have the right to choose but more importantly they need to be informed. The intent of **S 1482** is to do that.

Senator Bunderson stated this bill does what we all want, to be fully informed. The Attorney General's Office states this will stand scrutiny in any court of the land. **Senator Bunderson** asked the Committee to send **S 1482** to the amending order.

MOTION: **Senator Davis** moved to send **S 1482** to the 14th amending order. **Senator Geddes** seconded the motion.

Chairman Burtenshaw asked for a roll call vote on **S 1482**.

Senator Darrington - Aye

Senator Geddes - Aye

Senator Davis - Aye

Senator Stegner - Aye

Senator Little - Aye

Senator McKenzie - Aye

Senator Stennett - Absent

Senator Malepeai - Aye

Senator Burtenshaw - Aye

The motion **carried** to send **S 1482** to the amending order.

ADJOURN: There being no further business before the Committee, **Chairman Burtenshaw** adjourned the meeting at 9:03 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: April 3, 2006

TIME: 8:00 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: None.

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2006 legislative session, after which it will be retained in the Legislative Library (Basement E).

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

MINUTES APPROVAL: **Senator Stennett** moved to approve the minutes from March 13. **Senator McKenzie** seconded the motion. The motion carried by **voice vote**.

Senator Darrington moved to approve the minutes as written from March 15. **Senator McKenzie** seconded the motion. The motion carried by **voice vote**.

Senator Little stated that he has read the minutes of March 17, and he moved that they be accepted. **Senator McKenzie** seconded the motion. The motion carried by **voice vote**.

Chairman Burtenshaw stated that there are minutes that need to be approved. He has read the minutes from March 20, 22, 24, 27 and March 31. **Senator Geddes** stated that if the Chairman has read the minutes and he believes them to be adequate he would make the motion to approve them. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

S 1448 a **Senator Geddes** stated that this bill is regarding redistricting. The concern he has is where circumstances that were proposed are contrary to the constitutional provisions that were in place. The bill was amended and it was corrected.

MOTION: **Senator Geddes** moved to hold **S 1448** in Committee. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

HCR 67 **Senator Geddes** stated that this Resolution was drafted to recognize **Carl Bianchi** for his years of service to the Legislature. **Mr. Bianchi** is retiring in July and this is a tribute to him and the many great things that

he has done to serve the legislation.

MOTION: **Senator Geddes** moved to send **HCR 67** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

H 857 **Paige Alan Parker** from Legislative Services, addressed the Committee regarding **H 857**. **Mr. Parker** stated that this bill is a housekeeping matter, but very important. By statute, every year all administrative rules will expire unless extended. This is what this legislation will do.

MOTION: **Senator Geddes** moved to send **H 857** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

H 853 **Representative Jaquet** addressed the Committee regarding **H 853**. She stated that this legislation will authorize movie theaters who are licensed by the state to serve beer and wine. This bill will grandfather four theaters into compliance and they are the Magic Lantern Theater in Ketchum, Ski Time Cinemas, Sun Valley Opera House, and The Flicks here in Boise. The legislation defines what a movie theater is and it clarifies for the Idaho State Police (ISP) that these owners can continue to do what they thought was legal. The director of the ISP, **Dan Charboneau** has given them one year to clean this up. This bill will fix the problem and she asked for the support of the Committee.

Carole Skinner, President of The Flicks, Inc., addressed the Committee. **Ms. Skinner** stated that The Flicks has been open since 1984, nearly 22 years, and at that time a restaurant was opened on the premises. A beer and wine license was acquired through the State, County and the City. Often times after dinner, the dining patron will take a glass of wine or beer into the movie theater with them. The Flicks has dining and beer and wine throughout the premises. To date there has never been a complaint or any problems. Identification is checked and they request two id's if two drinks are purchased. No minors are served and most patrons are an older crowd. On occasion they show a family movie and want to be able to serve beer and wine throughout the premises. **Ms. Skinner** asked the Committee to support **H 853**.

