

Senate State Affairs Committee

Minutes
2008



MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: January 11, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly

MEMBERS ABSENT/ EXCUSED: None.

GUESTS: Sign in sheet attached to original minutes on file in the committee Office until the end of the 2008 legislative session, after which it will be retained in the Legislative Library.

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

Chairman McKenzie introduced the Page for the first half of the session, Travis Nicholson from Emmett.

RS17553 **Kirk Sullivan**, Chairman of the State Republican Party presented **RS17553** to the committee. He stated that this is a proposal to put into effect closed primaries. The majority of the states in the country operate under a closed primary law. Every electorate in the state would have to re-register by party. In a primary election they would be given either a republican or democrat ballot. Implementation will take some time and the cost would be approximately \$800,000.

Senator Jorgenson asked **Mr. Sullivan** if he were confident that this represents the wishes of the party. **Mr. Sullivan** responded that in June at the state central committee it passed by a 2 to 1 vote. **Senator Jorgenson** stated he believed there was a lawsuit that may have precipitated some of this. He asked if **Mr. Sullivan** was aware of anyone who signed up and then requested that their name be removed. **Mr. Sullivan** answered yes. The interested parties decided they would act before the legislature was given an opportunity to address the issue. The party did not participate in the lawsuit.

Senator Kelly asked **Mr. Sullivan** if the \$800,000 in the fiscal impact were accurate and if it would be ongoing. **Mr. Sullivan** answered they are one time costs to implement the program. Everyone would have to re-register, books would have to be reprinted and realistically everything would have to be redone. **Senator Kelly** asked if there was an adjustment to the confidentiality requirement. **Mr. Sullivan** stated that was correct.

MOTION: **Senator Little** made a motion to print **RS17553**. **Senator Jorgenson**

seconded the motion.

Senator Davis stated that he was not confident this is the direction to take. However, since this is only a print hearing he would be voting for it, but he does not believe this is what Idahoans want.

Senator Stegner stated he supports printing RS's so the public has an opportunity to see legislation. He does not support this concept beyond printing it.

Senator Stennett requested a roll call vote on **RS17553**.

Chairman McKenzie - Aye
Vice Chairman Jorgenson - Aye
Senator Darrington - Aye
Senator Geddes - Aye
Senator Davis - Aye
Senator Stegner - Aye
Senator Little - Aye
Senator Stennett - Nay
Senator Kelly - Nay
The **motion passed**.

**PENDING
RULES:**

Chairman McKenzie commented that this is a process we go through every session. Most states delegate authority to executive agencies. This process has been upheld by the Idaho state supreme court. The pending rules will go into effect unless there is a concurrent resolution by the House and the Senate to reject them.

54-0201-0701

Ron Crane, the State Treasurer presented the College Savings Plan to the committee. He stated there is a little over 17,000 accounts and the deposits are nearly \$130,448,000 through December 31, 2007. The program has been well accepted and is being used by Idahoans. On December 7, a new program manager was introduced called New Promise, that partners with Vanguard as the investment manager. Vanguard offers our constituents a lot of investment options for the college savings program. **Treasurer Crane** stated there were a lot of unnecessary rules that were covered in the contract. This is a repeal of many of the rules. The one concern may be in the area of disputes. The terms will now be explicitly spelled out in the contract.

Senator Geddes asked if the old program was still in place even though we now have a new contract with Vanguard. **Treasurer Crane** deferred to **Julie Weaver** from the Attorney General's Office, and she stated this is the same program. There is a new program administrator who offers a different set of investment options.

Chairman McKenzie disclosed that he is representing parties in a lawsuit where the Lottery Commission is named as the plaintiff. His clients are defendants and this is an interpleader action which means there is no adverse interest between the commission and his clients. This does not prohibit him from acting on these rules.

52-0101-0701

Jeff Anderson, the Director of the Idaho Lottery addressed the

52-0102-0701

committee. **Mr. Anderson** stated the pending rules do not have any fiscal impact or changes to fees. They are rule 52-0101-0701 and 52-0102-0701. Three rule changes were published and rule 52-0103.0701 was mistakenly included in the Fee Rules and it should be included on the agenda today. There are no changes in fees.

Senator Davis stated the last rule was not on the agenda. He asked **Chairman McKenzie** if it was his intent to pick up this rule. **Chairman McKenzie** commented that it is his intent to review the rules that are on the agenda today and approve them as a whole. The rule should be noticed up for the next meeting and the committee will take action at that time because of the notice issue.

Mr. Anderson commented that it is germane that the first docket 01 is linked with 03. It is being repealed and then there is a chapter rewrite. There are many changes in the rules that have not been reviewed for a number of years. Most changes are language changes to make it easier for the lay person to understand. Rule 52-0102 deals with charitable gaming. An Idaho Supreme Court ruling clarifies that the lottery can demand access to charitable operator bank records. Rule 100 to 114 reflects changes with respect to the 2005 amendments to *Idaho Code Section 67-7702* relating to electronic bingo games. The statute was changed but not the rules. Rule 118 reflects changes to the year 2000, 67-6708 to allow for higher maximum prizes in charitable games as long as the percentage payout is to charity. Limits on administrative expenses remain unchanged.

Senator Davis stated he understands that the Idaho Supreme Court says Idaho can demand access to a charitable operator's bank records. If this is true, he asked **Mr. Anderson** why we need a rule to do this. **Mike Gilmore** from the Lottery Commission responded to **Senator Davis'** question and said there was a case that went before the Idaho Supreme Court that dealt with record keeping for bingo and charitable operations. The rule change will clarify exactly what records need to be maintained, not that the Idaho Supreme Court states for the first time that they are required to keep records. This rule gives bingo operators fair notice of what exactly is expected. **Senator Davis** responded he understood the policy reasons and agreed with the redaction. He asked if competitors have access to this information once the commission acquires it. **Mr. Gilmore** responded these records are not generally available for public review. There is a separate security division of the lottery and they have security in place.

38-0101-0701

Joanna Guilfooy, Deputy Attorney General for the Department of Administration presented the pending rules, and she stated that they received no public comments, changes or public hearings regarding the rules. This is a repeal of the rules governing contested cases for the department.

38-0102-0701

This rule is a repeal governing specification challenges for non-adversary contested hearings. They were last updated in 1993 and they are essentially redundant to what is in our statute.

- 38-0103-0701** **Ms. Guilfooy** continued and stated this is another repeal of rules governing public hearings before the department. No statutory authority exists and the rules address procedures for public meetings and add nothing that is not addressed in the Open Meetings Law.
- 38-0501-0701** These rules are revisions to the current rules for the division of purchasing. The proposed rule changes are to designate reference rules applicable to certain appeal; increase the small purchase exemption limit and professional services exemption limit, under which agencies can purchase without formal bid process, from \$50,000 to \$75,000; clarify that the professional services exemption is for non-renewable contracts; and delete electronic signature rules.
- Chairman McKenzie** asked if the statute specifies the dollar amount and how does the statute clarify when it will go to the informal bid process. **Ms. Guilfooy** responded the statute allows for the administrator to provide for exception to the rules and that is how we get to the informal process.
- 38-0502-0701** This is a new set of rules to govern contested cases on bid appeals at the division of purchasing. The proposed rule changes are to promulgate new rules on procedures applying to bid appeals where there is a contested case hearing.
- Chairman McKenzie** asked **Ms. Guilfooy** what the streamline procedure is with regard to the contested cases, and did we follow guidelines from other states or agencies. **Ms. Guilfooy** responded that there has never been a contested case, but she reviewed the old rules and looked at other streamline rules from other departments, but not at other states.
- Senator Little** asked **Ms. Guilfooy** if we have more or less rules now. **Ms. Guilfooy** answered there are less rules.
- 31-1101-0701** **Mack Redford**, President of the Idaho Public Utilities Commission (PUC) addressed the committee with regard to the pending rules. **Mr. Redford** stated that for the most part these rules mirror the Federal rules so there is no confusion within utilities. The first rule provides for housekeeping.
- 31-1201-0701** **Mr. Redford** stated this is a change to the accounting system and will make it uniform and up to date. The federal accounting regulations are contained in the Code of Federal Regulations (CFR).
- 31-2101-0701** This rule pertains to customer relations and will allow for deposit on utilities in two installments. In addition it provides for customer refunds and the deposit can be credited to future bills, unless the customer requests otherwise. It will also limit the time period for re-billing an undercharged customer to six months.
- Chairman McKenzie** asked if there was a statute of limitations. **Mr. Redford** replied this is a rule that sets the statute of limitations to six months for customers who were undercharged for power.
- Senator Davis** stated that he agreed with the policy, but wondered whether the commission had the enabling authority. **Mr. Redford** asked **Don Howell** to respond to this. **Mr. Howell** stated there is a statute that

controls or sets the statute of limitations of three years, when the commission overcharges and a refund is due the customer. This rule applies to over-charged customers, but there is no statute of limitation. He asked **Mr. Howell** if he were confident that the PUC had the ability to write a statute of limitations that shortens up the limitation of actions. **Mr. Howell** answered there is no statute of limitations that addresses this particular type of undercharge. **Senator Davis** stated he embraced the value of what **Mr. Howell** said, but asked if this is a separation of power question. Before the commission writes a limitation different from what the statute provides, should the commission have enabling authority. **Mr. Howell** stated he believed the PUC had the authority to impose this type of limitation of action. The commission has general rule-making authority to do what is necessary to govern the relationship of the utility customer.

31-7102-0701

Mr. Redford stated this rule will repeal railroad accident reporting in its entirety. After the transfer of this rule to the Railroad Safety/Sanitation Rules, the Commission proposes to repeal its Railroad Accident Reporting Rules and consolidation of these rules will streamline the Commission's railroad rules.

31-7103-0701

This rule deals with railroad safety/sanitation rules and adopts the federal hazardous material regulations. The scope of these rules set safety, sanitation and accident reporting standards that railroads must meet while operating in Idaho.

MOTION:

Chairman McKenzie stated these dockets are before the committee and unless we specifically reject any of them and the House concurs, they will go into effect.

Senator Stegner moved to approve the rules. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

ADJOURN:

Chairman McKenzie advised the committee there would not be a meeting on Monday, January 14. However, the committee is invited to attend a presentation by the PNWER at 1:30 in the House Energy and Environment committee. There being no further business before the committee, **Chairman McKenzie** adjourned the meeting at 8:54 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

- DATE:** January 16, 2008
- TIME:** 8:00 a.m.
- PLACE:** Room 437
- MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly.
- MEMBERS ABSENT/ EXCUSED:** None.
- GUESTS:** Sign in sheet attached to original minutes on file in the committee office until the end of the 2008 legislative session, after which it will be retained in the Legislative Library (Annex 5th Floor).
- CONVENE:** **Chairman McKenzie** was delayed due to traffic. **Vice Chairman Jorgenson** called the meeting to order at 8:03 a.m.
- PRESENTATION:** **Garrett Nancolas**, Chairman of the Idaho Emergency Communications Commission, addressed the committee regarding the 2008 annual report. He stated that all the members are active, engaged, dedicated and care about the commission. The commission was formed by legislation in 2004, and since that time they have been active in the affairs of emergency communication. **Mr. Nancolas** continued and stated that the purpose of the commission is to enhance Idaho's public health, safety and welfare by assisting emergency communications and response professionals in the establishment, management, operations and accountability of consolidated emergency systems. **Mr. Nancolas** provided the committee with the report, but he pointed out some significant accomplishments. First and foremost was the hiring of **Eddie Goldsmith**, the project manager. **Mr. Goldsmith** has been engaged in numerous activities, but most importantly he has created a relationship between the public safety answering points across the state and the Emergency Communications Commission.
- Mr. Nancolas** continued and added that a survey of all the Public Safety Answering Points or PSAP's was completed to find out what stage they are in regarding 911 response. The counties and cities are as varied and different in the stages of emergency communications and 911 capabilities. How they can interact and come together and become more cooperative has been a challenge. **Mr. Goldsmith** has determined the status and what the upgrade process will be. The commission represents all parts of the state, as well as cities, counties, emergency services, the public and private sector, and they represent the public safety answering points all across the state. In addition to meetings across the state, they have incorporated a day long training for officials and people who work in the public safety answering industry.

The commission has determined that the state is varied in its capabilities of 911, and many communities and counties do not have the financial resources to take the next step. **Mr. Nancolas** shared a quote he made in his State of the City Address with the committee. "A vision but not a plan is only a dream. But a vision without a funding mechanism is a hallucination." The funding mechanism is essential for PSAP's and without it they cannot move from whatever stage they are in to the next phase. This year legislation will be heard to raise the fee by a quarter and the main focus of this amount is to have a small portion of it to fund the activities of the IECC (Idaho Emergency Communications Commission). The remainder of that quarter will go into a fund that will grant the money to the different agencies across the state. The "have nots" will be funded first which will help fund those entities to move to the next phase.

Lastly, the commission is now under the Military Division of the state of Idaho. Under **Colonel Shawver** and his staff the website is up, it is enhanced and improved, and they understand the purpose of the commission. In addition they are actively involved with the SIEC (Statewide Interoperability Executive Council).

Senator Geddes asked **Mr. Nancolas** if the communities and counties charge a different rate for their 911 enhancement, and is that where the problem for under funding is occurring? Will this additional quarter be an equitable solution to help subsidize those who are not charging enough now? **Mr. Nancolas** replied that it is a concern for the commission that all entities are not charging the same amount. He does believe if everyone were taking advantage of the full funding opportunity it would truly improve the condition of those entities. However, when some of the entities are so small, that even if they were charging the same rate, it is not significant enough to compensate for the cost of changing from standard 911 to enhanced 911. The quarter that will be added to whatever they charge will be under the jurisdiction of the commission. Last year a set of rules were adopted that have a very specific criteria.

Vice Chairman Jorgenson asked **Mr. Nancolas** how close is the commission getting the program fully in place. **Mr. Nancolas** answered it depends on funding. He asked **Mr. Goldsmith** to provide that information. **Mr. Goldsmith** stated there are several conditions in the 911 center. Basic 911 is where the center receives only a phone call and at best may get a caller id number. The second phase is enhanced 911 where they receive the location of the caller; thirdly, phase 2, where we have the ability to locate a cell phone caller. There are forty-seven PSAP's in the state, and thirteen of those receive phase 2 wireless calls. Four are ready to move to phase 2, but they do not have the population base to support their 911 systems, so they do not have the surcharge revenue to move forward. Thirty of the PSAP's are not phase 2 compliant and eighteen have the ability to receive enhanced 911. The telephone companies have registered approximately 747,000 access lines in the state of Idaho for wireless calls with the FCC (Federal Communication Commission). Cell phone companies have registered 905,000 cell phones within the state. This breaks down to about 73% of the revenue going to the top ten counties. A county with a population base of 20,000

or under, which is thirty four of the counties in Idaho, 20,000 to 10,000 do not receive enough funds to move to phase 2. Any county with 10,000 or less does not receive enough surcharge to go from basic to enhanced. The 73% equates to about 19 million dollars going to the top 10 counties, with the remainder of 5 million dollars going to the other thirty four counties to share. The estimate for the eighteen counties to move to enhanced would be approximately 3.85 million dollars. For every county to move from phase 1 and 2 including enhanced it is approximately 10 million dollars. The twenty five cent increase will enable everyone to move from basic to enhanced within two years, and all 911 centers from enhanced to phase 2, two years after that.

Senator Davis asked what the status is of printing the RS for the increase, or is it still being drafted? **Mr. Nancolas** replied that it has been updated. He asked **Teresa Baker** to respond to this question. **Ms. Baker** said the commission has been working with **Representative Wills** and the Legislative Council and they expect to have it sometime today. Then it should be introduced within a few weeks. **Senator Davis** asked if it would start on the House side or the Senate? **Ms. Baker** answered on the House side.

PRESENTATION:

Dodie Collier, Project Manager of the SIEC (Idaho Statewide Interoperability Executive Council) addressed the committee in the absence of **Mark Lockwood**, the Chairman. **Ms. Collier** stated that since the creation in 2002, the SIEC has been working diligently to carry out its responsibility. The high points for 2007 include the funds set aside for a grant opportunity called The Public Safety Interoperable Communications Grant Program. Last year the legislature set aside 3 million dollars as match funds towards that program. In September they were notified that 7.3 million dollars in federal funding was available, so the match amount was adjusted. Along with the match from last year, the SIEC has worked with the Bureau of Homeland Security to distribute the funding. The SIEC took over projects across the state that would provide the "biggest bang for the buck" towards the goal of interoperable communications.

Ms. Collier continued and stated there has been about 20 million dollars that has come in over the past 5 years from the federal government to the counties. The southwest part of the state, Ada and Canyon county, have been quite successful in implementing their systems. Blaine county has quite a bit of activity regarding economic development. Northeast and southeast Idaho will increase the system to that portion of the state and give us the capacity to reach into the sister states including Canada. The SIEC along with the 911 commission moved to Gowen Field which creates greater efficiency in decision making and the ability to plan.

Ms. Collier stated that the statewide assessment is in progress and they are taking a look at all resources across the state, at the local and state level to determine how to better manage the resources. The purpose of the assessment is to identify the resources, better manage the ones in place, and then the Council will know where to make the best investment to enhance and increase the capacity of the public safety communications

systems. The Council will have the assessment process completed in October 2008, both locally and statewide, to determine how to better manage and leverage the investments they already have.

Senator Davis stated that the first significant public demonstration of the need to address interoperability issues was Oklahoma City. It appears to him that we are doing the same things in 2008 as well as previous years to try and define what our assets are. He would like to solve the problem and his concern is that as a state we are spending so much time studying it that we are not doing it. Maybe we are, but he is not hearing that. The fire and police officials need to communicate with each other and that is his worry. The report is telling him that we continue to assess and plan. He asked **Ms. Collier** to help him with that or have someone who can give him the confidence that we are actually moving forward.

Ms. Collier replied that the successes in this report are at the local level in which the SIEC has helped to shepherd. Southeast Idaho is at 700MHz which is the spectrum made available by the FCC for public safety to communicate on. The agencies in that area were the first to move to this new spectrum, and they have realized communications as they never have before with clarity, coverage, and the ability to communicate with one another. Ada county is partnering with Canyon county to expand the coverage. Kootenai county is doing the same thing with Spokane county in Washington to partner as well; the Northeast part of the state is partnering with Montana. There are pockets of success going on and the Council is pleased with the enhancement. The SIEC in its role saw an opportunity to bring some resource into the state to go to the locals and help fortify the efforts they are undertaking. Planning and assessment is continuing, but it includes the state as a greater capacity than it did in the past. Under the command of **Colonel Shawver** and coming together under the Idaho Military Division, the Council is at a point now where they can coordinate and move more quickly to create a full statewide system.

Senator Davis asked **Ms. Collier** on a scale of 1 to 10, 1 being where we were after September 11, and 10 being where we want to be, where are we in this valley now?

Bill Shawver, Director of Homeland Security, responded from a statewide interoperability aspect, **Governor Otter** has signed an executive order creating a public safety communications council. The rationale is to bring state agencies together and have a public safety mission set with the Idaho State Police, the Transportation Department, Health & Welfare, the military division, and the Bureau of Homeland Security. **Mr. Shawver** continued and stated in a few weeks they will begin to collaborate and work on interoperable communications between state and local agencies. On a scale of 1 to 10, **Mr. Shawver** stated he believes Idaho is at a 3, but moving quickly. Eastern Idaho is probably greater than a 3 and that is largely due to 700MHz. That area is networking and there are 17 counties participating in that group as well as the upper Snake River. The whole eastern side of the state is probably closer to a 4 or 5. Microwave and fiber is available to support the local jurisdictions as well as providing interoperable communications within the state agencies.

Senator Davis asked if the sheriff would like to comment further on that? **Sheriff Chris Smith** of Canyon County, replied that the law enforcement in Treasure Valley is following the lead of Eastern Idaho, Bannock County and the state police in adopting the 700MHz standard. The main reason is that they have become so large, and they need additional frequencies for their own use, which are just not available any longer. This is the best answer for everyone including the fire and paramedic departments, who have been on the VHF frequency for many years. In the event of a disaster we can switch and literally be able to communicate with one another at the same time. **Senator Davis** asked **Sheriff Smith** on a percentage basis for your county, what number of motor vehicles actually have the equipment to allow communication with other departments in the event of an emergency today. **Sheriff Smith** answered basically none. We have to relay information to the dispatch center who then relays information on a different frequency. Currently, the vehicles do not have the ability to speak with the paramedic responding units.