Senator Malepeai asked **Ms. Skinner** when was The Flicks first opened. **Ms. Skinner** answered in 1984. He asked if wine and beer have been served since then? **Ms. Skinner** responded yes, all of that time. He asked if there had been any problems. **Ms. Skinner** stated no.

Chairman Burtenshaw asked if the license was for the theater or for the restaurant? **Ms. Skinner** responded that the premises is all one. The license they applied for was for The Flicks and they understood it to be for all of the premises, which include the patio and lobby area. Initially they had one theater and a second one was opened five years later. In 1997 two smaller theaters were added. The application and renewal that is submitted includes a drawing of all areas of the premises.

Richard Kessler, owner of The Magic Lantern in Ketchum, addressed the

Committee in support of **H 853** regarding compliance of licensed movie theaters that sell beer and wine. **Mr. Kessler** stated that he has owned and operated The Magic Lantern since September of 1974. It generates 40 to 50,000 dollars a year in State and local sales tax revenue. In June 1977, he applied for and was granted licenses to sell beer and wine by the drink. The State, County and City of Ketchum issued them and he has renewed them every year. During his twenty-nine years of operation there has never been a single registered complaint, nor has there been any alcohol related incident. The ISP and ABC have made routine visits and inspections. All suggestions and instructions have been complied with. **Bob Clements** from the ISP and the ABC questioned the legality of serving beer and wine in movie theaters under the current statutes. **Mr. Kessler** stated that he pointed out to **Mr. Clements** that a movie theater is not a bar. Customers purchase their refreshments and go to their seats in the theater. There is very little activity once the movie begins and activity to the contrary is discouraged by the management and other patrons. **Mr. Kessler** continued and stated that although concerns regarding service to minors is a legitimate concern, he takes the responsibility serious to see that minors are not served. Backpacks are inspected and/or not allowed. Theater auditoriums are patrolled at regular 15 minute intervals. Beer and wine sales account for 17% of his concession revenue. Visitors have often told him how thrilled and delighted they are that they can enjoy a movie with a beer or glass of wine. **Mr. Kessler** asked the Committee to support **H 853**, so that he can continue to operate his business like he has for the past twenty-nine years.

Chairman Burtenshaw asked **Mr. Kessler** if the City has the authority to issue the license? **Mr. Kessler** answered that the procedure is to get a license from all three entities, State, County and City every year.

Senator Geddes asked **Mr. Kessler** what would happen to his movie revenue if beer and wine were not available, and do they come there only because they can have beer and wine? **Mr. Kessler** answered he didn't believe they only come for that reason. His customers are used to this amenity in his area. The movie is the attraction, but they cannot survive without the concession sales.

Senator Davis asked **Mr. Kessler** if an individual who purchases the alcoholic beverage passes their drink to someone under age, who is the responsible party? **Mr. Kessler** answered that he believed he would be held responsible as well as the person who passed the beverage. The theaters are patrolled regularly and they have never had an incident in twenty-nine years. **Senator Davis** asked what happens in between the 15 minute intervals? **Mr. Kessler** responded we are not perfect and we are no different than a restaurant, but that they do every thing possible within reasonable means.

Senator Geddes asked what type of container is the beer dispensed in? **Mr. Kessler** answered they have cans and draft beer. Cups from Budweiser are provided.

Chairman Burtenshaw asked **Dan Charboneau**, Director from the ISP, how were the licenses initially issued? How do we grant four theaters in the state of Idaho and give them the authority to serve beer and wine without additional problems with other theaters? **Mr. Charboneau** replied that The Flicks was licensed as a restaurant. The floor plans were submitted over the years with the theaters included. It was overlooked. In the Sun Valley area, he has no knowledge how it happened. The ISP is unable to trace that as it happened three decades ago. The history of these restaurants or bars that act as movie theaters needed to be brought to the legislature and let them decide what to do. Other parts of the country do allow consumption in movie theaters.

Chairman Burtenshaw asked **Mr. Charboneau** in his opinion, what is the aftermath with other theaters in the state? **Mr. Charboneau** replied that the door is closed on any other theater outside of the four who are grand-fathered in under this bill.

Senator Geddes stated that he has concern over the one year to correct the situation. He asked **Mr. Charboneau** how do we justify that? **Mr. Charboneau** answered that it was justified "on the fly." There was no statute that allowed that authority. The history of the establishments were looked at and some movement nationally allows this under certain conditions. The one year expires today, and we are in a position as these license renew to take action. **Senator Geddes** commented that "it seems somewhat arbitrary that some entities that break the law have a year to comply or change the law. Other entities have no leniency or consideration of time granted." He asked **Mr. Charboneau** if he sees it that way as well? **Mr. Charboneau** replied that yes, he is exactly right. There isn't a solution that was amenable to all, so they used discretion with regard to the enforcement of the law. **Senator Geddes** stated that he doubted this law will be signed and passed today, so what happens tomorrow? **Mr. Charboneau** answered that The Flicks could serve beer and wine in the restaurant area and not inside the movie theater. The other theaters would maybe have to limit service to their concession area where it could be consumed.

Senator Davis commented that he doesn't see anywhere in the code section that it imputes upon the business operator some legal duty for inspection. He does not see any language that suggests that a license may be in jeopardy, if alcohol is given to a minor independent of the expressed consent of the operator. He asked **Mr. Charboneau** if an opinion from the Attorney General in that regard has been provided? **Mr. Charboneau** answered no, not specifically on that issue. **Senator Davis** stated that the existing code has an allowance for a baseball park. Theaters that have live performances have an exception as well. **Mr. Charboneau** commented that there are exceptions where minors can be present in the Idaho Code. Baseball parks and live theaters are some of those exceptions.

Senator Stennett asked **Mr. Charboneau** when do the current licenses expire? **Mr. Charboneau** replied that they will expire in April. He asked if the state issued them? **Mr. Charboneau** answered yes. **Senator**

Stennett asked if any complaints had ever been filed on any of the four entities? **Mr. Charboneau** responded that an extension was granted and their files have been reviewed for any complaints.

Senator Geddes asked where are the other two theaters that serve beer and wine? **Mr. Charboneau** answered they are in Blaine County.

Chairman Burtenshaw asked **Representative Jaquet** if she had anything further to add. **Representative Jaquet** stated no, that everything has been covered very well.

MOTION:

Senator Stennett moved to send **H 853** to the floor with a **do pass** recommendation. **Senator Stegner** seconded the motion.

Senator Davis commented that he is not naive to the fact that from time to time there may be periodic abuses. He is not unduly troubled by the exceptions in the bill. He cannot see the difference between a theater presenting a live performance and the exception in sub-part 7 of the bill.

Senator Stennett stated that he would prefer that this was not limited as a grandfather. These operations are not much different than a live performance theater. The state has issued these licenses for almost thirty years and there have not been any complaints. It is an important amenity for a resort town as **Mr. Kessler** pointed out.

Senator McKenzie added that he will support the bill. His concern is that the original bill that did not pass and now this limitation can only apply to these four theaters. They have however been in business for a significant time and have not had problems. This is reason for him to support it.

Senator Stegner commented that he shares **Senator McKenzie's** feelings. He would hope that we pass this and allow local communities to set their own standard for the type of entertainment they would like there.

Chairman Burtenshaw added that he is concerned about juveniles and keeping them separated from tobacco and alcohol. The state has been issuing the license, and if we were voting for all theaters in the state, he would vote against it. So because of that he will be voting against this bill.

Chairman Burtenshaw asked for a roll call vote to send **H 853** to the floor with a **do pass** recommendation.