Senator Darrington asked **Sheriff Smith** if it was a bit of a test during the fire at Middleton High School for emergency communication services. **Sheriff Smith** replied there were probably 10 different agencies trying to work together. The transfer of water was literally a test because they couldn't communicate, only verbally or with hand signals.

Vice Chairman Jorgenson asked Sheriff Smith what is the time frame for fully implementing this operation. **Sheriff Smith** answered that Ada county already has their system in place. The switch in Meridian will give them the ability to communicate throughout the state. Bannock county is also in place and Canyon county should have their infrastructure in place within a year.

Chairman Mark Lockwood addressed the committee. **Mr. Lockwood** stated he has tremendous support from the project manager as well as **Colonel Shawver** and his personnel. Initially everyone did their own thing, but they came together through education and working together reviewing the assets they had. Through research and analysis they have moved forward. More and more regions will come on line to leverage this technology and the ability to talk radio to radio to all first responders.

Senator Darrington asked **Mr. Lockwood** if the SIEC has an exclusive contract with Motorola or can other units throughout the state contract with who they want? **Mr. Lockwood** answered that the only client they have now is for the master side and for some infrastructure. Other entities throughout the state can get their engineering from any of the vendors.

RS17418

The gavel was returned to **Chairman McKenzie** and he asked **Jeff Anderson**, Director of the Idaho Lottery to present **RS17418** to the committee. **Mr. Anderson** stated this issue deals with the ability of the lottery to effectively perform fingerprint checks on applicants and vendors. Gaming system or instant ticket vendors have not changed for some time. The statute requires fingerprint and background checks on employees of vendors, and currently they can only do this in the western states. This RS will add language required by federal public law and Idaho Code to

allow the lottery enforcement division to submit fingerprints to the FBI (Federal Bureau of Investigation) for employment and licensing.

Senator Davis said the statement of purpose indicates that the Idaho Lottery wants authority to do this, and RS17418 states it is mandated to do this. **Senator Davis** asked **Mr. Anderson** if he wants the duty to always do this or the discretion to do this? **Mr. Anderson** responded they looked at protecting the integrity of the games as being of the utmost importance. If someone changes jobs, they would like it to be mandatory.

MOTION: **Senator Davis** moved to print **RS17418** and **Senator Stegner** seconded the motion. There was no discussion, however, **Chairman McKenzie** disclosed he had a client involved in a lawsuit with the lottery, but it has been resolved and the parties have stipulated to dismiss. The motion carried by **voice vote**.

RS17427 **Mr. Anderson** continued with the next RS and stated this relates to charitable gaming and there are a number of changes and amendments. On page 1, lines 28 and 29 the lottery is asking that charitable organizations maintain records showing their charitable activity. Currently there is no statute for accountability for charitable activities. The lottery has no authority to demand an accounting of the licensee and this amendment will require the licensee to maintain records, from which the lottery may determine whether or not they engage in charitable activity.

Chairman McKenzie asked if this is a requirement that doesn't exist under federal or state law. **Mr. Anderson** answered that he does not believe so and this is needed in the statute to require them to maintain these records. **Mike Gilmore** from the Attorney General's Office stated that one of the problems had to do with unincorporated associations. They are not IRS recording entities. In terms of what needs to be maintained by the IRS it is not easily or readily accessible to the Commission. **Chairman McKenzie** said the reason he asks this is because typically in the definition section it is defined. If it relates to a charitable organization as defined under federal code, that is easy to understand. **Chairman McKenzie** asked if this is a separate requirement in the definition. **Mr. Gilmore** replied on page 4, there is a requirement on lines 6 to 8 to maintain the records as well. **Chairman McKenzie** stated as someone who reads statutes on a regular basis, it would seem easier to have definitions consistent and separately define requirements as on page 4. **Chairman McKenzie** asked **Mr. Gilmore** if the Commission feels it is essential to have, or will page 4 cover what is needed. **Mr. Gilmore** answered if the committee would like to keep the definition cleaner, the requirement on page 4 will cover it.

Senator Kelly asked if this requirement would be in the rules? **Mr. Gilmore** answered yes it would since the lottery commission has general rule-making authority on the statute, but that he didn't want to second guess what the commission will do. **Senator Kelly** commented that as an observation, maintain records seem open ended. **Senator Davis** added that he shares that same anxiety, and as a suggestion, if the RS is going to be returned to the sponsor, a change in the definition section is needed.

Senator Little stated that it seems there are rules on page 2 that talks about the same thing. **Mr. Anderson** replied that the commission was before the committee discussing the rules, but they did not have an opportunity to go through all of them. One set of rules was incorrectly classified as a Fee Rule. The commission will return and address all the rules collectively. **Senator Little** commented that if this amended RS is passed, regardless of the rule change, on July 1 this requirement as to how you show gross revenues and expenses will go into effect. **Mr. Anderson** replied that is correct.

Amber French, Security Director of the Lottery addressed the committee. **Ms. French** stated she is responsible for the charitable gaming and has been for nine years. The reason the language was added to request or maintain records for charitable activities, is because currently a non-profit organization can file with the Secretary of State for one year. After that, they can apply for a bingo license and they do not have to do any charitable activity during that year. The commission has found this to be a loop hole for them. In the past a few organizations have acquired a license this way, because the commission could not require them to provide documentation that showed proof of charitable activity. It is harder to revoke a license than to deny one based on meeting the definition of a charitable organization. The constitution dictates that charitable gaming is only allowed for charitable activity. The commission wants to narrow this down to fulfill this constitutional obligation and ensure that these organizations are in fact charitable. On the licensing side, this will assist the lottery in determining who is really doing charitable activity, and not just lining their personal pocket.

Chairman McKenzie asked **Ms. French** if the language on page 4, lines 6 to 8, would adequately cover that issue. **Ms. French** answered this applies after they have been licensed, and it allows the commission access to their charitable activity.

Mr. Anderson continued with page 2, lines 29 to 40, and stated this amendment was made to reflect the unique circumstances associated with the use of electronic bingo machines. The language on lines 52 and 53 strikes the language unincorporated associations, because it has been difficult to monitor them. On page 3, lines 34 and 35, speaks to the electronic bingo device that is provided as a service to the players. They are not required to play the games. The changes on page 4, sub-section d(i), were requested through the Bingo Raffle Advisory Board by charitable operators, and it deals with how wages are paid when no one is paid to operate the games. This allows for it to be broken into 2 parts, 1) for expenses other than wages, and 2) for wages. The new sub-section on lines 33 through 35 deals exclusively with the language. This amendment will end the practice of open-ended payment of wages that are not paid from the separate bank account from the games. Page 5, lines 6 through 8, clarifies what the records of charitable activities of the licensee are required to maintain, as part of the permanent records referred to, and the records must be open for inspection by the lottery commission.

Mr. Anderson stated the commission is trying to bring the statute into conformance with reality of the market place today. The amendment on page 5, lines 46 to 49, closes a loop hole. Current law does not allow the lottery to deny a license for reasons that would otherwise authorize the lottery to deny a renewal of the license, or to suspend or revoke a license. It will eliminate the unnecessary step of first granting an application and then immediately revoking it, for reasons that it shouldn't have been issued in the first place. Line 21, page 6, removes the reference to the State Tax Commission, because they do not provide this information to the IRS. Lastly, lines 46 through 50, makes it clear that bingo and raffle operations cannot contract to pay people for services, other than paying bingo employees as authorized by Idaho Code. Anyone who is not part of the charity cannot handle money, only those who are actually part of the charity.

Senator Davis asked if the personal pronoun "them" on page 6, line 49, was necessary, and if not, he requested **Mr. Anderson** to consider that it be removed before returning the RS to committee for printing.

Senator Stegner commented that it appears there is a significant problem across the state with individuals and organizations posing as charitable organizations. He asked **Mr. Anderson** if this is a rampant problem that is overtaking the morals of this state, or if this is a select relatively obscure instance? **Mr. Anderson** responded that he would not characterize this as a rampant problem throughout the state. The changes are being recommended as a result of recent activities that the commission was involved in, that relates to a charitable bingo operation in the Treasure Valley. The problems and solutions were amplified by this one individual case. **Senator Stegner** stated that was helpful, and asked if there are operations currently in the state that would now be under examination and likely to be shut down? **Mr. Anderson** deferred this question to **Ms. French**.

Ms. French said that there are a few organizations that are part of the problem and would probably have to modify how they do their bookkeeping. It appears that wages are being siphoned off, and the commission is waiting to do an on-site audit with this legislation to assist in the process of putting them into compliance. **Senator Stegner** followed with another question and asked **Ms. French** if those organizations might have to modify their operations as true charitable organizations. **Ms. French** stated they are charitable organizations, but they could be giving more. The commission suspects they are padding their administrative expenses and contracting workers to run their bingo.

MOTION:

Senator Davis made a motion to return RS17427 to the sponsor for changes. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

RS17355

Chairman McKenzie turned the gavel over to **Vice Chairman Jorgenson** for the remainder of the meeting. He asked **Leslie Goddard** to present **RS17355** to the committee. **Ms. Goddard**, Director of the Commission on Human Rights, addressed the committee and stated this legislation would permit a court to grant reasonable attorney fees to a

plaintiff, who proved in court that he or she is a victim of discrimination or retaliation. In April 2007, the Idaho Supreme Court issued a decision in *Stout v. Key Training Corporation*. The jury found in favor of Stout and the Court said attorney fees are not recoverable under the state statute. However, federal statute under Title VII of the Civil Rights Act ,explicitly states that attorney fees are recoverable, but the state statute does not.

Ms. Goddard stated this ruling is inconsistent with other statutes. Most states have anti-discrimination laws very similar to Idaho, but the vast majority allow for the recovery of reasonable attorney fees. The Human Rights Act is inconsistent with other Idaho state statutes. If a plaintiff proves that he or she is a victim of consumer fraud they can recover reasonable attorney fees. Someone who is discharged from a job for a reason in violation of public policy may also recover attorney fees. However, someone who is discharged from a job for an unlawful discriminatory reason may not recover attorney fees. This proposed legislation would not impact the proceedings before the Human Rights Commission, only the portion that deals with court proceedings. **Ms. Goddard** asked the committee for a favorable vote to print the RS so that the Idaho legislature would have an opportunity to look at the statute, and correct the inequity that has become apparent through the ruling of the Idaho Supreme Court.

MOTION:

Senator Stegner moved to print **RS17355** and **Senator Little** seconded the motion. The motion carried by **voice vote**.

RS17426C1

John Chatburn from the Idaho Racing Commission presented **RS17426C1** to the committee. **Mr. Chatburn** stated that this clarifies a section of code that deals with Idaho bred horses and breeder awards of Idaho bred winners. On line 16, the Commission has stricken the language that stated Idaho bred races may be eliminated. Idaho bred races will now be an Idaho bred preferred race to offer the opportunity, when there are not enough horses to fill the race with Idaho bred horses. It will still be preferred over out of state horses. Language has also been added to clarify which portion of the purse the breeders award is to be paid. Periodically there is some confusion and contention over the statute and this will make it clear regarding Idaho bred races.

Senator Little asked **Mr. Chatburn** if this will change anything, or are the changes just for clarification. **Mr. Chatburn** answered this RS was reviewed at a racing commission meeting. The language was agreed upon and it makes it clear that if an Idaho bred horse wins any race, than the race track is responsible to pay 10% of the winners share based on the exclusions that have been added to the breeder of that horse. That is historically how it has been done, and was never specifically stated that way. This will put in statute what historical practices have been within the racing industry in Idaho.

Senator Stegner stated this is clear to **Mr. Chatburn** and **Senator Little**, but for someone outside the industry it is very cumbersome to understand. He asked **Mr. Chatburn** if there were adequate definitions to back up the statements and terms he is using. **Mr. Chatburn** replied the

definitions are not in the statute. However, they are in the rules that this section does not allow the commission to make, but the general rule-making authority is there for the commission to implement the racing laws. **Senator Stegner** asked if it is typical to have definitions in rules rather than statute? **Senator Kelly** responded and said that this can be done either way as long as they are consistent.

MOTION: **Senator Little** made the motion to print **RS17426C1**. **Senator Darrington** seconded the motion and the motion carried by **voice vote**.

ADJOURN: There was no other business before the committee. **Vice Chairman Jorgenson** adjourned the meeting at 9:32 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

- DATE:** January 18, 2008
- TIME:** 8:00 a.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Davis, Little, Stennett, and Kelly.
- MEMBERS ABSENT/ EXCUSED:** Senator Geddes and Stegner.
- GUESTS:** Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2008 legislative session, after which it will be retained in the Legislative Library (Annex 5th Floor).
- CONVENE:** **Chairman McKenzie** called the meeting to order at 8:02 a.m.
- PENDING RULES:** **Dennis Stevenson**, Rules Coordinator from the Department of Administration, addressed the committee regarding the pending rules that were previously before the committee for approval. **Mr. Stevenson** stated a correction is necessary to one of the rules. The corrections will run in the February bulletin for Docket No. 31-2101-0701. The correct version was reviewed and approved by the House.
- Chairman McKenzie** asked **Mr. Stevenson** for clarification regarding the versions the committee was provided. **Mr. Stevenson** answered that the handout with the strikeout is what should have come out of the pending rule. The clean copy is how it was presented to the House and approved.
- Chairman McKenzie** stated no action is needed, just the clarification that was looked at and approved by the committee. The rules for the Idaho State Lottery on today's agenda will be held over until Monday, January 21, 2008.
- GUBERNATORIAL APPOINTMENT:** **Jim Kempton** addressed the committee regarding his appointment to the PUC (Public Utilities Commission). **Mr. Kempton** stated he was appointed by the Governor to complete **Paul Kjellander's** term. Working in the PUC is a new environment for him and ex parte is a big factor. The PUC staff is a party in discussions and the commissioners are restricted from communicating with them. Decisions in an ex parte environment is a very interesting situation for him. This is a new process as he is more comfortable in the gas, electric, and water side, and telecommunications is kind of a dark hole. They do regulate some of the safety area of railroads including abandonment which is a very limited area of their work.
- Senator Davis** commented that he thought the State Transportation Board dealt with railroads on the federal level. He asked **Mr. Kempton** to

respond to that. **Mr. Kempton** answered he wasn't sure to what extent the PUC had, but they have authority in the process of determining the necessity or lack of the railroad section. How it interfaces with federal law, he cannot provide an answer. **Senator Davis** stated what he understands is that the PUC has a role in making a representation effectively to the Transportation Board for abandonment, then the Transportation Board makes the determination whether it should be allowed. **Mr. Kempton** replied that is his understanding as well.

Chairman McKenzie asked what **Mr. Kempton's** role is in the Northwest Power Planning Council, and if he stepped down from the Council. **Mr. Kempton** responded it is a three year appointed position. When he accepted the position with the PUC he stepped down, and the Governor can appoint someone for the remainder of his term.

Senator Davis asked **Mr. Kempton** how much of his work and knowledge with the Council will translate down and assist him in the PUC? **Mr. Kempton** answered a lot on the power side. The regional issues overlap state interests for fuel pricing and for gas as well. Wind farms use natural gas as a surrogate resource to determine avoided cost. On the conservation and resource side, the Council is mandated to prioritize these above other power generation resources such as coal and gas. In Washington and Oregon RPS (Renewables Portfolio Standard) programs are in place. On the power, gas and fuel side, there is an excellent translation to what he is doing now, but not a lot in water and telecommunications or railroads.

Senator Davis asked **Mr. Kempton** if the statute is still in place regarding the residential exchange credit, or has it been repealed? Additionally, does he anticipate any significant re-engagement of the residential exchange credit for people here in our area. **Mr. Kempton** replied that the act has been amended but it is still in full force. The benefits depend on how much the power is produced for and for Idaho Power customers there is no benefit right now. For the better part of ten years BPA (Bonneville Power Association) has provided reduced system power and operating on the far edge of the 1980 power act. Reduced distribution of power out of the Columbia River system is tentatively affecting the 1980 power act. All the communities and public utilities in Washington and Oregon agree with what Bonneville is doing. There will probably be some interface with Congress before this is over.

Senator Stennett asked **Mr. Kempton** if Idaho should get involved in RPS standards? **Mr. Kempton** responded there is nothing wrong with RPS standards as long as there is enough study beforehand and Idaho should not do too much too soon and overburden the base load. The problem is how far you reach to establish the RPS standards. Washington has reached out so far that they are heavily burdened and the generating resources are not there. **Senator Stennett** asked what role merchant power plants have in the PUC? **Mr. Kempton** replied that he liked what the Governor says, but the PUC is also a legislative body, so it is a fair question. **Mr. Kempton** said that he would like to have local citing authority to take care of the job. At some point the state will have to

develop a plan for generating resource siting inside the state and have some control over the process. Leaving it to local authority is worth a start to see where it goes. Some legislation is being proposed as a part of this review process. State authority that provides advice to county commissioners and the city managers will work by providing information for them to make a decision, but they still respond to constituent pressures. The PUC has a set of unique authorities that might assist with that process. **Mr. Kempton** stated there is a place for that; perhaps in an appeal instead of a direct citing, maybe an appeal based on cause, because full consideration was not provided. In an appeal role the PUC might function alright. But this is not a first choice citing authority.

Senator Little asked **Mr. Kempton** if the plans are going to be appealed? **Mr. Kempton** answered if there is an appeal avenue than it should be appealed. **Senator Little** stated most cities and counties are not zoned for industrial sites. The land use plans he sees would require some kind of a special use permit. Some may have drafted their industrial classification for their land use plan that is broad enough for this. But most of the big plants would be larger than what is allowed for industrial areas in current land use plans, so an appeal is almost inevitable. **Mr. Kempton** responded that is a very good point. He has not, however, seen a mandate in the plan that requires them to incorporate in their land use planning documents a provision for energy citing. An appeal will happen on that basis.

Senator Kelly stated an appeal idea is intriguing and worth exploring a little more, and she does not recall this being discussed before in an energy committee. **Senator Kelly** asked **Mr. Kempton** if there is an appeal for transmission in particular for Idaho, and what is the status of lines that are being proposed? **Mr. Kempton** stated he just had a briefing with the Northern Lights yesterday on where they are. He is familiar with transmission issues as the Council worked in that area quite a bit. The PUC does not have a direct citing authority, but they can issue a certificate of conveyance of necessity to move something along. They make an analysis on the necessity and the convenience of having transmission citing. Incorporating lines into the southern part of the state is a possible case in point.

Mr. Kempton stated there is going to be a transmission corridor coming through the southern part of the state. Idaho Power is going north towards the Columbia River and there will be a huge ability to access power coming from Canada. The north substation will be like a central terminal in Chicago. Northwestern Electric is proposing a transmission system and there is a proposal going down through Utah. There are a lot of connections and it looks like they will focus around the Borah substation. Idaho could be a buyer on the wholesale market with an opportunity to bid between three or four different lines to provide energy to different areas. **Mr. Kempton** stated he didn't think Idaho should turn down a legitimate offer from a company to build a plant, if they can get past the siting process. Renewables are very important on the wind side and generating plants that meet the requirements for base load to support part of renewable resource acquisition would primarily be combined

combustion gas turbines.

Senator Kelly asked **Mr. Kempton** to explain “you could buy off the grid” and buy more power that is generated, and is it the IOU (Investor Owned Utility) buying the power? **Mr. Kempton** answered not necessarily. It depends where the connecting stations are. Idaho could have coops coming into a connecting service point.

Chairman McKenzie thanked **Mr. Kempton** and advised him that the committee would vote on his appointment at the next meeting.

S1282

Jeff Anderson addressed the committee and stated last week he was before the committee with the pending rules. One rule was mis-classified as a Fee Rule and at the recommendation of the Attorney General, the Commission is repealing the rules entirely as it relates to the administration of the lottery. The Commission is requesting that the rules be re-approved in three parts: 1) rules relating to practice and procedure, 2) charitable gaming, and 3) rules of operation to the lottery. The third rule needs to be repealed and then all the rules reviewed together.

Mr. Anderson continued and presented **S1282** to the committee. This bill provides the Idaho Lottery's Security Division the authority to have access to the FBI's (Federal Bureau of Investigation) criminal history data base. The Commission needs to do nationwide fingerprint based criminal history checks of applicants to work in the lottery. This includes vendors, lottery retailers, and bingo and raffle operators. The primary objective is to protect the security and integrity of the games. Last year the lottery changed vendors for instant printing tickets. This vendor is located in Georgia. The Commission discovered they were unable to do FBI based fingerprint checks. As a result, the Commission is asking for the authority to do nationwide fingerprint based background checks.