Senator Darrington - Nay
Senator Geddes - Nay
Senator Davis - Nay
Senator Stegner - Aye
Senator Little - Aye
Senator McKenzie - Aye
Senator Stennett - Aye
Senator Malepeai - Aye
Senator Burtenshaw - Nay
The motion **carried**.

Chairman Burtenshaw stated there was another item to take care of today. The Committee would like to thank our page, **Emily Kuhl**. She has been an excellent page. The Committee presented her with a senate watch and letter of recommendation.

Senator McKenzie added there was an additional item of business. We all think very highly of the Chairman. He added that **Chairman Burtenshaw** is a real gentleman and because you are retiring the Committee wants to thank you and recognize you.

Chairman Burtenshaw commented that he enjoyed working on the Committee because of the support given to him. Issues were worked through even though we weren't always in agreement. Some issues were difficult and he always felt the support of the Committee. He added that he appreciated the opportunity to be Chairman.

ADJOURN: There being no further business before the Committee, **Chairman Burtenshaw** adjourned the meeting at 8:57 a.m.

Senator Don Burtenshaw
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE AND HOUSE STATE AFFAIRS SUBCOMMITTEES FOR REVIEW OF ADMINISTRATIVE RULES

Meeting Date - June 19, 2006
Legislative Services Office Conference Room, Boise, Idaho

Those in attendance included subcommittee group members, Senator Don Burtenshaw, Representative Bill Deal, Senator Curt McKenzie, Senator Clint Stennett, Representative Steve Smylie, and Representative Mary Lou Shepherd. Representative Smylie attended the meeting in person with all other subcommittee members participating by telephonic conference call. Others in attendance included Barbara Behner Kane and Jenny Grunke, Idaho Attorney General's Office; David Hahn, Division of Financial Management; Dave Minert and Jeff Minert, Minert and Associates; Doug Standlee, Deputy State Steward; Alan Horowitz, Capitol Racing at Les Bois Park; Director Jack Baker and Jacki Libengood, Idaho State Racing Commission; Bud Yost, Governor's Office; and Katharine Gerrity, Legislative Services Office.

The meeting was called to order at 10 a.m. pursuant to Section 67-454, Idaho Code, chaired by Senator McKenzie for the purpose of determining whether an objection would be made to one or more of the following rules of the Idaho State Racing Commission:

- IDAPA 11.04.01 - Rules Governing Horse Racing (Docket 11-0401-0601)
- IDAPA 11.04.01 - Rules Governing Horse Racing (Docket 11-0401-0602)
- IDAPA 11.04.02 - Rules Governing Simulcasting (Docket 11-0402-0601)
- IDAPA 11.04.02 - Rules Governing Simulcasting (Docket 11-0402-0602)

Senator McKenzie turned the meeting over to Rep. Smylie to explain their concerns relating to the rules.

Rep. Smylie proceeded to explain that the two primary issues of concern involve the rules relating to drug and alcohol testing. He noted that he was particularly interested in getting feedback from the Commission relating to comments received from the industry. In addition, he also indicated that he was interested in learning about the anticipated costs to the state and went on to say that he assumed costs will be coming out of the Commission's budget. Finally, he said that he was also interested in the rule that makes some changes regarding recognition of horsemen's groups.

Jenny Grunke said that she took some notes during meetings held with members of the industry last summer and fall regarding the rule changes. She indicated that her recollection is that all of the debate and discussion involved the rule as it related to

alcohol testing. She said that the parties in her recollection uniformly agreed that there was a need and a desire to have some type of drug testing policy for licensees based on safety concerns. Ms. Grunke indicated that the initial proposed rules were revised to make them not as strict for alcohol as for drug testing.