Senator Little asked **Mr. Anderson** if there is a national lottery association and does the Commission pay dues for information regarding practices and technology? **Mr. Anderson** answered that there is The National Association of State Provincial Lotteries. They do not, however, make recommendations on vendors. In this instance the lottery is required to make sure that the vendors and the people they do business with have no criminal history. **Senator Little** asked if someone physically obtains the fingerprint or is it mailed to the commission? **Mr. Anderson** answered they obtain the fingerprints in person.

Chairman McKenzie asked how does this apply to someone with a felony record from ten or twenty years ago? **Mr. Anderson** asked **Amber French** to respond to this question. **Ms. French**, the Deputy Director of the Security Division of the Idaho State Lottery, responded that there is a written standard and guideline regarding background checks. It is also in statute. Felonies that are over ten years old are considered to a certain level. The Commission will not accept anything of a theft nature, but for a DUI (driving under the influence) or a prior drug charge over ten years old, the Commission has a discretionary policy.

Chairman McKenzie asked who the fingerprint background check applies

to regarding a vendor of a large chain who may not be the hands on operator? **Ms. French** answered it depends where they are from. Currently they have the authority to run a check on them through the nine western states. They use fingerprinting if they know they are from outside the nine western states. This applies to the owners, not the employees, or anyone with a 5% ownership or more. It also applies to vendors, and the Commission will run a criminal history and credit check.

MOTION: **Senator Stennett** made the motion to send **S1282** to the floor with a **do pass** recommendation. **Senator Jorgenson** seconded the motion and the motion carried by **voice vote**.

S1284 **John Chatburn**, a member of the Idaho State Racing Commission, presented **S1284** to the committee. **Mr. Chatburn** stated this bill clarifies the provisions for Idaho bred races within the Idaho horse racing code. In addition, it clarifies which portion of the purse money of the Idaho breeder bonuses are paid on. In the past there was confusion regarding this and the commission hopes it will be clear that 1) it is a requirement to run at least one race each day of a meet exclusively for Idaho bred horses, and 2) if there are no horses available, then the race can be changed to an Idaho bred preferred race, which will still offer an opportunity to Idaho bred horses to participate. On paragraph 2, line 18, this language was changed to the first place purse. This has no affect, but it makes the horse racing community more comfortable. From time to time there has been a discrepancy over what portion of the purse the bonuses were paid on. In the mid nineties **Mr. Chatburn** stated that several groups of horsemen thought the race tracks should pay the 10% breeder bonus on the entire purse. In a big race, 90% was contributed by the horsemen. The horsemen felt the breeder bonus should be paid on the whole amount. Other members of the industry felt that the breeders bonus should be paid on the amount that the race track contributes, not on what the horsemen contribute or outside sponsors. Traditionally, it has always been that the bonuses were paid on the amount the race tracks contributed to the purse from the para-mutual tickets.

Senator Little asked **Mr. Chatburn** if the language on line 17 would be clear to everyone? **Mr. Chatburn** responded that within the vernacular of horse racing industry that means the racing secretary writes the race, which means the conditions and announces it to the horsemen. **Senator Little** asked if that was in the rules? **Mr. Chatburn** answered that it is used throughout the existing pages of the racing commission rules.

Chairman McKenzie asked **Mr. Chatburn** if the change in the clarification portion of the purse was currently in statute, or just the accepted practice? **Mr. Chatburn** replied the Racing Commission had a rule that didn't use this exact language. The language was reworked in the Commission's meeting in September. It wasn't written in statute but written in the rule, which has traditionally been the practice.

MOTION: **Senator Little** made the motion to send **S1284** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

MINUTES: **Senator Davis** requested that the minutes of January 11 be deferred for approval.

ADJOURN: There was no other business before the committee. **Chairman McKenzie** adjourned the meeting at 8:47 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: January 21, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly

MEMBERS ABSENT/ EXCUSED: Vice Chairman Jorgenson

GUESTS: Sign in sheet attached to original minutes on file in the committee Office until the end of the 2008 legislative session, after which it will be retained in the Legislative Library (Annex 5th Floor).

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

PENDING RULES: **52-0101-0701**
25-0101-0702
52-0102-0701
52-0103-0701

Jeff Anderson, from the Idaho State Lottery, addressed the committee regarding the pending rules. **Mr. Anderson** stated there are four dockets before the committee for review. The first docket is a chapter repeal with a rewrite regarding practice and procedures. The rules for the operation of the Idaho Lottery have not been reviewed in quite some time, so most changes are to the language. Rule 52-0101-0701 relates to charitable gaming and the importance is in 10.01 regarding audits. This clarifies that the Lottery can demand access to a charitable organization's bank records. In rule 100 to 114, it reflects changes that are required for electronic bingo. Rule 118 reflects changes made in 2000 in statute to allow for higher maximum prizes, as long as the percentage is paid to charity. Docket 52-0103-0701 was listed as a fee rule and there are no changes in fees. It deals primarily with the daily operations of the lottery. Rule 100.06 provides for the Director of the Commission to designate a Deputy Director of choice, as second in command. Gift prohibitions are in rule 100.04, which brings the rule in compliance with code and changes the maximum gift allowed to \$50 instead of \$100. Rule 110.06 allows the Lottery to negotiate travel expenses to be paid for by the vendors. Lastly, rule 202 relates to changes and brings the Lottery in line with the market place for describing products.

MOTION: **Senator Kelly** made the motion to approve the dockets 52-0101-0701 and 52-0101-0702 of the pending rules. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

Mr. Anderson stated there are two more dockets that require approval. **Senator Kelly** moved to approve dockets 52-0102-0701 and 52-0103-0701. **Senator Geddes** seconded the motion and it carried by **voice vote**.

RS17427C1

Mr. Anderson continued and presented **RS17427C1**. **Mr. Anderson** stated this RS was previously presented to the committee, and this one is back before the committee with the requested changes. The changes are on page 1, lines 28 and 29; page 4, line 7; and page 6, line 49. This will provide the Lottery with the authority to require charitable gaming operators to maintain records.

Chairman McKenzie requested **Mr. Anderson** to go over the changes that were made. **Mr. Anderson** stated on page 1, lines 28 and 29, language was deleted and inserted the words “that conducts charitable activities”. Page 4, line 7, enhances the language of “maintains the records”. Finally, on page 6, line 49, the word “them” was deleted. **Mr. Anderson** said that on page 2, a lot of this describes what electronic bingo is and ensures that the Commission has the ability to assure that the integrity and security of the electronic bingo games.

Chairman McKenzie asked **Mr. Anderson** if the language on page 4 refers to the duties of a licensed bingo operator to maintain records, and does the operator need to show proof of charitable activities? **Mr. Anderson** replied that is what is in statute, and this clarifies that the Lottery has the authority to require charitable operators to maintain financial records. The Idaho Supreme Court made a ruling last year regarding unincorporated associations, and there wasn’t enabling legislation to require proof of charitable gaming.

MOTION:

Senator Stegner moved to print **RS17427C1**. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

RS17673C1

Senator Tim Corder addressed the committee regarding **RS17673C1**. **Senator Corder** stated he would introduce the bill and then **Ms. Leslie Goddard** of the Human Rights Commission, will speak to the committee. **Senator Corder** said once upon a time there was a place where everyone was treated fairly, and white and black meant good and evil. Employers treated everyone fairly, and employees behaved appropriately. **Senator Corder** said he hasn’t experienced that world, and it is not the world that he lives in. Some people would like to make this about homosexuality, but this legislation is not what this is about. It adds a new clause and the changes are reflected on page 1, line 12, and on the last page on lines 26 to 30. Sexual orientation or gender identity is not what this is about, but it is about equal rights for everyone. We must do our best to define each area of discrimination and along with the Human Rights Commission protect all parties involved.

Leslie Goddard, the Director of the Idaho Human Rights Commission, stated this proposed legislation will amend Title 67, Chapter 59 of Idaho Code. It will prohibit discrimination on the basis of sexual orientation and gender identity. The 1968 legislature passed the Idaho Human Rights Act. At that time the statute prohibited discrimination on the basis of race, sex, religion, color and national origin. For the first time since 1968, Idaho acknowledged the unfairness of discrimination and it offered redress at the state level for victims of discrimination. A person’s skills and ability should be what determines them in the work place, not their skin color,

their sex, and not their religious choice. The correctness of the policy decision in 1968 was not as clear then as it is today. **Ms. Goddard** said she is before the committee today because there are indicators that Idaho once again needs to address an issue of discrimination, that to date we have not. This proposed legislation would in fact add sexual orientation and gender identity to the prohibitive basis of discrimination in the Human Rights Act. This is clearly a nationwide issue. Twenty states have already passed similar legislation and another eleven have executive orders or personnel policies that protect employees. Many cities have non-discrimination policies in place that protect their employees, and major corporations have determined it is good business to do so.

Ms. Goddard continued and said we are all painfully aware of the series of newspaper articles demonstrating the damage to people and careers, based on little more than rumors about one's sexual orientation. Boise State University recently published in a public opinion poll, that 64% of the respondents stated they thought it should be illegal to fire someone for being gay or lesbian. Every region of the state and both political parties share this opinion. **Ms. Goddard** stated that she believes it is significant that the bill amends the Human Rights Act rather than create an entirely new statute. There is nearly forty years of case law that respects and recognizes the important balance between the rights and needs of employees, and the rights and needs of employers. Case law under the existing anti-discrimination statute firmly establishes the right of employers to set rules and standards of behavior for their businesses. A well established principal of the anti-discrimination laws are applicable across the board to all of us. The laws give a promise of fairness to everyone regardless of sex, race, religion, or nationality. The amendments will protect our sexual orientation exactly the same across the board, and give us a level playing field. A person's sexual orientation is just as irrelevant as the other personal characteristics that are recognized by the statute. In addition, the amendments would offer remedy under state law if that principal is broken. **Ms. Goddard** encouraged the committee to print **RS17673C1** and let the legislative process go forward.

MOTION: **Senator Stegner** moved to print **RS17673C1** and **Senator Kelly** seconded the motion. **Senator Stennett** requested a roll call vote.

Chairman McKenzie - Aye
Vice Chairman Jorgenson - Absent
Senator Darrington - Nay
Senator Geddes - Aye
Senator Davis - Nay
Senator Stegner - Aye
Senator Little - Aye
Senator Stennett - Aye
Senator Kelly - Aye

The motion **passed**.

RS17372 **Ann Joslin**, the Idaho State Librarian, presented **RS17372**. **Ms. Joslin** stated this proposes to replace the existing state document depository

system that was created by statute in 1972, with eleven digital repository state publications. **Ms. Joslin** said a year ago she was before the committee to introduce some of the issues and the opportunity for bringing this program into the twenty first century. In 2006 she convened a task force to look at how Idaho public documents might be more readily accessible to the people of Idaho. The focus is on information published by state agencies and intended for public distribution. It does not include agency correspondence, internal publications and memos, or items that are exempt under the law from public disclosure. The task force found that the current depository system is both ineffective and inefficient. One of the six recommendations to make the system more efficient and effective, is to develop a digital repository of public documents that is easy for the public to use. **Ms. Joslin** stated she worked with the Deputy Attorney General to develop this legislation based on the task force recommendations, and the existing statutes of several other states. State law requires that agencies submit twenty copies of state publications, and compliance is very low. This legislation proposes to make compliance for state agencies as easy as possible. The digital repository would assist state agencies to reach their intended audience more effectively and efficiently. Many state publications, including what is posted on the agency web sites, are difficult or impossible for the public to find. The process that the library is developing will make it easier to find the full text of publications through the statewide LIL Web Catalog or through a google search. In addition, they are working with the State Historical Society, so that their process will feed into the archival requirement and eliminate or reduce duplication.

Chairman McKenzie asked **Ms. Joslin** if the digital library will replace the multiple copies that go to the library, and what is the estimated cost savings? **Ms. Joslin** replied BSU (Boise State University) did a study of the existing state publications, and the study confirmed that most state agencies do not know everything they are publishing. Some agencies are not in full compliance so it is difficult to estimate what the cost would be. The commission doesn't know what the agencies currently spend so it is not possible to predict what the savings might be.

Senator Little asked **Ms. Joslin** where is the DFM (Division of Financial Management) on this, and what needs to be done for the agencies to comply in the future? **Ms. Joslin** responded DFM supports this legislation and gave the library permission to proceed, although the DFM did not include funding in the Governor's recommendation. In general, this idea has support from many agencies and most agencies believe it would be easier to comply with the digital repository requirements, rather than the current twenty copy requirement. **Senator Little** asked **Ms. Joslin** how many digital formats are there, and how will the library handle documents that could be changed or edited? **Ms. Joslin** answered within the last year, technology has become available that will meet most or all requirements for protecting documents. The pilot project has been working on what the process would be, and they have harvested state publications from agency web sites in PDF format. They are sealed and it is not possible to change them. There is also a new format, PDAA, and that is the format that the state archivist feels is going to be workable from

an archive standpoint to protect documents. There are many formats out there, and this legislation provides authority for the state librarian to grant certain exemptions for compliance.

Senator Geddes asked **Ms. Joslin** if there is a fiscal impact for the state agencies to comply with submission and having the necessary equipment to scan or send it to the library? **Ms. Joslin** answered the libraries throughout the state will experience very little impact. They would have the ability to access the digital repository, and to help their clients to obtain information. Physical copies would no longer be provided to the depository libraries that remain. If a state agency prints their publication, they will submit two copies to the state library. The library will then send the copies to the Historical Society and The University of Idaho, who have extensive collections and want to maintain and continue to add to them. All state publications are created digitally now, so the cost to the agency is minimal. The agency can forward it on to the library as an e-mail attachment for the library to process.

Chairman McKenzie asked **Ms. Joslin** if the committee prints **RS17372** does she intend to go back to JFAC (Joint Finance Appropriations Committee) for additional authority for the funding? **Ms. Joslin** said that is the process, and if it passes the Senate and the House she will seek funding from JFAC.

MOTION:

Senator Stegner made the motion to print **RS17372**. **Senator Kelly** seconded the motion. **Senator Little** stated he is going to support the motion, but when it returns for a full hearing, he would like the format issues to be answered and the commitment of the executive branch clarified. **Senator Kelly** commented that there may be challenges trying to get state agencies to comply, but she is impressed by the effort to overcome the obstacles regarding this.

Ms. Joslin added that there is no question that there are details to be worked out. The library knows that state publications are being lost everyday. The longer we wait to work out all the details, the digital repository will probably never happen. The motion carried by **voice vote**.

RS17638

Senator Bilyeu and **Representative Bolz** sponsored **RS17638**. **Senator Bilyeu** stated boxing has always been very popular in Bannock County, starting with Idaho State University as Golden Glove Champions. **Senator Bilyeu** said a friend, who is a boxing champion, asked her to sponsor this bill.

Tom Katsilometes, the Commissioner of the Idaho Athletic Commission addressed the committee. **Mr. Katsilometes** stated that amateur boxing keeps kids busy who do not have another avenue to participate in sports. The long range direction is good and this bill will provide for one dollar of the fee or ticket price for an event, to be put into the amateur program. Ninety cents would go into the fund and ten cents would go to the Commission.

Senator Davis asked **Mr. Katsilometes** if the fund was a self-appropriated fund, and how will the funds be supervised? **Mr.**

Katsilometes replied that the Athletic Commission acquires their funds from fees charged at the gate, and the Commission receives 5% of the gate on any professional event. This money would come from a dollar on the ticket price, and then it would go through the Bureau of Occupational Licenses to be distributed. The State Athletic Commission would oversee how the money is being used. The money would be spent for equipment and to keep the amateur programs going throughout the state.

Senator Darrington asked **Mr. Katsilometes** if the gate goes towards the purse and to support the activities of the Commission? **Senator Darrington** commented that the statement of purpose states absolutely nothing and that a few sentences stating what this will do, would be in order. **Mr. Katsilometes** responded the statement of purpose is clear about what he believes is needed. **Senator Darrington** responded it is clear, but it just doesn't say anything. A few comments about how the monies collected from the gate will be used to support amateur boxing is all that is needed. He asked **Mr. Katsilometes** if the ticket price pays the venue, the fighters and the purses, and does it support the operation of activities? **Mr. Katsilometes** replied that is correct.

Chairman McKenzie commented that along the lines of what **Senator Darrington** said, it might be useful to have an expected take on the statement of purpose, based upon historical ticket sales that the fund is expected to raise so many dollars.

Senator Stegner asked **Mr. Katsilometes** if the Commission receives 5% of the gate, to explain what the gate is? **Mr. Katsilometes** said the gate is the ticket price. **Senator Stegner** asked if this was in addition to the take on the gate? **Mr. Katsilometes** replied that it could be, or remain like it is. The Commission is stable, but the dollar could be added to the ticket price, or taken from the ticket price. **Senator Stegner** asked what is the average price of a ticket? **Mr. Katsilometes** answered that the average price is fifteen to twenty dollars, but different fights have different prices. **Senator Stegner** said on a twenty dollar ticket the Commission is getting 5% of that, so another dollar would double the amount that the Commission is collecting. He asked **Mr. Katsilometes** if the Commission is already collecting 5% why not suggest 10% instead of the dollar? **Mr. Katsilometes** replied that the Snake River Amateur Athletics and a group out of Pocatello are the ones that came up with that amount. The Commission did not consider what amount they would receive. The dollar amount was something that was thrown out there and it can be changed. **Senator Stegner** stated he doesn't have an issue with the Commission having authority to designate some of their revenue towards amateur boxing. He is troubled that an organization, a non-governmental entity, is to receive by statute, this kind of fee. He would be more supportive of an enhanced Commission percentage, and the authority for the Commission to designate some of the revenues to support amateur boxing as they see fit. In addition, he shares the same concerns about the statement of purpose being less than what is normally provided.

Senator Stegner asked **Mr. Katsilometes** if the boxing events on the Indian reservations in northern Idaho were sanctioned by the

Commission, and does the Commission generate revenue from those gate receipts? **Mr. Katsilometes** responded that the Commission does sanction the events and they collect 5%. The Snake River Organization is the state organization, not regional, for amateur boxing that oversees the entire state regarding amateur boxing. **Senator Stegner** asked are all amateur organizations required to belong to the Idaho Snake River Association? **Mr. Katsilometes** replied that is correct and they must belong to participate. If not, they would fall under the Idaho State Athletic Commission and the Commission will not allow them to participate, unless they belong to a certified organization that is accepted nationally.

Senator Geddes stated he shares the same concerns as **Senator Stegner**. Establishing a fixed dollar amount and mixing it with percentages should be looked at. It isn't clear if the 5% comes out of the dollar by statute. If that is the case, they are not going to receive ninety cents, but something based on a ninety five cent split. There could be a consistency issue with respect to an existing statute, as to what the Commission should receive from the total gate, versus taking one dollar, and whether it is before the gate or after the gate. He asked **Mr. Katsilometes** how will that be managed? **Mr. Katsilometes** replied he could not disagree with **Senator Geddes**, and he is not sure how the process will work with this.

Senator Bilyeu asked **Chairman McKenzie** if they should rewrite this? **Chairman McKenzie** answered that the committee could return the RS to the sponsor for additional changes, or they could vote to print the RS. **Senator Stegner** said that he is aware that House committees will amend an RS, but not in the Senate. We usually request the sponsor to rewrite it formally, or the easiest way is for you to ask the committee to return it to you for modifications. If the changes and clarifications are made to the RS, he would support this. **Senator Bilyeu** said it would be satisfactory to return the RS to sponsor. **Chairman McKenzie** said at the request of the sponsors the RS will be returned to them.

GUBERNATORIAL APPOINTMENT:

The confirmation vote of **Jim Kempton** to the PUC was before the committee.

MOTION:

Senator Darrington made the motion to confirm **Mr. Kempton** to the PUC. **Senator Stennett** seconded the motion. There was no discussion on the motion and it carried by **voice vote**. **Senator Darrington** said he would sponsor **Mr. Kempton**.

MINUTES:

Chairman McKenzie advised the committee that the minutes of January 11, 2008 will be redistributed with **Senator Davis'** changes, and the committee will vote to accept them at a later date.

ADJOURN:

There was no other business before the committee. **Chairman McKenzie** adjourned the meeting at 9:16 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: January 23, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly

MEMBERS ABSENT/ EXCUSED: Chairman McKenzie

GUESTS: Sign in sheet attached to original minutes on file in the committee Office until the end of the 2008 legislative session, after which it will be retained in the Legislative Library (Annex 5th Floor).

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

RS17645 **Senator Kate Kelly** presented **RS17645** to the committee. **Senator Kelly** stated this is a Memorial that she began working on a few months ago regarding the issues that returning Idaho Veterans face. In recent years over 1.5 million troops have been deployed to Iraq or Afghanistan. Almost half of those service members have been deployed more than once. To date almost 4,000 have died in Iraq and Afghanistan, and 34 of them are Idahoans. At the federal level, Idaho is part of a region so these figures are difficult to track. The Boise area may include some Oregon numbers and northern Idaho is included with Walla Walla, Washington. Approximately nineteen hundred National Guard and Reservists from the 116th infantry were deployed in 2004. They returned at the end of 2005 and 2006. Three hundred fifty members of the 183rd battalion returned from Afghanistan in March 2007. The 321st combat engineers deployed three hundred fifty members as well. Most have returned, but unfortunately three did not. This particular unit are mine sweepers, who suffer from significant health issues due to the work they perform.

Senator Kelly stated that as the servicemen return there are obvious physical health care needs, and sometimes mental health care needs which aren't as apparent. At the federal and state level the health care system is being modified to accommodate the new challenges. For the first time in military history, women are in combat which also presents medical challenges. The pentagon task force recently reported that on average half of returning National Guard members, 38% of the soldiers, and 31% of returning marines have mental health issues. These issues need to be dealt with and the legislature knows, if they aren't, they will manifest later on down the road and they will need to be addressed one way or another. Families, the health care system, and possibly the prison system will also have to deal with the issues we are facing. Some bills

are pending in Congress which address some of these issues. **Senator Kelly** said the research she has done indicates there are some things the state could do, and awareness is a start. This Memorial will send a message to Congress and the President that this is an important issue, and that we encourage the federal government to deal with this.

Senator Stegner, who co-sponsored the Memorial, stated that **Senator Kelly** did most of the work on this and deserves the credit for her work. Additionally, this is an emerging problem for Idaho in terms of the states involvement, to provide health care and in particular mental health care to our citizens. A number of venues indicate that returning veterans have mental health conditions and situations that deserve the best treatment available. It needs to be addressed and dealt with effectively. This Memorial is an attempt to make sure that the federal government knows that the state of Idaho is supporting these efforts.

Jim Adams, the Administrator and Support Manager for the Division of Veteran Services, stated that he spoke with **Senator Kelly** regarding the Memorial. It is very important that the issues are kept up front on the federal side. The Veterans Administration treats these individuals and assists them in returning to a normal life. **Mr. Adams** said that the VA (Veteran's Administration) appreciate the efforts of **Senator Kelly** and the support of the committee.

MOTION: **Senator Stegner** made the motion to print **RS17645** and send it to the floor for consideration. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

RS17462 **RS17462** was presented to the committee by **Mike Nugent**, from the Legislative Services Office. **Mr. Nugent** stated this is the codifier's bill. The purpose of this bill is to make various codifier corrections to the Idaho Code. During the legislative session, multiple amendments are frequently passed and the majority of this is "junk" in Idaho Code. Rather than waiting for future amendments to the various affected sections, this bill will clean up the glitches.

MOTION: **Senator Davis** made the motion to print **RS17462** and **Senator Darrington** seconded the motion.

Senator Stegner asked **Mr. Nugent** if the Legislative Services staff accumulate these changes, bring the suggestions to you all year long, and then draft the legislation? **Mr. Nugent** answered that is correct. The Idaho Code Commission consists of three lawyers and the executive director. They are the ones who alert Legislative Services of these issues.

There were no other questions or discussion. The motion carried by **voice vote**.

ADJOURN: There was no other business before the committee. **Vice Chairman Jorgenson** adjourned the meeting at 8:22 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: January 25, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly

MEMBERS ABSENT/ EXCUSED: None

GUESTS: Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2008 legislative session, after which it will be retained in the Legislative Library (Annex 5th Floor).

CONVENE: **Chairman McKenzie** called the meeting to order at 8:10 a.m.

GUBERNATORIAL APPOINTMENT: **John Chatburn** addressed the committee regarding his appointment to the Idaho Racing Commission. **Mr. Chatburn** stated that the Governor appointed him to the Commission in August 2007, after a member resigned. The role of the Commission is to regulate the horse racing industry, the para-mutual wagering, and simulcasting of races in Idaho. They are in the process of reviewing the rules and one rule which governs the license fees, will be before the committee. Some rules are redundant and a new set of rules will be published before the racing season begins.

Mr. Chatburn said he was born and raised in Idaho and his family raced quarter horses in the mid seventies. In 1982, he moved to California and spent ten years in the management of thoroughbred horse farms, then he returned to Idaho and completed his college education.

Senator Geddes thanked **Mr. Chatburn** for serving on the Commission and said that he would be a tremendous asset. He asked **Mr. Chatburn** if the new Executive Director had been hired, and what improvements have there been since his appointment? **Mr. Chatburn** responded he replaced the commissioner who resigned in July. The Executive Director retired around the first of November, and the Racing Commission is part of the ISP (Idaho State Police). The Commission does not have hiring authority for staff, they are hired under the authority of the Director of the ISP. Recruitment for an Executive Director was advertised nationwide and the posting closed a week ago. Human Resources is reviewing the applications. Along with him, the Director of ISP, and the Chairman of the Racing Commission, will begin to conduct interviews next week. The Commission hopes to have an Executive Director in place as expeditiously as possible. The Director of ISP has committed himself to provide resources and play an active role in the management of personnel. The Commission is moving forward and addressing

administrative procedures to make sure that the staff of the Commission abides by the statutes.

Senator Geddes said when things were a little rocky at the Commission there were claims of open meeting violations. He asked **Mr. Chatburn** if that had been addressed and closed? **Mr. Chatburn** answered that he heard those allegations, but he understands that the Attorney General's Office did an investigation, and he has not seen the report. One commissioner resigned, but he is not certain if that played a role in his resignation.

Senator Kelly asked **Mr. Chatburn** if he has any personal or financial interests in horse racing? **Mr. Chatburn** responded that his wife owns a paint mare and that is the only horse they currently own. In that regard, he would say he does, as he pays the bills.

Senator Stegner asked **Mr. Chatburn** how many permanent staff members are there? **Mr. Chatburn** said there is a vacancy for the Executive Director, so when that position is filled there will be three. The other two positions are the State Para-Mutual Manager, and a clerical position for the license clerk. At the ISP in Meridian you can apply for and obtain a license. **Senator Stegner** asked **Mr. Chatburn** how many race tracks exist in Idaho, and approximately how many races are there? **Mr. Chatburn** answered that there are nine tracks that run live races. Most races are associated with the county fair. Emmett runs a meet outside their county fair and it is the first meet of the season in Idaho. Jerome and Burley have their season during their county fair. Rupert runs their meet over the 4th of July, and Blackfoot runs during the Eastern Idaho State Fair. Last spring, Idaho Falls ran a spring and fall meet and this year they have applied for only one. Pocatello runs a small meet at their track. **Mr. Chatburn** said that he is not certain of the total number of races. Boise runs about forty five days which were approved for 2008. In addition to the live race meets, the state regulates and license a simulcast site at Post Falls and Les Bois Park. There used to be a simulcast site in Idaho Falls, but the Commission needs someone to operate it. **Senator Stegner** commented that there is someone from Emmett who could invite the committee to the first race of the season and make it a field trip. **Chairman McKenzie** asked **Mr. Chatburn** when is the first race of the season? **Mr. Chatburn** replied that he believes it is mid April. **Senator Little** said the first race is the Kentucky Derby weekend, so it is the week before that, and hopefully we will have forgotten about the legislative session.

Chairman McKenzie thanked **Mr. Chatburn** and advised him that the committee would vote on his appointment at the next committee meeting.

HCR34

Chairman McKenzie said **Senator McGee** and **Representative Shirley** are here to present **HCR34** which supports Idaho's efforts to put on the World Winter Games. **Senator McGee** addressed the committee and stated that **Representative Shirley** drafted the resolution and he has done all the work. **Chip Fisher**, the CEO of the World Winter Games is also here, and **Senator McGee** stated that he is an outstanding leader for

the games. In 2009 Idaho will host the World Winter Games, and they expect over 2,000 athletes from eighty five countries to participate. **Senator McGee** stated that research suggests there will be approximately forty five million dollars infused into the economy as a result of hosting the games. This will be the largest event ever held in the state of Idaho, which is a pretty impressive endeavor. **Senator McGee** said he has the pleasure of serving on the Board of Directors and this promises to be an exciting venue and event for Idaho. He urged the committee to support **HCR34**.

Senator Little asked **Senator McGee** to address the rumors regarding the general fund to finance this. **Senator McGee** answered that he sent a letter to the JFAC co-chairs (Joint Finance Appropriations Committee) requesting that five million dollars be allocated to the games. There will be a return on the investment based on the economic study that was done, and they estimate about forty-five to fifty million dollars, as a result of the games. In the past, other states have appropriated funds for these precise games. **Senator McGee** stated he thinks it is appropriate for Idaho to do the same. The federal delegation obtained 7.5 million dollars in backing and private investors have contributed as well. He and **Chip Fisher** are working hard to get more private investors and achieve a balance between federal, state, and private funding for the games.

MOTION: **Senator Little** made the motion to send **HCR34** to the floor with a **do pass** recommendation. **Senator Stegner** seconded the motion and the motion carried by **voice vote**.

MINUTES: **Senator Kelly** moved to approve the minutes of January 11, with the suggested changes by **Senator Davis**. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

Senator Darrington made the motion to approve the minutes of January 16, as written. **Senator Kelly** seconded the motion and it carried by **voice vote**.

Senator Little stated he has a few changes to the minutes of January 18. **Chairman McKenzie** said the minutes for January 18 will be held over for the next meeting.

ADJOURN: There was no other business before the committee. **Chairman McKenzie** adjourned the meeting at 8:30 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

- DATE:** January 28, 2008
- TIME:** 8:00 a.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, and Kelly
- MEMBERS ABSENT/ EXCUSED:** Chairman McKenzie and Senator Stennett
- SIGN IN:** Sign in sheet attached to original minutes on file in the Committee Office until the end of the 2008 legislative session, after which it will be retained in the Legislative Library (Annex 5th Floor).
- CONVENE:** **Vice Chairman Jorgenson** requested a silent roll call, and he called the meeting to order at 8:05 a.m.
- GUBERNATORIAL APPOINTMENT:** The gubernatorial appointment of **John Chatburn** was before the committee for confirmation.
- MOTION:** **Senator Little** made the motion to confirm **John Chatburn** to the Idaho State Racing Commission. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.
- MINUTES:** **Senator Little** moved to approve the minutes of January 18 with minor changes. **Senator Kelly** seconded the motion and the motion by **voice vote**.
- RS17635C1** **Lyn Darrington** presented **RS17635C1** to the committee. **Ms. Darrington** said she was before the committee on behalf of the Knitting Factory, who is the new owner of the Big Easy concert house in Boise and Spokane. The purpose of this is to establish a definition of an "event center" in the liquor retail section of the Idaho Code. Last year, the Senate Judiciary and Rules committee heard testimony regarding a proposed rule that would have affected the Big Easy in a negative way. This proposed legislation will provide the Big Easy a place to reside in Idaho Code. In December, the language was given to the Governor's task force on liquor, and the task force decided not to go forward with legislation this year. **Ms. Darrington** said that her client is in a bind because of the dispute over their restaurant designation in Idaho Code. This RS will define what an event center is and address the primary concerns of the Idaho State Police (ISP).
- Senator Kelly** asked **Ms. Darrington** if there are other facilities that this would apply to? **Ms. Darrington** responded not to her knowledge. The definition was crafted to respond to the ISP's recent concern about two

things. One, raids in a temporary club, hence the language for a year-round lease, and secondly, the ISP does not want the run of the mill bar or strip club to qualify with a similar venue like the Big Easy. There hasn't been any negative feedback from the Governor's task force regarding this.

Vice Chairman Jorgenson asked **Ms. Darrington** if this is a new entity or are they the same owners of the Big Easy, but just under a different name? **Ms. Darrington** responded that the Knitting Factory is a corporation that owns clubs in New York City and they are looking to purchase other clubs in the Midwest. The corporation purchased the Big Easy clubs in Boise and Spokane, so this is a company with a lot of experience in running clubs such as the Big Easy. The Knitting Factory considers themselves to be a competitor to the House of Blues, but on a much smaller scale.

MOTION:

Senator Geddes made the motion to print **RS17635C1**. **Senator Stegner** seconded the motion. **Senator Kelly** said she will support the printing, but she has a lot of questions. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT:

Paul Kjellander addressed the committee regarding his appointment as the Administrator to the Office of Energy Resources. **Mr. Kjellander** stated he considers it an honor to have been appointed at a critical time for the state of Idaho. The state cannot turn its back to any potential economically viable options for fuel resources as we go forward. Energy efficiencies such as management, conservation and digesters are being looked at, and other larger resources that could serve the growing base load needs. It does not exclude nuclear energy. It includes natural gas for base load generation, and it may in fact include coal. In the few months that he has served as the Administrator, he believes the most important thing to look at is education. Informing everyone that we are at a point of concern and playing a significant role, to ensure that the state can meet its energy future is a critical piece of what the Office will do. On a sad note, **Mr. Kjellander** said that he was disappointed to hear that the MidAmerican Project is now in mothballs. Even though that project is no longer on the table, he strongly supports nuclear power, and going forward it can help provide a tremendous degree of Idaho's energy future, as well as regionally. It is his hope that Idaho will be looked at as a possibility for future nuclear activity. Nuclear energy has a place in the state and the region as a whole.

Since the announcement of MidAmerican, **Senator Geddes** asked **Mr. Kjellander** what does he see as the future for the other project that has been proposed for Idaho? **Mr. Kjellander** replied as the Office looks at nuclear power being developed in the country, there are 104 reactors today that provide energy around the country. It is an aging fleet and there has not been any new construction in thirty years. As a result, the producers of this technology have moved overseas. The French and the Japanese are the two major manufacturers. Ultimately we will have to provide base load power and with the aging fleet, more reactors will have to be built to replace those. Going forward, this means there will be other foundries that will step up to the plate and take advantage of the opportunity. Prices for nuclear power will also increase because of the

increase to ethanol, as well as wind resources.

Senator Davis asked **Mr. Kjellander** what are the principal responsibilities of the Office of Energy Resources? **Mr. Kjellander** responded that the critical piece the Office is working on deals with transmission. The role of the Office is to work with federal and state agencies collaboratively with the government regarding permits, applications and siting. As of today, there are five inter-state transmission projects that have been proposed which include going across a piece of Idaho. Idaho is at a critical juncture to ensure that everyone works closely so that these projects do not fall flat. The Office is working with the Department of Lands regarding the mitigation of endangered and threatened species. These issues could create a scenario in which developers ignore Idaho if we are unprepared. The perception that it is too difficult to build here is being addressed so that projects will go forward.

Senator Davis stated from the transmission point of view, his worry is that Idaho is expected to provide the right of access with off ramps for the benefit of Idahoans. He asked **Mr. Kjellander** to speak to that. **Mr. Kjellander** answered that Idaho does not want to just be a pathway to send power across the region. The pathways have a benefit within the State, and looking at the DC line proposal that comes out of Canada for example, a converter station is needed in order to have any benefit to Idaho. This type of venture is a concern, and the role of the Office is to ensure that the future base load of Idaho is their highest priority. The ultimate goal in working with the feds, states and the government is to select projects that will benefit Idaho projects, so the Office will focus on the ones that have the ability to serve Idahoans first. **Senator Davis** asked what leverage will the Office have to make that happen? **Mr. Kjellander** replied the leverage that he has is the support of the Governor, and the legislature. Personally, he does not have any power. His hope is that discussions will take place so that the appropriate steps to make sure the energy needs of the state are met. **Senator Davis** asked if access over state land will also give the Office the leverage that is needed? **Mr. Kjellander** answered that the Office is working with other state agencies, and each agency has an understanding in their area of expertise. There is a lot of creativity within the Department of Lands, and it was suggested that the Office take a look at some land swaps to establish some corridors for easier access in siting.

Senator Kelly asked **Mr. Kjellander** how much control or leverage does the Office have over generation and merchant plants? **Mr. Kjellander** answered that no single branch has the ability to say they have the control and power. Again, it is the ability to try and work with the other branches in government, to ensure that we understand the problems, and look at the limitations. **Mr. Kjellander** said a few years ago when he was a regulator, he was telling the utilities that he did not want to see any more natural gas fired base load plants built, because of the volatility of the fuel resource, the perception of limitations on the pipeline capacity, but most important the end cost to the customers. Things have changed and Wall Street now dictates what should be done. Green house gases and the potential impact was looked at, and it was not possible to get financial support from Wall Street to make the projects go forward. The Office

recognizes what the realities are so they can see what the real options are today. Natural gas is one of the few options because of the low carbon footprint. In addition, we need to move more aggressively in the area of renewables and energy efficiency. The utilities throughout the nation have one base load resource, which is natural gas. The federal government mandates for green house gas emissions, so we have to balance that and how we bring in renewables, which points again to energy efficiency. Long term we need to look at solutions and recognize that all efforts need to be pursued aggressively. There are a series of small steps that will get us closer to where we need to be.

Senator Kelly asked **Mr. Kjellander** what policy recommendations will the Office make regarding energy efficiency? **Mr. Kjellander** answered the Office has a collaborative effort launched with Rocky Mountain Power that combines some low interest loans, along with incentives that they offer to residential customers. They are in the process of launching a similar project in North Idaho with Vista. Through the PUC there are a series of incentives, but the customers are not taking advantage of it yet. The Office has the ability to bring state government into the mix and be a part of the promotional aspect of the incentives. There are a lot of gimmicks out there, and the Office is looking at things that work. **Senator Kelly** stated that she would like to hear about the restructuring of the Office. **Mr. Kjellander** replied that the Division of Energy was absorbed by the Office of Energy Resources. The Office is operating and moving forward with many of the grants and federal projects that they were working on. Going forward the Office wants to move away from the reliance on federal grants because they dictate what you do. The Office needs the flexibility to respond quickly to what our needs are and move in that direction. Energy efficiency and wind development will be a case in point. In the future he is recommending 1) to move away from the dependency on federal grants, and 2) recognize that we can't do it alone.

Senator Stegner asked if all the employees were transferred to the Office of Energy Resources? **Mr. Kjellander** answered because the office was created midstream and mid-fiscal, he is the supervisor of the staff. The budget is still tied under the Department of Water Resources. Next fiscal year they will share some of the resources that they currently have regarding administrative support and assistance, as well as lease space within the Department's facility. **Senator Stegner** asked where is his office? **Mr. Kjellander** responded that the Office is located with the Idaho Department of Water Resources. His office is on the sixth floor of the building and his staff is on the fifth floor. **Senator Stegner** asked does the Administration see a reason to structure this another way? **Mr. Kjellander** answered there has not been any discussion in that direction. At this point they are trying to make sure the Office is established and policy is set, to assist them in the short term and going forward for energy.

Senator Kelly said by virtue of the Office being under the Governor, are the staff classified employees? **Mr. Kjellander** responded eventually all the employees will move to an exempt status, as he is. His appointment is not political. The Office needs people who understand energy efficiency and renewable energy. Under the Division of Energy his staff

had a firmer grasp on the broader issues associated with transmission distribution and natural gas pipelines. The Idaho National Laboratory)0 (INL) has brought in staff on loan to deal with nuclear power. His current staff is very committed and doing a good job.

Senator Little asked **Mr. Kjellander** if he had reviewed the audits of the Department of Energy, and during this transition, is the Office on top of the energy loans ? **Mr. Kjellander** answered that he had reviewed some and he would like to see more low interest loans being utilized.

Vice Chairman Jorgenson asked **Mr. Kjellander** if there are any new nuclear facilities in Canada? **Mr. Kjellander** responded that he is not aware of what is happening in Canada regarding nuclear energy. Another thing to consider is the work force that is needed to construct, maintain, and operate these facilities. Because the U.S. has not seen increased activity in nuclear generation over the last thirty years, they have found more efficiencies within those operations. **Vice Chairman Jorgenson** said there has been a lot of news regarding the development of geothermal. He asked if that is something that we can look at? **Mr. Kjellander** answered it is, and Idaho has been pegged as one of the states with a tremendous amount of untapped geothermal opportunity. The financial difficulty with geothermal is that there is an enormous cost to do the preliminary wells. We have seen some activity within the State and 17 megawatts of geothermal is coming on line now, and more is planned. In Payette there is some development there as well. Hopefully we will see more activity from both federal and state.