Alan Horowitz, General Manager with Capitol Racing, was also in attendance at some of the meetings. Capitol Racing is currently renting racing at Les Bois Park. Mr. Horowitz said they have a lease to operate horse racing through September of 2010. He went on to say that Capitol Racing has been in California for some time and that state, which has a much larger racing operation than Idaho, tends to have very strict rules. He noted that it has always been the intent of the board in California to make sure the participants act in a safe way because on the track you have many large animals, jockeys and handlers and you have the staff of the racing operation that operate the starting gate and are closely around the horses and participants. He said that from Capitol Racing's standpoint, they are very supportive of any rules that the Commission and Legislature promulgate with regard to alcohol and substance abuse given the dangerous activity of horse racing. He said they have some of the highest insurance rates for an industry in the state and nation and they believe it's essential for the participants to be regulated as it involves substance abuse.

Rep. Smylie asked whether someone would address the actual proposed rule (Docket 11-0401-0601). Given the fact that there was an earlier version of the rule, Senator Burtenshaw asked for confirmation that the underlying material in this docket is the most recent proposed rule. Jacki Libengood responded that it was and that the docket represents the proposal resulting from committee meetings and commission meetings and has been approved by the industry.

Ms. Libengood proceeded to address the various subsections of the rule. She proceeded to explain that in subsection 041 the primary purpose for testing is set forth. She indicated that subsection 042, provides definitions and was revised in regard to the definition of "suspension" by removing the word "employment." They did, she said, include a definition for "licensee, employee or applicant." "Employee" in terms of the definition are employees of the Commission meaning, for example, stewards or anyone else that receives their paycheck from the Commission. She explained that licensees are considered applicants until they have a license. She said they require jockeys to be tested and some would have to be tested before getting their license in order to be approved. Ms. Libengood went on to say that in subsection 042 "controlled substance" is also defined. She said that the testing procedures pursuant to the rule provide that the Commission can ask for testing to be done as part of examination or based on reasonable suspicion. Post-accident testing is also provided for. She indicated that under the rule, a refusal to test gives the Commission authority to discipline or suspend. She said that the testing procedures as provided are tied to established medical and law enforcement procedures. Ms. Libengood said that the rule goes on to set forth procedures if a test comes back positive, providing for written notice and an opportunity for explanation. The rule also provides for confidentiality. She said that subsection 052 relates to the consumption of alcohol and received the most discussion during the

meetings. She said it was agreed that any jockey, starter, assistant starter, pony person, outrider or racing official should not have any amount of alcohol present within their bodies while participating in any horse races held that day. Finally, she said that subsection 053 covers the testing expense.

Rep. Deal asked whether they would go back to subsection 044 relating to testing. He asked for a clarification about how the determination to test is made - whether its based on suspicion or whether it is random. Director Baker responded and said that they do both random as well as testing based on reasonable suspicion. He said that If they get a call from a jockey or trainer that has observed an irrational act, they will test that person. Sen. McKenzie asked when random testing is performed. Director Baker said that it could be at any time and they also use reasonable suspicion associated with the random tests. He said they test the jockey room around three or four times during a season which is an example of random testing.

Rep. Smylie asked whether testing will include those involved on the fair circuit. He said that one of his concerns is that when you talk about "licensee, applicant or employee" you are talking about a broad group. In addition, he said that he is very interested in the associated costs. Director Baker said the cost of regulation is always an issue but they don't feel you can put a price on making horse racing as clean as possible. With regard to the licensees, he said they will direct their main attention to those that have direct contact with the horses during the races and it will include tracks throughout the state, not just Les Bois Park. Rep. Smylie asked how many tests they anticipate administering and the cost per test. Director Baker said that at this point he would ask Mr. Minert to go over the contract for drug testing that the Commission has with Minert and Associates.