Vice Chairman Jorgenson thanked **Mr. Kjellander** and advised him that the committee would vote on his appointment at the next meeting.

ADJOURN:

There was no other business before the committee. **Vice Chairman Jorgenson** adjourned the meeting at 8:55 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: January 30, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett (Thorson), and Kelly

MEMBERS ABSENT/ EXCUSED: None

GUESTS: Sign in sheet attached to original minutes on file in the committee Office until the end of the 2008 legislative session, after which it will be retained in the Legislative Library (Annex 5th Floor).

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

RS17724 **Scott Turlington** addressed the committee regarding **RS17724** and stated that this amends a section of code from 2006, which the legislature enacted. The Tamarack Resort has a liquor license under the ski resort provision. In the process of building the resort, a need for lessees of lodging, dining, or restaurant facilities to have the ability to acquire a liquor license was needed. Under Idaho Code they would not be allowed to use the Tamarack Resort license. Two years ago that specific section of code was enacted, and now there is a need for additional licenses as they develop the village, and bring in additional boutique size hotels. This amendment would increase the number of licenses that have been issued from three to twelve, with an increase of nine for the resort.

Senator Davis commented that when this legislation was written, the legislature may not have addressed the cost for a license. He asked **Mr. Turlington** if there was a different section of code where this is addressed? **Mr. Turlington** answered that the fees for licenses are contained in a different code section. **Senator Davis** asked how is the price for a license determined? **Mr. Turlington** responded as he understands the section of code on fees, a year-round resort that applies for a license under this exemption, would have a one time fee of \$25,000. Lessees or owner operators of a lodging, dining or restaurant facility within the resort would have a one time fee of \$2,500. The resort is requesting that their license with the current exemption be under this provision, in order to have it apply to the \$25,000 fee. **Mr. Turlington** said he is not an attorney, but as he understands this, it is a \$25,000 fee for the resort, and a \$2,500 fee for any additional license that is issued within the resort. **Senator Davis** asked **Mr. Turlington** if it seems appropriate to change the fee structure as a component of this, and have the fee be \$25,000 for each? **Mr. Turlington** responded it is certainly the pleasure of this committee to do that. Given the climate that exists within

the realm as this relates to a liquor license, **Mr. Turlington** said that he suggested two years ago that a \$25,000 fee for the resort was doable. Should the committee decide to take a different direction, we would have to oblige. At the end of the day that fee is passed on to the owners, which is ultimately passed on to the consumer. To purchase a license today, the cost in some places is as high as four to five hundred thousand dollars. The license is not transferable so it has a zero value. That being said, our lessees find this to be a bargain.

Senator Geddes stated that on lines 18 through 21 there is some deleted language. He asked **Mr. Turlington** to explain to the committee what the intent is. **Mr. Turlington** replied that the deleted language references that the Tamarack Resort license would be applied to one of the three current licenses. The intent was to divide three additional licenses beyond the resort exemption. The deleted language clarifies that it would not apply to an owner, operator or lessee of a ski resort, golf course, waterfront, or cross-country facility. **Senator Geddes** asked if it were logical that the additional twelve licenses would be somewhat more independent than the ones granted to the ski resort itself? **Mr. Turlington** responded that they need to be independent from the Tamarack Resort's license for the liability regarding alcohol beverage control. **Senator Geddes** asked **Mr. Turlington** if there is a concern regarding the transferability over the three licenses that the ski resort maintains? **Mr. Turlington** stated that the resort has one license. To qualify for the additional licenses the resort went to the ABC (Alcohol Beverage Control) in 2004. In the process the resort qualified under a cross-country facility, golf course, and a waterfront resort, which makes it a year-round resort. Any facility that Tamarack Resort, LLC owns and operates that serves alcohol, is exempt under the ski resort exemption. The resort waived their rights to the other exemptions. The additional licenses that are offered to hotels, restaurants or other facilities not owned by Tamarack Resort, qualify under the year-round exemption. **Senator Geddes** stated based on that understanding, doesn't it seem more logical to follow the rationale that **Senator Davis** provided. **Mr. Turlington** asked if he meant the fee structure? **Senator Geddes** replied that is right. **Mr. Turlington** said he could not argue against that, and it would require the resort to take a look at the fee section to determine how to structure it.

Senator Kelly asked **Mr. Turlington** if this section was added two years ago? **Mr. Turlington** answered yes it was. **Senator Kelly** asked if the resort had four licenses? **Mr. Turlington** said there are two including the resort. It was decided in the Senate there would be three. Tamarack needed time to look at the success of the development and come back now and request the additional licenses. **Senator Kelly** stated it sounds as if the resort has the ability for four licenses. If one is granted under the ski resort, **Senator Kelly** asked **Mr. Turlington** if there are still two available? **Mr. Turlington** answered that the ski resort license counts against the maximum number of licenses, because it falls under the year-round exemption. So the resort had two to allocate to hotels and restaurants, and the one that was not allocated is pending the code change.

Senator Davis suggested that the language on line 18 be removed. He said line 19 hits the same target and maintains the requirement for a year-round liquor resort to only apply to a year-round resort. **Mr. Turlington** stated the real goal is to have three licenses instead of two, should this not go forward. **Senator Davis** stated there is a big difference between three and twelve, and including the stricken language in sub-part 2 you really have thirteen. **Mr. Turlington** responded that is correct. In reality we would only have twelve, because the Tamarack Resort license is solely their license. The additional twelve will be allocated to hotels, restaurants and dining facilities.

- MOTION:** **Senator Stegner** moved to print **RS17724** and **Senator Little** seconded the motion. **Senator Davis** stated the committee could support this motion and then send it to the amending order. This is a good time to address the interpretation of fees and make it a part of the same bill.
- SUBSTITUTE MOTION:** **Senator Davis** made a substitute motion to return **RS17724** to the sponsor. **Senator Geddes** seconded the motion. **Senator Geddes** stated we are early in the process that it would be in **Mr. Turlington's** best interest to redraft **RS17724**. The substitute **motion carried**.
- S1338** **Mike Nugent**, from Legislative Services Office, presented **S1338** regarding the codifier corrections. Mr. Nugent said that multiple amendments, new sections that are added, and conflicting citation numbering all contribute to the necessity of this bill. Rather than waiting for future amendments to the various affected sections, this bill compiles those code sections that are affected and makes the corrections.
- MOTION:** **Senator Little** made the motion to send **S1338** to the floor with a **do pass** recommendation. **Vice Chairman Jorgenson** seconded the motion and the motion carried by **voice vote**.
- RS17431** **Chairman McKenzie** stated that **RS17431** will be held for a later date.
- GUBERNATORIAL APPOINTMENT:** **Chairman McKenzie** said the confirmation vote on **Paul Kjellander** as Administrator of the Office of Energy Resources is before the committee.
- MOTION:** **Senator Little** moved to confirm **Paul Kjellander** to the Office of Energy Resources. **Vice Chairman Jorgenson** seconded the motion and it carried by **voice vote**.
- MINUTES:** The minutes of January 21 were before the committee. **Senator Kelly** said she did not have an opportunity to review the minutes. They were held for the next meeting. **Vice Chairman Jorgenson** reviewed the minutes of January 23.
- MOTION:** **Vice Chairman Jorgenson** stated that he reviewed the minutes of January 23, and he moved to accept them as written. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.
- MINUTES:** The minutes for January 25, were held until the next meeting for approval.
- ADJOURN:** **Senator Geddes** asked if there was an update regarding **Senator Stennett**. **Senator Kelly** said **Senator Stennett** is out of surgery and

that is pretty much all the news they have. **Senator Thorson** said that he visited with **Senator Stennett** last evening. He came through the surgery very well and the family is waiting for the test results on the tissue that was removed. There was no other business before the committee. **Chairman McKenzie** adjourned the meeting at 8:30 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 4, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly

MEMBERS ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

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

GUBERNATORIAL APPOINTMENT: The first order of business was the appointment of **Wayne Hammon**, as Administrator of the Division of Financial Management (DFM). **Mr. Hammon** addressed the committee and said a copy of his resume is enclosed in your packet. Since July he has been serving as the Administrator for DFM. **Mr. Hammon** said that he grew up in Blackfoot and received his Bachelor and Master's degree from Brigham Young University (BYU) in public policy. The DFM is responsible for putting together the Governor's budget recommendations, submitting it to the legislature, and working with the Joint Finance and Appropriations Committee (JFAC). After the legislative session DFM works with the agencies to implement and realize the Governor's goals.

Mr. Hammon stated before coming to the DFM, he spent six years in federal government as the Administrator of the Idaho Farm Service Agency. In that role he supervised two hundred twenty employees in thirty six locations across the state. His position at DFM is a vast change for him and he is proud to be a part of the Governor's team. This year the Division took a different approach with the budget. The Governor reviewed every request from the agencies, and he made the decisions based upon that. **Mr. Hammon** said that his role is to shepherd the budget and make sure it is delivered on time. The Governor presented his budget to JFAC on December 21, 2007, the earliest completion date in recent history. In the six months that he has been with DFM, the Division has built a relationship with the Legislative Services Office (LSO) staff in closing the gap between the executive branch and the legislative branch. Both staffs work together and discuss priorities. As the Administrator, his job is not about the math. His job is to shepherd the process.

Senator Kelly asked **Mr. Hammon** how many employees or staff are there at the Division? **Mr. Hammon** answered the Division is divided into three branches. There are eight analysts who work directly on the budget, two economists, and an administrative staff. In total there are nineteen, and at the moment there are two vacancies. **Senator Kelly** said looking at the statutory duties of the DFM it is more about a planning or coordinating function. It doesn't focus on the budget. She asked **Mr. Hammon** if he sees it working well from a planning perspective? **Mr. Hammon** answered that he does. They review each agencies strategic plans, and proposed rules, so much of that ties into the budget. The Division is still housed with the Division of Human Resources so the staff is cross pollinating. Early November through the end of the session his staff is all hands on the budget process. In July they begin the organization, planning, developing, and rule checking process. The state has tried zero based budgeting, and **Mr. Hammon** said he told the Governor that he doesn't expect this to save a lot of money. His plan is to focus on what the agencies do, how they do it, and why.

Senator Little asked **Mr. Hammon** if he monitors long term budgeting? **Mr. Hammon** responded as part of the statutory responsibilities of DFM they do. In addition to that, he serves on the committee with the state treasurer. They have a data base and they are working on an interactive one. They track the budget to see where they are going, and secondly, because it directly affects their bonding. **Senator Little** asked if they look at maintenance requirements and costs? **Mr. Hammon** answered they do and most of that is under the direction of the Governor. The Governor believes ten percent of revenue should be put into maintenance. This year twenty three million dollars has been transferred from the general fund to the permanent building fund, so that the maintenance dollar matches the new construction dollar. The committee made that recommendation and the Governor accepted it. The Governor extends that philosophy to state parks and he allocated nine million dollars for maintenance to the parks.

Senator Darrington asked **Mr. Hammon** what his expectations are from a department head when they testify before a committee? **Mr. Hammon** replied this being his first budget cycle, he would ask the department heads to share the JFAC recommendations that they make. The Governor has made it very clear that the department heads are his policy advisors. They are the ones who make policy recommendations and they should be mindful of the Governor's direction.

Senator Davis commented that it is his understanding that an e-mail was sent to the different agencies, telling them that they are limited as to what they can do at the legislature. He asked **Mr. Hammon** for a copy of that correspondence. **Mr. Hammon** replied that he would search for that, but that he isn't aware of such an e-mail. He was copied on an e-mail but he is not the author of it. **Senator Davis** said regardless of who the author is, he understands that there has been some direction from the Governor or his agents, instructing them what they are allowed to say or do when working with the legislature. He asked **Mr. Hammon** if he was familiar with any restrictions, scope or participation? **Mr. Hammon** responded

that on the morning of the state of the state, the Governor met with the members of the cabinet. They were provided a copy of the Governor's recommendations and told to work within his budget recommendations. He viewed that as an exercise of his authority as the executive branch. Approximately fifty people were there, and he saw this as a pep talk. The Governor's instructions were to participate if asked, but not to linger in the hallways. **Senator Davis** said he just wants to understand the relationship with the agency directors and what limitations may exist. In order to set a budget the Legislature relies heavily on those individuals, and to understand what they are trying to achieve, that way the legislature can measure the appropriate level of funding. In addition, the legislature has concerns for issues that are funded as well as the ones that are not funded. **Senator Davis** stated he did not want any barriers to access information in assisting the legislature with their job. **Mr. Hammon** replied that the instructions to the agency directors were to respond quickly, and to be as helpful as possible. The Governor told him that the constitution gives the legislature the budgeting authority, we only make the recommendations. **Mr. Hammon** said he understands the concerns that **Senator Davis** and **Senator Darrington** have.

Senator Darrington asked **Mr. Hammon** if the agencies should be candid with the legislature regarding any questions? **Mr. Hammon** answered that he hoped they would be. **Senator Darrington** said he appreciated that and the fact that they are professionals.

Senator Kelly said it seems contrary to her that on one hand all presentations to JFAC went through DFM, and that the agencies were directed to stay with the Governor's budget and policy recommendations. On the other hand, you said that the agency directors were told to share information. The Legislature is a separate body and it is counter productive if we have to commission our own studies to learn what the other branch of government is doing. **Senator Kelly** asked **Mr. Hammon** how do these two fit? **Mr. Hammon** responded that he understands what **Senator Kelly** is saying. DFM has not been heavy handed with the directors. He believes that JFAC is giving them the permission they need, and he hopes as members of the Governor's cabinet, that the directors understand the direction he is going. Each agency has a specific mission, so they will not always be in agreement. **Mr. Hammon** said it is difficult when you have a new boss but they are making the transition successfully. The Governor has made it very clear that the directors are the policy makers, and they make the recommendations. The job of DFM is to check the numbers and make sure they are correct.

Senator Geddes said he appreciates the effort the Governor has made. With the increasing reports of unemployment, a dip in the economy is expected. There is concern relative to the revenues that the State can depend on. The legislature is beginning to stress over the news that they are hearing. He asked **Mr. Hammon** what provisions has DFM made with respect to the recommendations that the Governor has made in anticipation of declining revenues? **Mr. Hammon** answered that DFM received the budget requests from the departments September 1. In October through November, they reviewed them with the Governor. Most

of the budget was completed by early December. But things are very different now and DFM is watching it very closely. They receive a monthly report from the State Tax Commission, as well as the national forecast. The predictions and forecasts are checked and updated monthly. **Mr. Hammon** said we should not panic, the State of Idaho is doing well and Idaho is ahead of many states. DFM is doing their due diligence to check projections and update them as necessary. **Mr. Hammon** stated that although they need to be conservative in budgeting, he is optimistic and they are early enough in the process to avoid a disaster. **Senator Geddes** stated in light of that there may be a need to look at filling the gaps with one time money. The Governor and your efforts have been complimentary in structuring and balancing the budget. He asked **Mr. Hammon** if he saw one time money as a solution to balance the budget? **Mr. Hammon** responded that is a tricky situation. One time money may be appropriate for some things, but a lot of the budget is based on anticipated growth. Construction projects are a good use of one time money.

S1321

Ann Joslin, the State Librarian presented **S1321** to the committee. **Ms. Joslin** stated the intent of this legislation is to expand citizen access to information in state publications, by replacing the outdated depository system created in 1972, with a web accessible digital repository. **Ms. Joslin** said that **Janet Gallimore**, from the Historical Society, is here to testify. She asked **Chairman McKenzie** if **Ms. Gallimore** could address the committee first.

TESTIMONY:

A written copy of **Ms. Joslin** and **Ms. Gallimore's** testimony are attached to the minutes on file in the committee office, Capitol Annex, room 205.

Senator Geddes asked **Ms. Joslin** to explain the exemptions in the last part of the bill? **Ms. Joslin** answered the exemptions are not spelled out. There are some publications that the Library is not equipped to deal with. One example is the programs produced by Idaho Public Television (IPT). The Library doesn't see a need to duplicate what they are already doing. **Ms. Joslin** said as the state librarian she would exempt IPT so they would not be in violation of the new statute. In discussions with the Deputy Attorney General rules will be developed to govern this process.

Chairman McKenzie asked if the word "for" should be "from" on line 27. **Ms. Joslin** replied I believe that is correct.

Senator Darrington stated there is a rule to allow for a simple word change. **Ms. Joslin** said they read through this many times and they did not see that error.

Senator Little asked **Ms. Joslin** what "OT" on the fiscal impact means? **Ms. Joslin** answered it means "one time", a one time purchase of the server to house the repository. It is not a recurring charge. **Senator Little** asked **Ms. Joslin** how will the agencies comply with this new code? **Ms. Joslin** responded that some agencies are complying with the existing requirements, however, overall the trend is less and less compliance. With this legislation her hope is to create a process that will make it easier

for agencies to comply. The Library will be more diligent in reminding agencies of the new requirement. **Senator Little** asked **Ms. Joslin** to explain the two print copies on page 2, line 16? **Ms. Joslin** answered under this bill the Library is requesting two copies only when the agency prints a document. **Senator Little** asked if this bill passes and the Joint Finance Appropriations Committee fails to fund it, what will happen to the twenty copy requirement? **Ms. Joslin** replied that she would put a more positive spin on that, and that the twenty copy requirement would go away. The Library has developed, established, and operated the digital repository since spring 2007 at a very low level. The Library would continue to do so, but without funding fall farther behind in getting the state publications into the digital repository.

Tim Hurst, Chief Deputy of the Secretary of the State (SOS), said that the SOS is doing more digital publications. This is a benefit and would allow history to be maintained. The Idaho Blue Book is now on their web site, and this gives the SOS the opportunity to be current. He supports this legislation and asked the committee to support it as well.

Senator Davis said as an observation, current technology is exciting but documents that he saved electronically from the eighties, are impossible to retrieve now. A book that was published in the sixteen hundreds can still be read today. He has a concern that in the future electronic archived information may not be accessible. **Senator Davis** stated that he likes the bill and he supports it. He asked **Mr. Hurst** to speak to his concern. **Mr. Hurst** answered that he shares that same concern. Some documents should be given to the Library and Historical Society. The funding should provide for technology to be able to read whatever is given in an electronic format.

Senator Stegner said that he is troubled by the exemption provision. The need for an exemption may be there, but we are creating an opportunity for misuse. The exemption needs to be tightened up. **Mr. Hurst** said he did not have an answer. **Ms. Joslin** stated that she had not given thought to this scenario.

Senator Darrington stated in this instance the Librarian becomes the Archivist. The Library collects the records and the goal is the accumulation of correct information. His observation is that they are professionals and he does not share the same concern that **Senator Stegner** has.

Senator Kelly asked **Ms. Joslin** if a rule would be better to address this? **Ms. Joslin** answered yes it would. As they developed this, she discussed the need for rules with the Deputy Attorney General, to carefully define what the process would be for granting exemptions. **Senator Kelly** asked **Ms. Joslin** to give an example of that. **Ms. Joslin** said the example of IPT is a good example of an exemption that they would grant. They are already doing a good job of archiving and migrating to current formats. There are other types of public documents such as the Department of Agriculture's data base, which is designed for public use. It fits the definition of a state publication. The Library currently does not have a good way to capture that because it is a real time interactive data base.

The Library may consider an exemption for a certain period of time, while the Library figures out how they would do that. **Senator Kelly** asked **Ms. Joslin** if the rules would specifically define the exemption? **Ms. Joslin** answered yes. The technical details and explanations need to be worked out to be clear in the terminology that is used.

Senator Stegner stated he does not want to make this a big issue. He would prefer that this legislation not say “may exempt”, but instead “may promulgate rules for that purpose”. This would provide guidelines and not an open ended exemption.

MOTION: **Senator Stegner** made a motion to send **S1321** to the amending order. **Senator Kelly** seconded the motion. **Senator Darrington** opposed the motion. The motion carried by **voice vote**.

S1322 **Chairman McKenzie** turned the gavel over to **Vice Chairman Jorgenson**. **Jeff Anderson**, from the Lottery Commission presented **S1322** to the committee. **Mr. Anderson** stated that **S1322** is designed to protect and enhance the security and integrity of charitable gaming in Idaho. This legislation will require charitable bingo and raffle operators to provide documentation of the charities that they support. It will also require minimum record keeping requirements and delete the authority of unincorporated associations, to conduct charitable gaming. The bill will also clarify the procedure for denying certain applications.