Dave Minert addressed the subcommittee to explain their contractual arrangement with the Commission. He is the president and owner of Minert and Associates. They provide drug and alcohol testing services for the Racing Commission. He said that they have been in business since 1991 and also provide testing for numerous cities and counties throughout Idaho as well as irrigation districts, highway districts, etc., He noted that his company has a lot of experience doing drug testing, especially in Idaho. He said that they were contacted by the Commission a number of years ago to work up a policy that was not implemented at that time and were then contacted a number of months ago to participate in the final language of the policy to ensure the policy was consistent with Idaho law and workable. They also put a bid in and the bid that was accepted was \$50 per drug test. He said that cost is a little more expensive than some of their testing but for a reason. He explained that the vast majority of tests will be done on evenings and weekends and the people that will do the testing typically don't work during those times. Consequently, he said they had to increase the costs about 25 percent. The cost of an alcohol test will be \$20. He went on to explain that drug tests are performed on urine tests and require devices consistent with Idaho law that have been approved by the FDA and also may include a laboratory test - all included in the \$50. The alcohol test, he said, is a breath test similar to that used by the Idaho State Police.

Rep. Smylie then asked how many tests are they looking at conducting. Director Baker said he suspects with the random testing and reasonable suspicions there would be well under a hundred tests per season.

Rep. Deal asked Mr. Minert whether there would be any discrimination relating to reasonable suspicion. Mr. Minert said that it would be based on observations made about a particular jockey or participant that appears to be impaired due to drugs or alcohol. It is a subjective test but it is intended to be done by people who are trained to recognize what they are likely to be seeing if a person is impaired. He said they don't anticipate that it would be used to harass or discriminate against individuals but simply to see that if a person appears to be impaired that you would test them to make sure if they are or not. Rep. Deal asked what happens in a situation of competition between jockeys, for example, and whether that might lead to a incident of discrimination. Director Baker said that the tests are done on site and they are very fast. Mr. Minert said that the drug and alcohol tests take only two to three minutes so if there is any allegation, the testing will be done right there and the person will know within minutes.

Sen. McKenzie was required to leave the meeting due to a conflict in his schedule and thanked all participants for the additional information provided.

Rep. Smylie asked whether the deputy attorney generals would comment relating to Rep. Deal's question. He added that it appears the definition of "reasonable suspicion" essentially just restates "reasonable suspicion" without providing any detail as to what is meant by that term. He asked whether this is something that could be used against rivals for the purpose of gaining advantage and how will this be handled in a day-to-day operation. Doug Standlee, State Steward, said that, as an example, they had an incident a week ago where they were contacted by a member of the facility at Les Bois indicating they felt another individual was under the influence. After due investigation, they tested and received a positive test. He said that he felt it was a great stride toward safety.

Barbara Behner Kane also addressed the issue and stated that in those federal circuits where they have reached the question as to whether or not a state can regulate horse racing, all those that she has seen do allow strict regulation by the state. She went on to note that with reasonable suspicion you run into the same problems as you do with that concept in police enforcement in that it always becomes a subjective test. She said we have to rely on the stewards and other employees of the Commission who are at the racetrack at that time and observing whoever is the subject of the allegations. She also said that there is a severability clause in the event a court ever thought any part of the rule wasn't constitutional.

Rep. Deal said that he believes his question has been answered and, having been involved with the horse industry for years, he believes that it is essential that we have a drug testing policy in place. He said Ms. Kane's explanation responded to his concerns and he believes the rules have been well thought through. He added that, in his opinion, in order to run a good operation on the tracks the Commission should have

the opportunity for testing of those individuals that are around the horses.

Rep. Smylie said that using the figures provided it looks like the yearly costs are anticipated at about \$5,000. Director Baker said that he wouldn't think it would go over \$5,000 and, if it did, it would be just a minor amount. He added that the funds are available in the budget.

Sen. Burtenshaw said that he believes that most of those at the track are conscientious and the fact that there may be a random test is a deterrent in his estimation. He agrees with Rep. Deal that this is an important part of racing.

Rep. Shepherd asked whether there would be any recrimination against a participant if the individual tested turned out to be clean. Doug Standlee said no - that the commission would be the one investigating and calling Minert and Associates for the testing.