MOTION: **Senator Geddes** made the motion to send **S1322** to the floor with a **do pass** recommendation and **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

RS17768 No one from the Governor’s Office was available to present **RS17768**. **Vice Chairman Jorgenson** suggested it be carried over to the next committee meeting. **Senator Davis** stated in anticipation of this being heard at the next meeting, a copy of the tribal agreements should be made available to the committee members for review. **Senator Kelly** asked if the intent was to have a print hearing at the same time. **Senator Stegner** suggested to print **RS17768** and return it to committee for a full hearing. **Senator Davis** said the advantage in doing that, is that it will have a bill number and be available to the citizens of Idaho.

MOTION: **Senator Davis** made the motion to print **RS17768** and recommended that the concurrent resolution return to the committee for hearing. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Kelly** moved to approve the minutes of January 21. **Senator Darrington** seconded the motion and it carried by **voice vote**.

Senator Geddes stated he read the minutes of January 25. He made the motion to approve them as written. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

ADJOURN: There was no other business before the committee. **Vice Chairman Jorgenson** adjourned the meeting at 9:24 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 6, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett (Thorson), Kelly

MEMBERS ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENE: In the absence of **Chairman McKenzie** and **Vice Chairman Jorgenson**, **Senator Darrington** called the meeting to order at 8:18 a.m.

GUBERNATORIAL APPOINTMENT: The Confirmation vote on **Wayne Hammon** to the Division of Financial Management was before the committee.

MOTION: **Senator Geddes** made the motion to confirm **Mr. Hammon** and **Senator Davis** seconded the motion. The motion carried by **voice vote**.

Mike Gwartney addressed the committee regarding his appointment as Director to the Department of Administration. **Mr. Gwartney** said that he has known the Governor for a number of years. They worked together in ranching and banking. He was with the Boise Cascade Corporation for thirty six years, and when he retired he was Vice President of Human Resources. **Mr. Gwartney** stated that he has a degree in finance and he worked with Farmers and Merchant Bank for ten years.

Vice Chairman Jorgenson was present at this time. He asked the committee if they had any questions for **Mr. Gwartney**. **Senator Kelly** asked **Mr. Gwartney** to talk about the different areas of his authority under the Department of Administration. **Mr. Gwartney** responded that he joined the Department in June 2007. The Department is divided into several areas. In Public Works he works with **Senator Darrington**. There is around seven hundred million dollars in construction and maintenance projects that are on-going, and most notably is the Capitol Building. The Department plans to bring that project in on budget and on time. Another area of responsibility is purchasing for the state. Healthcare insurance is also handled through the Department. The Department is consolidating Information Technology (IT) and they are putting together a federation. There are twenty or thirty small agencies and the Department will be the IT support for the agencies. Eighty five e-

mail systems and forty six telephone systems are handled by the Department as well. The Tax Commission and Fish & Game have the expertise to maintain their own systems. The Department plans to accomplish the consolidation over the next twenty-four months.

Senator Kelly asked **Mr. Gwartney** if the Department handles the Human Resources Department. **Mr. Gwartney** answered that he does not have direct responsibility over that, but he does, however, work with human resources. **Senator Kelly** asked **Mr. Gwartney** if he serves on any board that might present a conflict of interest? **Mr. Gwartney** responded that he is on the board of the Regence Group which owns Blue Cross Blue Shield organizations in Washington, Oregon, Utah and Idaho. Regence Blue Shield of Idaho is the entity that is affiliated with it, so yes, he does have an interest in that. **Mr. Gwartney** said if they were to bid for that contract today, he could be perceived as having a conflict. There is no plan to do that, but he would excuse himself if that happened.

Senator Kelly asked **Mr. Gwartney** to explain his salary situation. **Mr. Gwartney** replied that he has refused to take a salary for three reasons. One, the state has been good to him, secondly, he was the head of the transition committee and as such he had to terminate and hire employees. The third reason is, if things were reversed, the Governor would do the same for him. **Senator Kelly** said so you do not receive a salary or any benefits. **Mr. Gwartney** stated no he does not. **Senator Kelly** stated this arrangement is unprecedented and it raises a concern of accountability because you have no vested interest.

Vice Chairman Jorgenson advised **Mr. Gwartney** that the committee will vote on his confirmation at the next meeting.

RS17776

Brian Judy, the Idaho State liaison for the National Rifle Association (NRA) presented **RS17776** to the committee. **Mr. Judy** stated this deals with the preemption of firearms laws by the State of Idaho. The legislature attempted to preempt firearm regulation in 1984. The current statutes are titled Regulation of Firearms Controlled by the State. Title 31 is the preemption statute that deals with counties, and Title 50 deals with cities. Under the existing law it limits local government's ability to restrict in three areas, 1) the ownership, 2) the possession, and 3) the transportation of firearms. This legislation will broaden and strengthen the existing firearm preemption statute. It will also include the sale of firearms, acquisition transfer, and carrying or storage of firearms. Since the existing law only deals with cities and counties, this will include all governmental entities. All firearms laws and policies will be standardized throughout the state, based on current and future laws passed by the legislature. The legislation will avoid a complex patchwork of inconsistent firearms laws and policies throughout the state.

Senator Davis said sub-part 3 deals with counties and sub-part 4 deals with cities. The limitations for each are different. He asked **Mr. Judy** to explain why they are different. **Mr. Judy** answered these two sections of the bill will authorize the restriction of the discharge of firearms by counties and cities. They are different because generally there is a more appropriate use of firearms in counties than within city limits. Hunting,

and target shooting are more apt to be found on county land, so that would be the main difference. **Senator Davis** said you are proposing to repeal two code sections on page 1. Do either of them deal with concealed weapon permits? **Mr. Judy** responded no they do not, those are two separate existing firearm preemption statutes. Basically, they prevent the cities and counties from restricting the ownership, possession or transporting of firearms. **Senator Davis** said on page 2, sub-part 5 it addresses the State Board of Education and the Board of Regents adopting and implementing rules. He asked **Mr. Judy** what he believes the effects of that language could be? **Mr. Judy** replied this language will require individuals who possess firearms on campus to notify that particular institution. The NRA does not believe the right to self protection ends at any arbitrary boundaries. Law abiding adults who are licensed by the state, should be able to carry firearms for self protection without regard to artificial boundaries. **Senator Davis** said he wants to understand the application of sub-part 5. It does not apply to Kindergarten through 12 (K-12) grades, so would the zero tolerance policy for possession in that environment be inappropriate? **Mr. Judy** answered he needs to further investigate the restrictions language, but your assumption is correct. The NRA does not believe that artificial boundaries should impact the ability to provide self protection. An individual has to be 21 years of age to be licensed for a concealed weapon permit. They view a staff member wanting to carry a concealed weapon as being reasonable. Individuals who are going to commit a heinous act will regardless of the laws. Creating a gun free zone does not prevent terrible things from happening in schools.

Senator Davis stated if a university president decides that weapons cannot be discharged, even in a ceremonial event, do you believe this bill will prohibit a university from making such a declaration? **Mr. Judy** said he believed so and that it would have to be approved by the Board of Education or the Regents. **Senator Davis** asked **Mr. Judy** if the language in sub-part 5 will allow the State Board of Education and the Regents to have different policies? Or would this require uniformity, at each university or college? **Mr. Judy** answered that he hoped the intent of this legislation would be for uniformity. The NRA's position on uniformity of the law is that it is beneficial, because it is the same throughout the state and it makes it easier for individuals to obey the law. **Senator Davis** stated if conformity throughout the state is the target, could the State Board of Education be precluded from adopting the policy, that the State of Idaho adopts by statute. **Mr. Judy** responded if that is the case, then the language may need to be tweaked. **Senator Davis** said if the real target is uniformity, regardless of boundaries, then why should the legislature grant to the State Board of Education and the Board of Regents any authority to participate in defining this. Shouldn't all of this be set by statute? **Mr. Judy** said that may be an appropriate way to go, and he will speak with **Senator McKenzie** the sponsor of the bill. **Senator Davis** said he just wants to understand the intent and the application of the bill.

Senator Little asked **Mr. Judy** to explain 3(d) and 4(b) regarding shooting ranges within city and county limits. If there are conditional use

permits would the adoption of this mean the permits would be null and void? **Mr. Judy** answered he does not believe so. Giving authority to local municipalities to restrict the discharge of firearms, they would manage the specifics. **Senator Little** said the language in the subsection states "it may not apply to or affect a person discharging a firearm on a public or private shooting range". **Mr. Judy** responded that is not the intent of this legislation. **Senator Little** stated in this valley there is a lack of good organized shooting areas. This may have a chilling effect on the establishment of good, safe areas for the public to shoot. This needs to be looked over. It is going backwards from where we need to be headed. **Mr. Judy** replied he does not read it that way, but it could be a possibility. The NRA supported a bill a few years ago to protect existing shooting ranges and having safe places to shoot is critical.

Chairman McKenzie said the question that **Senator Davis** had is an appropriate observation. Before printing this, different organizations suggested adding section 5 to give the Board of Regents and university presidents more control over their campuses. That requirement allows individuals to carry a weapon as long as they are in compliance. It was more of a political compromise rather than a strict policy.

Senator Stegner asked **Chairman McKenzie** if the language in paragraph 2 would include a local school district? What is the intent of the exception in paragraph 5? **Chairman McKenzie** answered the intent is to be consistent and apply to all political subdivisions, and not just to cities and counties. **Mr. Judy** responded under existing state law there are restrictions on elementary and secondary schools, and you cannot possess a firearm. **Senator Stegner** asked what sections are being repealed? **Mr. Judy** replied there are only two, which state that cities may not regulate the ownership, possession or transportation of firearms. It is a very narrow preemption statute and consolidated with the title dealing with firearms. It is also broadened and adds language to include the sale, acquisition, transfer, carrying or storage. The existing restrictions on K-12 schools in statute are not changed.

Senator Kelly asked how will this apply to courthouses, city halls and the ordinance in Moscow? **Chairman McKenzie** answered when he has his pocket knife with him, Ada County Courthouse has him hide it out front. **Mr. Judy** responded in addition to schools there are restrictions on the state level for courthouses and jails, that will not change. Moscow wanted to impose a restriction in all government buildings, but it is only limited to courthouses. **Senator Kelly** asked if the city of Moscow has adopted an ordinance and will this affect that? **Mr. Judy** answered they did not move forward with the ordinance. The Attorney General opined what the city was wanting to do, was already preempted. **Senator Kelly** asked what problem will this bill solve? **Mr. Judy** stated there are reports of restrictions being imposed in certain county fair districts. Some cities have tried to enforce restrictions, so the point of this bill is to clarify and broaden the existing statute. **Senator Kelly** asked **Mr. Judy** if he was referring to Idaho? **Mr. Judy** said yes, the Western Idaho Fair is one example that he specifically heard mentioned, and they are trying to impose restrictions. One librarian also told him that restrictions are being

imposed. State statutes are limited to schools, courthouses and jails. The restrictions being imposed by the Western Idaho Fair are contrary to the existing law, but hopefully the passage of this statute will clarify and put the limitations into the firearms statutes. **Senator Kelly** asked what about a large venue such as a concert at Taco Bell Arena? **Mr. Judy** answered if a restriction is being imposed by a city or county, it is currently already preempted and it would be contrary to the existing law.

MOTION: **Senator Davis** moved to print **RS17776**. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

RS17817 **Chairman McKenzie** resumed control of the meeting and thanked **Vice Chairman Jorgenson** for chairing the meeting in his absence. **Chairman McKenzie** asked **Scott Turlington**, representing the Tamarack Resort to present **RS17817** to the committee. **Mr. Turlington** stated he is back before the committee with the revisions to the bill. The first section, 23-904 clarifies there is a one time fee of \$25,000 for each license issued to a year-round resort lessee. Additionally, they will pay an annual renewal fee of \$3,500. On page 2, lines 36 and 37, is the increase from the current number of three to twelve licenses, that will be available on the premises of year-round resorts with hotels, restaurants and boutiques.

MOTION: **Senator Davis** moved to print **RS17817** and **Senator Stegner** seconded the motion. The motion carried by **voice vote**. **Senator Kelly** asked if this bill is a companion to the other bill. **Chairman McKenzie** said no this replaces the other bill.

SCR125 **Chairman McKenzie** stated this is the Concurrent Resolution regarding the fuel tax agreements with the tribes. **David Hensley** from the Governor's Office presented **SCR125** to the committee. **Mr. Hensley** stated there are various representatives here today from the tribes. **SCR125** will ratify four motor fuel tax agreements between Coeur d'Alene, Kootenai, Nez Perce and Shoshone-Bannock tribes. **Mr. Hensley** gave a brief background regarding the negotiations. With the passage of **H249** last year, this established a deadline of December 1, for the state and the tribes who wanted to negotiate and enter into agreements for the assessment, collection, and utilization of motor fuel taxes. Under the Governor's direction the scope of the agreements was to only include the assessment, collection, and utilization of motor fuel taxes. There were requests to expand the scope of the agreements, but the Governor felt it was important to only deal with these issues. Secondly, each tribe requested that the Governor negotiate with them independently, and to address the unique circumstances that the tribe individually faced within their reservation. The State of Idaho takes in over two hundred twenty million dollars a year in revenue from the sale of motor fuels. The tribes collectively contribute four to five million dollars.

Mr. Hensley said the Governor set forth some goals that he wanted to accomplish during the course of negotiations. 1) He wanted to arrive at fair and equitable agreements, 2) achieve tax parity among the tribes in the state, 3) to address issues surrounding the sale of diesel fuel on the reservations, 4) to address the one cent Petroleum Clean Water Trust

Fund fee, and 5) bring the tribes to the table on transportation issues, and allow them to bring money to their own specific projects. The state achieved tax parity with all the tribes today and into the future. Each agreement states each tribe will collect the same amount of tax as the state currently does. The fuel tax would be increased should the state increase the motor fuel tax. Diesel fuel is sold in major retail outlets on and off the reservations. When an interstate trucker pulls into a non-tribal retail outlet, they pay state tax on diesel fuel. That tax is accounted for when they burn the fuel within the state, but when they leave the state the truckers are eligible to make a claim with the Tax Commission for any fuel that they did not burn within the state. That is the basis for the International Fuel Tax Agreement.

At one point in time, interstate truckers were filling up at one of the reservations and not paying the tax, and then the truckers made a claim for it. This agreement has resolved that issue and the truckers who fuel at the Shoshone-Bannock reservation will pay the state tax through the distributor. Every gallon of diesel delivered there is charged 85% of the state tax on the total gallons of diesel. For every hundred gallons, 85% of those gallons have the state tax applied at the distributor, and then it is given to the State Tax Commission. Through this agreement it will suffice to meet the claims that the state pays out and provide some extra for the highway fund.

A similar method was devised with the Kootenai tribe. 85% of all gallons delivered to that reservation will have the state tax imposed. The diesel and gasoline fuel for the Coeur d'Alene and Nez Perce tribes is considered not state tax paid. An interstate trucker who fuels at those reservations will not pay state tax, so they will not receive a refund. If money is owed when they leave the state, it will be reconciled through their accounting. The diesel fuel issue, which was one of the Governor's primary concerns, was resolved. The Governor wanted to bring the tribes together on transportation issues. This was accomplished by specifying in each agreement that the revenue generated from the tribal fuel tax would go towards transportation issues, including the construction and reconstruction of roads. This includes the improvement of waterways, right of ways, and in some cases the payment of the state transfer fee. It was agreed that Coeur d'Alene and Nez Perce are allowed to use tribal fuel tax revenue for general transportation of members through bus and van services.

Mr. Hensley said the key issue among all the agreements, was the need to resolve the transfer fee issue. This is a one cent fee imposed on every gallon of motor fuel in the State of Idaho. That is broken down three ways, 1) 77% goes to Idaho Transportation Department (ITD), 2) 3% goes to Parks & Recreation, and 3) 20% goes to the Petroleum Clean Water Trust Fund, which covers spills, clean-ups, etc. If the tribes receive coverage under the trust fund, they should pay for that through the transfer fee. If they aren't, the transfer fee would not be paid, so the state required each to add one cent to achieve tax parity. The Nez Perce tribe allowed each retailer to choose whether to opt in to the transfer fee and the provisions of the trust fund. The Coeur d'Alene tribe agreed to have the transfer fee imposed on all gallons delivered, the Shoshone-Bannock

tribe opted out, and the Kootenai tribe agreed to pay the transfer fee when they have a retail outlet. All the agreements are perpetual and there are provisions for termination, mediation and arbitration.

Senator Little asked **Mr. Hensley** if any tribe opts out, are they required to insure their underground storage tanks? **Mr. Hensley** answered when the tribe opts in, they have to apply to participate in the trust fund and pay the one cent fee, they must work through process to be able to participate. If the tribe opts out, all existing policies will be canceled and the tribe must agree not to participate in the trust fund in the future. Federal, state, or tribal provisions must be adhered to the provisions of law, that requires the tribe to carry insurance on the tanks. Opting out means going it alone and understanding the ramifications of that.

Senator Little asked if the tribe could renegotiate a deal and come back in to the program? **Mr. Hensley** said the agreements can be amended.

Senator Little asked **Mr. Hensley** if the additional one cent applies to transportation within their system? **Mr. Hensley** responded yes that is correct.

Senator Darrington stated the additional one cent could be used to create their own fund. **Mr. Hensley** said out of the tribes that opted out, the agreements do not allow for the establishment of a separate insurance fund. **Senator Darrington** said that is confusing if they have to self insure. If the one cent cannot go towards their own self insurance fund, where will the money come from for the tribe to self insure? **Mr. Hensley** stated one of the benefits in negotiating with each tribe separately, is that they understand their own business and policies. The Governor wanted to achieve tax parity, but also that the money was focused pursuant to the terms of the agreement.

Senator Kelly asked **Mr. Hensley** to talk about the effective date of the agreement and the resolution. **Mr. Hensley** answered **H249** clarifies the effective date in *Idaho Code Section 67-4002*. The agreements are effective upon ratification by concurrent resolution. **Mr. Hensley** said the concern is how do you reconcile the language of **H249** with the language of 67-4002. The definition of ratify includes the notion of acceptance retroactively. For all intent and purposes **H249** upholds any potential liability upon the signing of the agreement. The Concurrent Resolution simply recognizes the intent of the language in **H249** that the liabilities are to the date of December 1, or upon signing of the agreement. The expectation of the parties is that these are great agreements and it resolves a long standing issue that is fair and equitable.

Senator Davis said the code sections do not seem as congruent. The Attorney General's office opined that this would require a Concurrent Resolution and the intent is to ratify as of the date of signing. **Senator Kelly** said she has no issue with the effective date. She just wants to fully understand the intent of **SCR125** in ratifying the agreements. **Senator Davis** said that is the target.

MOTION:

Senator Davis moved to send **SCR125** to the floor with a **do pass** recommendation. **Senator Jorgenson** seconded the motion. The motion

carried by **voice vote**. **Chairman McKenzie** thanked the representatives of the tribes for being here today.

ADJOURN: There was no other business before the committee. **Chairman McKenzie** adjourned the meeting at 9:23 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 8, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Senators Darrington, Geddes, Stegner, Little, Stennett, and Kelly

MEMBERS ABSENT/ EXCUSED: Vice Chairman Jorgenson and Senator Davis

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session, and will then be located on file with the minutes in the Legislative Services Library.

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

RS17758 **Senator Werk** presented **RS17758** to the committee. **Senator Werk** stated the purpose of this legislation is to assist school districts to build better, more energy efficient buildings and to save the state General Funds. When the state took over the responsibility for maintenance and operations levy, energy costs were picked up as well. The state now has a compelling interest to ensure that school districts build better, energy efficient buildings, because they are footing the bill for energy costs. This bill will leave school districts in control of all decisions regarding the construction, scope and budget. It will require the use of integrated design and construction of new school buildings for bonds passed after January 1, 2009. Additionally it will place oversight and technical assistance responsibilities with the Division of Building Safety, and it will require the Division of Building and Safety to promulgate rules, clarifying how to comply with the integrated design and fundamental commissioning requirements. It funds the costs of fundamental commissioning through the existing bond levy equalization program, and lastly, it provides an enforcement mechanism that allows the state to recoup payments for fundamental commissioning, when a school district does not complete fundamental commissioning.

Senator Werk said this legislation will not mandate any energy efficiency standard on the school districts or the state. There is no requirement for any school district to yield control of the building project and it will not delay the opening of a new public school. Finally, it will not add additional costs for the school districts or their patrons. School districts are in the business of educating children and building a school is a once in a generation activity. In many instances, school districts are just not good at building schools. The fundamental commissioning costs will add approximately 0.85% to the total project cost of building, which will be

funded through the bond levy equalization program. There is an enforcement mechanism since the state will be contributing, so if the school district does not complete fundamental commissioning the money will be withdrawn.

Senator Geddes stated at one point in time legislation was passed or was contemplated that would provide some construction, design and plans for school districts. He asked **Senator Werk** if this will duplicate that? **Senator Werk** answered his impression is that there isn't a provision in law, but there are standard sets of plans available for building and safety that some school districts take advantage of. The plans are good, and if used in the proper setting they can result in significant savings. This legislation will not preclude that cost ability.

MOTION: **Senator Little** moved to print **RS17758**. **Senator Stegner** seconded the motion. The motion to print **RS17758** carried by **voice vote**.

RS17809 **Senator Heinrich** addressed the committee regarding **RS17809**. **Senator Heinrich** said for years the state of Idaho has funded economic development programs throughout the state. The main purpose of this legislation is to encourage tourism and economic development in Idaho's smaller communities. The cities with a population of fifteen hundred or less, will be issued a non-transferable liquor license, in exchange for a five million dollar or greater taxable investment, in newly constructed lodging and hospitality facilities. **Senator Heinrich** stated there is a development in the City of Cascade that meets this requirement, which is the Ashley Inn.

Senator Stegner asked **Senator Heinrich** if this is expanding the law or just changing the requirements to make it useable for this particular issue? **Senator Heinrich** replied that is correct, and this is further restricting the law by reducing the population to fifteen hundred.

MOTION: **Senator Stegner** made the motion to print **RS17809** and **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

RS17766 **Roger Batt**, representing the Idaho Grape Growers & Wine Commission presented **RS17766** to the committee. **Mr. Batt** said this will amend *Idaho Code Section 23-1325*. Under the current liquor code, restaurants are allowed to sell beer, wine and liquor. Under the wine act there is no language to provide for wineries to sell liquor, beer and wine that are manufactured within that winery. As a growing industry, many wineries wish to get into the restaurant business. This language will make it clear that the winery can sell wine, beer and liquor like any other restaurant, and make the language in the liquor code and the wine act consistent.

MOTION: **Senator Little** made the motion to print **RS17766**. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

RS17777 **Mr. Batt** continued with **RS17777** and stated there is only one change to the code. The Legislative Services Office suggested that the definitions be in alphabetical order. For example, dessert wines and table wines on lines 10 through 19, were in the same definition. They are now separated and everything else follows. The only real change is on page 2, lines 47

and 48. There is nothing in Idaho Code that states that two or more wineries can share premises and equipment to manufacture their respective wines. Federal regulation allow for this as well as other states.

Senator Kelly asked if the emergency clause was for a different situation? **Mr. Batt** responded yes, that there is an emergency clause and the wineries would like this to be effective immediately. **Senator Kelly** asked if there is an immediate situation that is being addressed? **Mr. Batt** answered that the situation is Alcohol Beverage Control (ABC). Currently, to be in compliance, co-operators that share the premises and equipment of a winery have to basically draw a line down the center, and not cross over to use equipment that they might otherwise share.

Senator Little asked if this is currently happening now with a can of white paint? **Mr. Batt** answered that is correct.

MOTION: **Senator Stennett** made the motion to print **RS17777** and **Senator Little** seconded the motion. The motion carried by **voice vote**.

MINUTES: **Senator Darrington** made a motion to approve the minutes of January 28. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Chairman McKenzie** said the confirmation vote of **Mike Gwartney** is before the committee.

MOTION: **Senator Geddes** made the motion to support the appointment of **Mike Gwartney** as Director of the Department of Administration. **Senator Stegner** seconded the motion. The motion carried by **voice vote**. **Senator Kelly** objected to the confirmation.

MINUTES: **Chairman McKenzie** said the minutes of January 30 are before the committee. **Senator Little** asked the committee secretary if the changes he suggested were made to the minutes. **Deborah Riddle** advised the committee that they were, and that the minutes in their folders reflected those changes.

MOTION: **Senator Little** made the motion to approve the minutes of January 30. **Senator Stegner** seconded the motion and the motion carried by **voice vote**.

ADJOURN: There was no other business before the committee. **Chairman McKenzie** adjourned the meeting at 8:27 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 11, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, and Kelly

MEMBERS ABSENT/ EXCUSED: Senator Stennett

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENE: **Chairman McKenzie** called the meeting to order at 8:01 a.m.

RS17823C1 **Senator Shirley McKague** presented **RS17823C1** to the committee. **Senator McKague** said this is a Joint Memorial addressing the issue of illegal immigration. She asked the committee to support this and debate it at a later time.

Chairman McKenzie asked **Senator McKague** to explain what this will do and what are we urging Congress to do? **Senator McKague** said our U.S. Constitution guarantees that federal government shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive against domestic violence. That is not happening because of illegal immigration. This will urge the President and Congress to support and defend the Constitution of the U.S., by passing necessary legislation to resolve the illegal immigration crisis.

MOTION: **Senator Jorgenson** moved to print **RS17823C1**. **Senator Stegner** said under the motion he believed it should be printed and sent to the floor. He asked if the mover's intent is for the Memorial to return to committee for hearing? Or is his intent to print and send it to the floor? **Senator Jorgenson** replied to print and return to the committee for hearing. **Senator Stegner** seconded the motion and it carried by **voice vote**.

HCR36 **Representative Trail** addressed the committee regarding **HCR36**. This Concurrent Resolution will congratulate the University of Idaho and all of those individuals who have worked to make the Lionel Hampton Jazz Festival a success. The culmination of this success has been recognized by the 2007 National Medal of Arts Award presented by President Bush to President Tim White in the Rose Garden in Washington in D.C. in September. The University of Idaho (U of I) is the only public institution to

have received this award in the past several years. It has been said the National Medal of Arts Award is akin to the Nobel Peace Prize in terms of significance.

Representative Trail said Governor Butch Otter responded to the presentation by stating the priceless legacy of music and learning embodied in the Lionel Hampton International Jazz Festival is a treasure not just for the U of I, but for our entire state and indeed for all lovers of the arts everywhere. Recognition and acclaim that come with the National Medal of the Arts is well earned, greatly deserved and a reason for all Idahoans to celebrate. The jazz festival is more than a showcase for the most accomplished musicians. The Lionel Hampton Jazz Festival celebrates four days of music with events that not only include the evening concerts, but also the young artists concert, the jazz in the school program and artist workshops for students and jazz lovers. Representative Trail stated this event is about two weeks away so the timing for this is on schedule.

MOTION: **Senator Darrington** made the motion to send **HCR36** to the floor with a do pass recommendation. **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.

S1382 **Scott Turlington** from Tamarack Resort presented **S1382** and said that he has provided the committee with photos of the resort, and an economic and fiscal analysis. **Mr. Turlington** stated the analysis was done earlier this year to give them an idea as to what is happening at the resort. The master plan includes hotels, retail, commercial and residential lodging. There are existing buildings, some are under construction and there is future development. The Village Plaza is scheduled to open in summer 2008 with a mix of nineteen boutique shops, restaurants and different service type facilities. On the upper level there are one hundred twenty nine condominiums which have all been pre-sold. In large part this helped to fund the development of Village Plaza. **Mr. Turlington** said upon completion the next phase of the village, Trillium Plaza, will begin. Trillium Plaza will be smaller and they anticipate it to be around a two and half year project. After that they will move into the Main Plaza, so there is approximately four to five more years of construction remaining at the resort.

The economic and fiscal impact analysis was commissioned to get an idea what the impact would be to the local community, the region and the state of Idaho. Resort operations and construction are two distinct segments of the economic indicators for the county and the state. The resort operations speaks to the areas of recreation, food and beverage, and lodging. Construction speaks to the development of the resort. **Mr. Turlington** said he would like to address the four main areas of the study and the conclusions, which are 1) salary and wages, 2) employment and jobs, 3) tax revenue generated by the resort, and 4) Valley County contributions. This study examined the first three years of operations, 2004 through 2006. In those three years, Tamarack Resort has had an impact of one hundred fifty seven million dollars in wages and salaries. That is broken down as follows: The total wage increase is eighty seven million dollars, half of that amount went to resort employees and the other

half to contractors and the construction crew.

The employment in Valley County has the fastest growing rate in the state. In 2006, an increase of almost 18% accounts for the employment at the resort. During that period Valley County posted a total employment gains of 13.6%, and 10.5% in 2005 and 2006 respectively. The resort itself created nine hundred sixteen jobs in operations and construction in 2006. There was an additional fifteen hundred jobs created as spin off jobs. A good portion of those came from service industries which follow resort development.

Senator Jorgenson asked Mr. **Turlington** to talk about the jobs, what the average income is, are they seasonal jobs, and do they include benefits? **Mr. Turlington** answered the average salary for a Tamarack Resort employee is about \$43,000 per year, which is significantly higher than the local job in Valley County. This includes benefits and is for a full time employee. Eighty five percent of the employees are year-round and the other fifteen percent are part time, during the peak seasons, such as lift operators. A lot of the part time jobs are filled through the J-1 Visa Program. All jobs include benefits even for the part time positions. Benefits for full time positions include health, dental and life insurance.

Senator Jorgenson asked **Mr. Turlington** if it is necessary to use the J-1 Visa Program? **Mr. Turlington** said there is a necessary component to that. It is a national program, and resorts across the country utilize it. They use the local market for part time positions first, before the resort goes to J-1. J-1 must be applied for one year prior and there are only a certain number of allocated positions that are allowed. **Senator Jorgenson** asked what is the advantage of using a J-1 Visa? **Mr. Turlington** said the main advantage is instant employment. Most of the J-1 employees are students from foreign countries, such as Brazil, Peru and Australia, who have the winter or summer off. They earn respectable wages around twelve dollars per hour. A lift operator will earn eighteen to twenty dollars per hour. **Senator Jorgenson** asked if housing and meals were included and is there a fee for that? **Mr. Turlington** responded there is on-site housing for employees, not just for the J-1 Visa. They do pay for that at a reduced cost and the resort offers a discount for meals to all employees.

Mr. Turlington stated the total employment since Tamarack Resort's emergence in Valley County is about twelve hundred eighty four jobs. Most of them are resort positions. Seven years prior to that, Valley County had only nineteen jobs and actually lost one hundred jobs. Boise Cascade created a significant job loss and the resort spoke to that. The tax revenues generated by the resort from 2004 through 2006 total about twenty million dollars, which comes from personal income tax, general sales tax, construction, corporate income tax, motor fuel taxes, licenses, fees and any other levy or tax that the state of Idaho imposed on businesses. This amount will increase given the construction that is on-going.

Over the last three years, Tamarack Resort has generated just under one million dollars in property tax to Valley County from the property that the

resort owns and the property owned by the homeowners. That should increase dramatically as there is over two hundred million dollars in assessed value from the Planned Unit Development (PUD). The build out of the resort is anticipated to be completed in 2012 to 2013, so it is hard to predict what the revenue will be. They estimate about eight hundred million dollars in assessed value to the commercial components, which will generate roughly forty percent of today's property taxes in Valley County.

Mr. Turlington said **S1382** is an amendment to existing statute and the need for additional liquor licenses to be available to third party lessees. The resort itself builds their own amenities but they also sell and lease hotel pads, restaurants, and other amenities. Under the current statute of ABC code those third parties do not have the ability to obtain a liquor license. The exemption was originally created for year-round resorts. In 2006 the legislature allocated three licenses, they have been allocated and now the resort is requesting an increase under *Idaho Code 23-957*. ABC cannot endorse the bill, but they have indicated that the bill is acceptable. An annual renewal fee has been created for each license, which will generate about forty two thousand dollars a year. If an enforcement position is created by ABC the renewal fees would fund that. The one time fee of \$25,000 goes directly into the general fund not to ABC. The resort has an immediate need for the additional licenses in order to continue the development and lease negotiations of the pads to the third parties they are working with.

MOTION:

Senator Stegner made the motion to send **S1382** to the floor with a **do pass** recommendation. **Senator Jorgenson** seconded the motion. **Senator Little** asked **Mr. Turlington** if the one time fee would go to the general fund, and the renewal fees to ABC? **Mr. Turlington** responded that is his understanding. **Senator Little** said he was looking for that part of the code in the bill. **Chairman McKenzie** said he had some concerns with the bill two years ago, due to the nature and the way the licenses are issued. This is a good bill and he will support it here and on the floor. He has served on the ad hoc committee of the ABC that the Governor put together. The committee is trying to come up with something for the local communities to have some control over this, to allow for economic development in their community. This bill helps us move in that direction so businesses like Tamarack Resort will not have to return for exemptions or exceptions that the legislature imposes. The motion carried by **voice vote**.

ADJOURN:

There was no other business before the committee. **Chairman McKenzie** adjourned the meeting at 8:33 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 13, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, Kelly

MEMBERS ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

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

GUBERNATORIAL APPOINTMENT: **Chairman McKenzie** welcomed **Kim Wherry Toryanski** to the committee. **Ms. Toryanski** spoke to the committee regarding her appointment as Administrator to the Idaho Commission on Aging. **Ms. Toryanski** stated she has spent nearly half of her legal practice over the past twenty years pursuing the rights of vulnerable people in this community. Her experiences in government and the private sector have provided understanding and insight to take on her new role. Her law firm pursued the rights of older Idaho citizens in the workplace and individuals with disabilities. Additionally, as a state and federal prosecutor she is familiar with the practices and procedures related to abuse and neglect, as it relates to health care fraud.

Ms. Toryanski said that it is estimated that the population of Idaho's seniors, over the age of sixty is 234,500. That number will continue to grow from the migration from other states along with the existing population. The state will continue to see an aging but healthier workforce. Some have already been confronted by unforeseen events, such as the need to raise their grandchildren. National statistics estimate that to be about 2.4 million, and 55.6% of them continue to be employed full time. In Idaho, it is estimated that eight thousand grandparents are raising their grandchildren. Eighty to ninety percent of those situations are linked to drugs. The Commission on Aging through their partnership with the Department of Health and Welfare and the Office of Drug Policy are addressing this issue.

Senator Darrington asked **Ms. Toryanski** what are the greatest challenges that she faces at the Commission? **Ms. Toryanski** responded there is a need for adult protection. The Commission is working with law enforcement and investigators when an adult protection case is turned

over to them. There is a correlation between the meth problem and other substance abuse among elders as well.

Senator Geddes said this is an incredibly good appointment by the Governor and he is very impressed with **Ms. Toryanski**. **Senator Geddes** asked **Ms. Toryanski** how will the Commission address the issue of transportation in the rural communities of our state? **Ms. Toryanski** said the Commission is working with the Department of Transportation and other agencies to address that very issue.

Senator Kelly asked **Ms. Toryanski** to talk about the budget and if there is money to implement the responsibilities she has been given? **Ms. Toryanski** stated almost sixty percent of the funds come from the federal government, and the balance is from the general fund. There is a shift in how the appropriation is received from the federal government. The Commission is strengthening their information gathering process by switching to a web based system for more reliable, up to date data to quantify their numbers. Re-balancing is taking place on the federal side and the Commission is working with Health and Welfare to ensure the most efficient profit.

Chairman McKenzie thanked **Ms. Toryanski** and advised her that the committee would vote on her appointment at the next meeting.

A copy of **Ms. Toryanski's** presentation is attached to the original minutes on file in the committee office.

RS17892

Senator Broadsword presented **RS17892** to the committee and stated this Concurrent Resolution would designate one week per year as Farm City Week. Idaho's rural areas are relying increasingly more on micro processors and advanced information technology to accomplish what they do. The week would allow the citizens to understand how they are both interconnected. There has been a National Farm City Program for over 54 years and many cities from the state of Idaho have participated, but the state itself has never recognized Farm City Week.

Chairman McKenzie stated there is no fiscal impact so will this exist within the existing duties. **Senator Broadsword** answered the Idaho Department of Agriculture has existing staff to serve as Idaho's Farm City coordinator. Donations from private entities along with ongoing promotional outreach functions with the Idaho Department of Commerce, should be sufficient to serve as the catalyst for a successful program. The majority is underwritten by private donations.

MOTION:

Senator Jorgenson made the motion to print **RS17892** and go to the floor with a **do pass** recommendation. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

S1381

Chairman McKenzie said **Brian Judy**, from the National Rifle Association (NRA) is here today, but the intent is to ask for a motion to send S1381 to the amending order. In the amending order the language referring to "constitutional corporations" and section 5 are to be deleted. The bill does a number of things and one would include state universities

and schools within state preemption on the firearm concealed carry. Principle and political compromise are part of this process and sometimes they collide. In this situation **Chairman McKenzie** stated that he prefers to get some of the good things this bill will do, rather than address that particular issue which may over time and education be addressed.

Senator Little asked **Chairman McKenzie** what changes are you specifically referring to? **Chairman McKenzie** answered the reference to “constitutional corporations” on page 1, line 23 and page 2, section 5. **Senator Little** asked if section 5 would be deleted entirely? **Chairman McKenzie** replied yes and based on the opinion you provided from the Attorney General, some language may also be tweaked, but not in a substantive way.

Senator Davis asked **Chairman McKenzie** what the anticipated effect will be by deleting “constitutional corporations”? **Chairman McKenzie** replied it would not apply to the Board of Regents so as to encompass the universities. **Senator Little** said the Board of Regents only administer to the University of Idaho. The State Board administers everyone else. **Senator Davis** said on line 23, the word “board” would apply to the State Board of Education. **Chairman McKenzie** stated the net result of the changes is to not apply to either, and additional language changes may be needed, but that is the general intent.

Mr. Judy presented **S1381** to the committee for consideration. **Mr. Judy** said the current state preemption law only narrowly restricts local governments ability to impose three types of restrictions on firearms, the ownership, possession and transportation. **S1381** would strengthen and broaden the current preemption law by adding sale, acquisition, transfer, carrying or storage of firearms to the list of restrictions. It would also prevent back door controls by preempting restrictions on ammunition and firearm components. The existing preemption law only deals with cities and counties in two different parts of the code. This will consolidate the preemption statute and expand it beyond cities and counties to other local entities. **Mr. Judy** said there was an issue raised at the print hearing and he has some examples. In Latah County the library district prohibits the possession of a weapon on library property. At the state level, State Department of Parks and Recreation has a policy that requires any firearm brought into the Department of Lands to be unloaded at all times. This restricts possession of firearms to law abiding citizens who have been issued a concealed weapon permit. In Ada County code there is a restriction on the fairgrounds. Canyon County code restricts all firearms brought into a county park must be unloaded unless you are hunting. Again, this impacts concealed weapon permit holders. These are a few examples, but there are multiple local entities that impose restrictions on firearm owners. This would do away with the restrictions and make the law uniform throughout the state.

The NRA believes it is good to have standardized firearm laws and policies throughout the state, and this will null and void any local ordinances or governmental body policies that are more or less restrictive. In no way will it lessen the current state laws. Existing restrictions in

courthouses, schools, jails or law enforcement facilities will remain intact. The intent of this bill is not about higher education, but to strengthen and broaden on a much larger level the preemption statute. Under existing law there is a constitutional conflict between the right to keep and bear arms and the constitutional provision for the educational system. **Mr. Judy** stated in Article 1, section 11 it specifically provides for the right to keep and bear arms. Article 9, section 10 of state constitution deals with the powers of the University of Idaho and higher education. The Attorney General has opined that there is an existing conflict and whether or not the state can tell these institutions what they can or can't do. This will not have an impact on the universities and colleges. They have restrictions now and they will continue regardless of what this bill does.

Senator Kelly asked **Mr. Judy** how will this affect citizens who have a weapon and openly carry it? **Mr. Judy** answered the state has laws and policy that will dictate that. This is to provide for uniformity across the state. Under existing law there is no prohibition on open carry. **Senator Kelly** asked if a citizen has a permit, can they carry a weapon? **Mr. Judy** replied that his understanding is that it depends on the state statute, and it does not provide for open carry.