Sen. Stennett asked whether this is the first time we have gone into drug and alcohol testing for state licensees. Both Katharine Gerrity and Rep. Smylie said they were not sure. Dave Minert said that alcohol testing is a common component for employees of the state that have a commercial license but Sen. Stennett reiterated that this rule covers *licensees*. Jenny Grunke responded that pursuant to this rule, it is only applicable to a few of the licensees that are handling horses on the day of the race meet. She added that it is not determinative of *whether* they get their license or apply in situations after the race is over. She said It specifically applies to those in direct contact with horses during a race meet.

Rep. Smylie asked about controlled substances that enhance performance. Dave Minert responded that the drugs that will be tested for are marijuana, cocaine, amphetamines, methamphetamines and opiates. Steroids are not included. Director Baker said that with the weight issue of jockeys that is probably not a concern, nor is fatigue.

Rep. Smylie asked what concerns were raised by the racing community. Jacki Libengood reiterated that the main concern involved alcohol. She said that the concern, more specifically, was that if an owner, for example, was in the Turf Club having a drink and then went down to have his picture taken in the winner's circle, whether the stewards could, if so inclined, have him tested and whether he could lose his license. That concern, she said, resulted in the change that the only people subject to the testing are those directly involved with the horses during the race day.

Jennie Grunke commented that during the meetings a lot of the discussion occurred on statutory changes that were made. In regard to the drug testing rule, the only point of discussion was relating to alcohol as noted by Jacki Libengood. Director Baker added that they have had nothing but praise from jockeys, trainers and owners that the Commission has brought itself up to speed with other jurisdictions with regard to alcohol and drug testing.

Rep. Smylie moved on to his final concern relating to recognition of horsemen's groups, Docket No. 1104010602. Director Baker prefaced his remarks that this issue has come up twice under his term - once in Idaho Falls and once in Boise. He said that both management teams wanted to create their own horsemen's groups because that is required to get a license. He said that with this rule change, he believes the Commission has come up with something that gives everyone the proper tool to form a new group if that is in the interest of a majority of the horsemen. He said that he believes it is a good tool to protect the present horsemen's group, to give a new group parameters of what they would have to do to form a new horsemen's group, and also to give the Commission the tools to determine who really is the majority of the horsemen.

Rep. Smylie said that in the past there has been controversy between some of the horsemen with concerns about preferential treatment, etc., He asked whether this may put an end to that concern and to in-fighting. Director Baker said you will never get complete agreement, but it will help them as regulators and it will help horsemen that believe a change is needed. He added that the horse industry helped put this together and there was no opposition.

Rep. Smylie asked if anyone would like to summarize. Director Baker said that he believes we now have, for the first time in history of Les Bois, a management team interested in growth and bringing the industry we have in Idaho across the nation. He went on to say that anything that the Commission and horsemen can do to help them achieve that is important for the survival of their industry. He said he wants to commend the group that has now taken over for their ideas, their integrity and foresight. He said that he thinks the rules will provide a cleaner operation and something that the whole industry can be proud of.

In response to a question from Sen. Burtenshaw, Director Baker responded that with regard to rule relating to horsemen's groups and the intent, the rule does spells out what a new group would have to go through to become certified - he said that it is spelled out very clearly.

Jenny Grunke noted that the Legislature has delegated to the Racing Commission the authority to regulate, supervise and license race meets and she is of the opinion that the rules as presented do not exceed or misuse that authority.

Rep. Smylie thanked everyone for being there. There were no motions made to file an objection. The meeting adjourned at 11:15 a.m.

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: August 25, 2006

TIME: 8:45 a.m.

PLACE: Room 437

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

MEMBERS ABSENT/ EXCUSED: None

MINUTES: The meeting was called to order by **Chairman Burtenshaw** at 8:45 a.m.

The Chairman requested the secretary to call the roll. There was one member absent at the time of the roll call; however, the member entered the meeting a few minutes later.

Chairman Burtenshaw said the purpose of the meeting was to conduct a confirmation hearing for **Mark G. Ricks, appointed as Lieutenant Governor**. The Chairman then invited Mr. Ricks to speak to the committee.

Lieutenant Governor Ricks: **Mr. Ricks** stated that his political career was started by his interest of being a precinct committeeman, followed by his responsibilities connected with the Teton Dam flood recovery efforts. He stated that he was a farmer by vocation and occupation, retiring a few years ago and served in the Senate for 16 years, retiring in 1994. Mr. Ricks introduced his wife, stating that they were married in 1944, and that she has always supported him in his endeavors.

Senator Davis said that Mr. Ricks is a former chairman of the State Affairs Committee and former majority leader of the Senate, as well as chairman of the (former) Western Legislative Conference, representing 14 Western states and has also served nationally for that organization.

Senator Stegner attended a conference in Alberta this summer and stated that Mr. Ricks was in attendance there, representing Idaho. He felt that with Mr. Ricks' grace and intelligence, it added distinction to Idaho.

Senator Little asked Mr. Ricks what counsel would he give to the committee, having been a former member. **Mr. Ricks** said that the challenges are different each year and he feels the Senators do a good job of meeting those challenges. One suggestion was that consideration must be given to the economy of the state.

Chairman Burtenshaw said that he has worked with Mr. Ricks involving their religious dealings and that Mr. Ricks has been president of the Idaho Falls Temple for three years. The Chairman stated that Mr. Ricks' integrity is above reproach and that he is polite and cordial to everyone.

Motion: **Senator Geddes** moved that the committee support the confirmation of

Lieutenant Governor Mark G. Ricks. The motion was seconded by **Senator Davis**. **Chairman Burtenshaw** asked for unanimous consent of the appointment.

Senator Stennett stated that the practice of the State Affairs Committee has been to vote on confirmations the following day.

Senator Davis said that on most occasions, the practice has been to vote the following day, but as a session nears its end, it is not an uncommon practice to address an appointment on the same day. Not anticipating to be here for another day, Senator Davis urged the committee to go forward with the motion.

Senator Darrington gave a brief history of how confirmation hearings have been conducted. At one time, voting took place on the day of the hearing with the appointee in the room. He said that he started the practice many years ago of delaying the voting and that other chairmen have since adopted that practice. Senator Darrington said the decision as to when the voting is conducted is at the call of the Chair.

Chairman Burtenshaw said there would be a roll call vote.

Vote: Abstaining from the first roll call were Senators Malepeai and Stennett, with all other Senators voting aye. The second roll call indicated the vote was unanimous.

Sponsor: **Senator Geddes** said that with the Chairman's approval, he would like to be the sponsor for Mr. Ricks, as well as asking **Chairman Burtenshaw** to assist him. The Chairman agreed to the request.

Other remarks: **Senator Geddes** said that during the interim, there have been some issues, two of which are to settle and agree on the renovation plans and floor plan of the Capitol. Another committee has been meeting regarding the Court House Building to accommodate the legislative session in two years. It is apparent that if the legislative session in 2007 is not adjourned and finished by April 1, that all of those plans will have to be delayed, which will very likely put a 30 month plan of renovation to a longer time period. With construction costs and a tight schedule, that would only cost more money for the citizens of the state of Idaho. Senator Geddes said that since this is a leadership committee, and there is representation of both the minority and majority caucus, he made a plea that the individual caucuses begin their work now to prepare for the 2007 legislative session. The bill drafters are anxious to start drafting legislation and the sooner they can start, the sooner the session can be up and running. Senator Geddes stated that it is critical to stay on schedule.

Adjournment: With no further business to come before the committee, **Chairman Burtenshaw** adjourned the meeting at 9:10 a.m.

Senator Don Burtenshaw
Chairman

Juanita Budell
Secretary