Senator Davis said on line 20 it states it is the Legislatures intent to wholly occupy the firearm regulation within the state. Is it the Legislature's right to wholly occupy the field, or is it the state's intent to wholly occupy the field. **Senator Davis** stated he would love the expansion of legislative power, but he is not sure the gentleman on the second floor would agree. **Chairman McKenzie** said that is a valid observation.

Senator Kelly asked what about the federal regulations, would they apply? **Chairman McKenzie** responded on federal property, federal regulations would apply. **Mr. Judy** responded there is an entire body of federal laws that deal with firearms and this will in no way impact that. Anything the state legislature will do with regard to firearms will obviously have to go to the Governor for consideration. **Mr. Judy** said it is important that the legislature be the entity that wholly occupies the body of firearms laws. There are state agencies that have policies that conflict with rights of law abiding firearm owners. **Senator Kelly** stated on page 1, line 26 and 27, the language seems broad regarding any element relating to firearms. What is the intent, and why doesn't it just state ammunition? **Mr. Judy** replied the intent is to broaden firearms, parts and ammunition and be combined together.

TESTIMONY:

Captain Pete Ritter, representing the Boise Police Department testified in opposition to **S1381**. **Captain Ritter** said they have concerns. This bill would make enforcing campus rules more confusing if university officials are prohibited from making any rules modifying the ability to carry concealed weapons on campus. If that portion of the bill is being stricken they reserve the right to comment at a later time. That was the Department's main opposition.

Nathan Barry testified in support of **S1381**. **Mr. Barry** said gun control

laws do not control crime. Criminals will always have guns because they do not obey the law, including anti gun laws. The right to bear arms was added to the Bill of Rights not only to prevent crime, but also to prevent oppressive government.

Doug Schoenborn, from the Boise Police Department, stated based on the anticipated amendment to the bill, he would withdraw his comments at this time.

Matthew Pond, a student, testified in support of the bill. **Mr. Pond** said he is a gun owner. Giving students and law abiding citizens the right to keep and bear arms for the safety of themselves and others is a vital part of society. At Virginia Tech last year, the shooter managed to kill thirty two people with a 22 caliber and a 9mm handgun before law enforcement arrived. Virginia Tech was a gun free campus, and as such not one student was able to defend themselves or others. In 2002 at the Appalachian Law School, a disgruntled student was quickly subdued and shot by students who had concealed weapon permits. Three people were killed at this incident. **Mr. Pond** stated he believes this bill will better define Idaho state preemption codes.

James Fox addressed the committee and stated that he represents the Associated Students of the University of Idaho. **Mr. Fox** said they are opposed to this and strongly support **Chairman McKenzie's** intent to amend the bill.

Bryan Fischer, Executive Director of Idaho Values Alliance, stated they support **S1381**. Uniform laws in this regard would benefit the safety of Idaho families and the ability to protect themselves.

Marty Peterson, representing the University of Idaho, expressed his appreciation to **Chairman McKenzie** for the need to address higher education in the bill.

Sharon Kiefer, the Intergovernmental Policy Coordinator for Idaho Department of Fish & Game stated the Department has not taken a position on the bill at this time. **Ms. Kiefer** said she is seeking clarification about the working parts of the bill and the potential consequences of this bill on the Commission's ability to conduct rulemaking, to regulate lawful hunting. The Commission regulates hunting and the use of certain firearms and ammunition as "methods of take" based on Idaho Code. The interpretation of the prohibition against agency regulation is a new section of code that the Department has concerns with.

Aled Baker testified in support of **S1381**. **Mr. Baker** said he is a student at the University of Idaho in Moscow and he serves as the Northwest Regional Director for Students for Concealed Carry on Campus (SCCC). Nationally they have 11,000 members who are dedicated to bringing awareness, and the issue of security at public universities and colleges across the country. This bill will affect current university policies with regard to firearms on campus. The bill as written will take important steps to clarify who may lawfully regulate firearms and, in doing so, to protect

the rights of citizens from further encroachment. **Mr. Baker** asked the committee to reconsider the proposed amendments and support **S1381**.

Brian Wood stated he is a firearms instructor and that he supports **S1381**. **Mr. Wood** said typically there are only two people in a crime, the criminal and the victim. Most criminals are deterred by the presence of law enforcement, they will either wait or go somewhere else. On college campuses students are basically "sitting ducks". At the Appalachian Law School incident the students were carrying, but it was against school policy. The criminal was stopped by students who were armed. The law does not prohibit a student from carrying, the school policy prohibits it.

Bruce Newcomb stated he is representing Boise State University and there are a few problems with this bill. One is that the National College Athletic Association (NCAA) has a rule that prevents firearms at any playoff event. Any playoff game would be in jeopardy if the bill is passed as it stands.

Senator Geddes asked **Mr. Newcomb** if the NCAA has that rule, what measures do they take to enforce it? **Senator Geddes** said he asks this question because testimony today indicates that there is a likelihood that concealed weapons are being carried at sporting events at BSU. **Mr. Newcomb** responded he can't answer that, but if that is the case they are taking a chance by carrying a firearm illegally. The NCAA has sanctions and they can choose to go elsewhere, if there isn't a policy in place.

Senator Little asked **Ms. Kiefer** if there are restrictions along the Boise River for ammunition, and is this problematic for the areas where hunting is allowed? **Ms. Kiefer** responded if the intent is for only those types of restrictions in statute and not via agency rulemaking, then there will be problems in achieving safety measures. The statutory authority for the Commission is founded in state statute, but the implementation is through rulemaking. **Senator Little** said there is an emergency clause, if this is passed, long range weapons could be used along the river. **Ms. Kiefer** replied if there was a season right now, that would be the effect of this.

Senator Stennett said there is a season this fall and there isn't time for the legislature to develop statutes in order to protect public safety. He asked **Ms. Kiefer** to comment on that. **Ms. Kiefer** responded the Commission would not have raised the issue if they didn't have these concerns. The consequences are unclear and the legislature reviews the rules of the Commission. They have the ability to approve or disapprove them.

Senator Davis asked **Chairman McKenzie** if the issues that Fish & Game presented will also be addressed in the amendment? **Chairman McKenzie** answered lines 20 and 21 raise that issue, the "wholly occupy" language. If that language is removed the state does not preempt the use of a firearm in the pursuit of game. Sale, acquisition, sale, transfer, ownership, possession, transportation or carrying of weapons or parts thereof, will not take away Fish & Game's authority to regulate the type of weapon, caliber, or time of year for hunting.

Senator Kelly commented the Attorney General provided an opinion on shooting ranges, is the intent to amend this as well? **Chairman McKenzie** said that will be easily taken care of without a substantive change. **Senator Kelly** said there are issues with Fish & Game, section 5, and some other minor changes with regard to shooting ranges. **Senator Kelly** stated she is uncomfortable sending this to the amending order as there is a potential for unintended consequences.

Senator Little stated in his area the biggest problem is adequate places for shooting. He asked the Attorney General to look at this because there wasn't a regulation to govern shooting ranges.

Senator Geddes said he shares the same concerns that **Senator Kelly** has. This is an important piece of legislation and we are never certain what will be amended. We have identified today a number of concerns in addition to what **Chairman McKenzie** initially proposed for the amendment. **Senator Geddes** stated there is time in the session to perhaps bring back a new draft and have another hearing to address the concerns that have been identified.

Senator Davis stated he agrees with Senator Geddes, to reprint the RS and address the other issues raised today by Fish & Game.

Chairman McKenzie said he appreciates the discussion we have had. The testimony is important to this bill and will be reflected in the outcome. **Chairman McKenzie** stated as the sponsor of this bill it will be withdrawn with the intent to return with a new RS and incorporate the changes.

ADJOURN:

Chairman McKenzie stated there is no other business today. He adjourned the meeting at 9:18 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

- DATE:** February 15, 2008
- TIME:** 8:00 a.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENE:** **Chairman McKenzie** called the meeting to order at 8:06 a.m. and stated because of the interest in **S1367** testimony will be heard today and next Wednesday, February 20.
- RECOGNITION:** **Chairman McKenzie** said our committee page, **Travis Nicholson**, will be leaving us after today. The committee thanked him for his hard work and dedication and presented him with a senate watch and letter of recommendation.
- GUBERNATORIAL APPOINTMENT:** **Chairman McKenzie** stated the confirmation vote of **Kim Wherry Toryanski** as the Administrator to the Idaho Commission on Aging is before the committee.
- MOTION:** **Senator Little** made the motion to confirm **Ms. Toryanski** and **Senator Jorgenson** seconded the motion. The motion carried by **voice vote**.
- RS17886C1** **Vice Chairman Jorgenson** presented **RS17886C1** to the committee and stated he was here to discuss the issue of float home rental rates. A float home is not a house boat. They are fixed or attached to docks, and have sewer, water and electricity. The Department of Lands determined that float homes can exist on two lakes in the State of Idaho, Pend Oreille and Coeur d'Alene. There are about three hundred float homes in existence and no additional homes are allowed. The problem is with increasing costs to property value that rental rates have accordingly increased. **Vice Chairman Jorgenson** said based on old legislation, marina owners can charge a fair and reasonable rate. This bill is endorsed by land owners and the Department of Lands, and proposes to provide a method of binding arbitration under certain conditions.
- Senator Little** asked **Vice Chairman Jorgenson** if the Land Board endorses this policy? **Vice Chairman Jorgenson** answered yes they do.

Senator Little asked if this is a Land Board policy? **Vice Chairman Jorgenson** responded the Land Board requested that the Department of Lands draft legislation that would remedy this. This legislation has been reviewed by the Department of Lands and various members of the Land Board. **Senator Little** asked who is the recipient of the lowered fees? **Vice Chairman Jorgenson** replied this legislation will not lower fees. It provides for arbitration if there is a dispute when a marina owner raises the rental fees.

MOTION: **Senator Darrington** made the motion to print **RS17886C1**. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

RS17866 **David Fulkerson** from the Division of Financial Management (DFM) stated that the Board of Examiners are seeking to modify *Idaho Code 31-2219*. This code provides for compensation to the state for services by county sheriffs. Currently the claims are submitted on a yearly basis to the Board of Examiners who seek an appropriation to pay the claims. This proposed change would provide for the Board of Examiners to approve the claim and then submit it to the Department of Corrections for payment. **Mr. Fulkerson** said if this proposed legislation is approved, the intent is to work with the Joint Finance Appropriation Committee (JFAC) to add a line item appropriation in the Department of Corrections budget for an estimated amount. This will speed up the process so that claims could be paid within sixty days.

Senator Davis asked **Mr. Fulkerson** if this will be a continuous appropriation? **Mr. Fulkerson** responded the intent is that the appropriation would be made every year by JFAC for an estimated amount in advance for the claims to be submitted. It would be reviewed every year by JFAC. **Senator Davis** stated he does not see the language quite that way.

MOTION: **Senator Davis** made the motion to print **RS17866**. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

H354 **Ted Roper**, Manager of the Industrial Special Indemnity Fund (ISIF) addressed the committee regarding **H354**. **Mr. Roper** stated that ISIF is part of the Worker's Compensation system and commonly known as the second injury fund. The bill will repeal the sunset provision by statute that was enacted in 1998. This provision will allow the second injury fund sixty days time before it has to accept or reject a claim. ISIF deals with a small number of claims but they are complex and voluminous. There is no fiscal impact.

Senator Davis asked **Mr. Roper** procedurally are we amending a session law, and was the sunset provision codified? **Mr. Roper** replied he doesn't know the answer to that.

Senator Little stated he is unsure why there was a sunset provision. He asked **Mr. Roper** if there was some compelling reason for this to go away? **Mr. Roper** answered this should have been re-authorized years ago and made permanent. He does not know the history behind this, but that is what ISIF is requesting now.

MOTION:

Senator Little made the motion to hold **H354**. **Senator Little** said he would like more information to understand what the sunset provision is. **Senator Jorgenson** seconded the motion. **Chairman McKenzie** made a unanimous consent request to hold **H354**.

S1351

Lyn Darrington addressed the committee and stated that she represents the Knitting Factory, the new owner of the Big Easy Concert House. **Morgan Margolis**, the Vice President will speak about the company's business philosophy and how they operate in the communities in which they serve. **Ms. Darrington** said the objective of **S1351** is to provide a definition in Title 23 that offers an appropriate regulatory mechanism for establishments like the Big Easy. **S1351** creates a definition of an "events center", under which venues that hold concerts and other events lease their premises for private functions and offer a full service kitchen. This will provide clear, defined and suitable regulation for their operations.

In 2000 before the Big Easy opened under the previous management, the Alcohol Beverage Control (ABC) suggested they operate their liquor license under the restaurant endorsement. This means a certain percentage of purchases, not sales, must come from food and beverage. This regulation has changed over time, and a percentage of sales and operations have had to change to try to meet the endorsement. There is a hearing pending by ABC to revoke that endorsement, because of a complaint that arose from activity under the previous management. The benefit to creating this regulatory environment will give ABC the most appropriate standards to regulate venues like the Big Easy.

Ms. Darrington stated under the new management of the Big Easy along with the appropriate regulation, everyone will benefit significantly. Issues have been addressed and the safety of patrons and the general public is of the highest priority. Underage drinking, over serving, passing beverages to minors have diminished and management is working with law enforcement to ensure the safety of everyone. **Ms. Darrington** said there are proposed amendments to **S1351**. However, after she met with the Deputy Attorney General for the ISP, it is clear that additional changes are needed to the proposed amendment. Under the new section of code, ABC would still have the authority to grant a liquor license to the Knitting Factory or not.

Senator Davis asked **Ms. Darrington** if there are additional amendments to **S1351** that are not included here? **Ms. Darrington** answered yes, there are some additional needed changes to the proposed amendment.

Vice Chairman Jorgenson asked **Ms. Darrington** if the Knitting Factory is a new entity? **Ms. Darrington** replied the Knitting Factory is the corporation that owns the Big Easy Concert House in Spokane and Boise. **Vice Chairman Jorgenson** asked if there is new ownership of the Big Easy? **Ms. Darrington** said yes.

Senator Stegner said he is curious about the requirement that the revenue is monitored by the Idaho Tax Commission. Before this goes to the amending order he would like some discussion about that and if it is

an appropriate role for the commission to be involved in. **Ms. Darrington** said that is a good point and she will discuss that with the Commission before the final amendments are ready.

Morgan Margolis, the Vice President of the West Coast Knitting Factory Entertainment, the Big Easy Boise and Spokane spoke to the committee. **Mr. Margolis** said the Knitting Factory has been in business since 1987. Their main focus is to bring new and emerging music artists to the community, and develop and bring these artists up to larger stadiums, arenas, and so forth. Knitting Factory Entertainment has taken over one hundred percent ownership of the Big Easy Concert House. They have severed all ties with the previous owners, which is unfortunate. Issues and problems were inherited and their philosophy is to face the issues, deal with the problems, and make things right. **Mr. Margolis** stated he is working with his team to establish new relationships in the community. One of the largest consumers of music is young adults and in order for their business to succeed, they have to cater to young adults as well as adults. It is critical to the success of their business and to all concert venues throughout the country.

The Big Easy is not just a concert house, or a restaurant, they do a vast amount of things. Events such as private receptions, community events, charitable events, parties, corporate and sporting events are all part of what the Big Easy does. **Mr. Margolis** said it is important to note that the Big Easy brings events to Boise year-round, and this venue was one of the anchor tenants in Boise Downtown (BoDo). It helped to bring the other businesses into the community. During the two week renovation of the Big Easy it was closed, and the other local businesses reported a decline in business. The Big Easy is committed to work with the community as well as non-profit and charitable organizations. They are here to do business as usual and not to change the Idaho liquor law and define the code.

Senator Geddes asked **Mr. Margolis** to explain how the Big Easy initially got into the restaurant business and licensed to operate, and would the Big Easy have to reapply for a liquor license? **Mr. Margolis** answered before they took over the Big Easy, it was under the restaurant code and they are operating under that. The restaurant code changed and went to thirty eight percent purchases of food and non-alcoholic beverage. **Mr. Margolis** said he can't speak for the former owners as to why they decided to be licensed under the restaurant code. The concern the Big Easy has now is if the code is changed, that it will have to reapply for a liquor license, and ABC may license it under the same restaurant code.

Vice Chairman Jorgenson said in the past there were concerns that the types of events by the previous owners invited gangs, and there was underage consumption of alcohol. He asked **Mr. Margolis** if steps have been taken to deal with this? **Mr. Margolis** responded he doesn't want to speak about the past as he had to do damage control from the previous owners. Hip hop artists or other artists sometimes have gang affiliation, but they are working with the police community to identify them. Head of security is trained to deal with this and they have added additional

security for patrolling underage drinking. Alcohol being passed to minors is a possibility even at other arenas, like Qwest Arena. But the Big Easy does their best to prohibit it.

Lieutenant Bob Clements, the Bureau Chief of ABC stated that he has reviewed **S1351**, including the revised language to add the definition of an "event center". **Lieutenant Clements** said he has several concerns with this bill and it affects Idaho communities, their local law enforcement, as well as ISP and ABC. *Idaho Code, Section 23-941* restricts children from entering, remaining, or loitering in taverns, bars and cocktail lounges. The proposed definition of an "event center" is contrary to public policy. Currently there are several exceptions: restaurants, catered events, baseball park, sports arena, convention center, multipurpose arena, theater for live performances, wineries, and fairgrounds. This is redundant in light of the several existing exceptions.

Lieutenant Clements stated the proposed definitions are over broad and the definition of an "event center" does not define a "structure" in enough detail. This is an invitation to some of the more adult bars to qualify to be considered an "event center" under this proposed definition. Unlike Taco Bell Arena, Qwest Arena or The Idaho Center, people leave after an event. A bar encourages people to remain and drink. The limit of 15,000 square feet is arbitrary, and this requirement to legitimize one establishment only succeeds at qualifying bars like China Blue and Joe's All American for example. Additionally, under the proposed definition a bar would be able to allow children into their premises by simply obtaining a contract for food catering services.

This proposed legislation deals with premises selling alcohol, and the Legislature has said that children are restricted from entering bars. These types of establishments create an over/under age atmosphere that mixes drinking adults with youth. **Lieutenant Clements** said these types of establishments have created excessive calls for service from local law enforcement agencies. Increased incidents of gang activity, homicides, shootings, stabbing, and underage drinking have been reported. An establishment involving adults and children mixing in a bar atmosphere is a public safety issue and contrary to prior legislative intent in 23-941.

Vice Chairman Jorgenson asked **Lieutenant Clements** if he had an opportunity to work with the new owners in crafting this legislation? **Lieutenant Clements** responded that he did not. He has an open door policy and is willing to meet and get involved.

Senator Davis said that he had heard something different, that you rebuffed meeting with the owners. He asked **Lieutenant Clements** to speak to that. **Lieutenant Clements** answered that he was not contacted to sit down and discuss this. An attempt was made to meet with **Colonel Russell** since we have pending litigation with the Big Easy. **Colonel Russell** is the decision maker in that process as far as appeals or requests for reconsideration. **Senator Davis** said that could be his misunderstanding. **Senator Davis** said if the definition would provide that the sale of liquor would be prohibited thirty minutes before the event's

completion, it would bring it more in line with some of the concepts of current statute. He asked **Lieutenant Clements** if that would alleviate some of his anxiety? **Lieutenant Clements** responded that is one of the concerns with multipurpose arenas, but it is not mandated by statute that they stop selling alcohol before the end of the event. The only requirement is within thirty minutes of bar closing time. **Senator Davis** said if the sponsors picked up the concept contained in subpart 7, would that alleviate additional anxiety? **Lieutenant Clements** replied no because the problem would still exist with minors being in a bar type atmosphere that encourages underage drinking. **Senator Davis** said as he looks at 23-902 and the definition they are a little inconsistent. He has issues with over under ball parks, and dark movie theaters. Is the real problem with this type of venue the degree of the over under problem? **Lieutenant Clements** said yes, an open bar atmosphere is completely different.

Senator Little asked **Lieutenant Clements** what was the status of the liquor license before the sale of the Big Easy took place? **Lieutenant Clements** responded a past violation was settled regarding the sale of alcohol to a minor with a suspension and fine. The revocation of the restaurant endorsement is still at issue. **Senator Little** asked if the proceeding was about the fact that the restaurant wasn't a full blown restaurant? **Lieutenant Clements** answered that is correct and it is still proceeding. **Senator Little** said if they had a restaurant there wouldn't have been grounds for the revocation. **Lieutenant Clements** said that is right.

Senator Darrington asked **Lieutenant Clements** how do you justify going after the new owners for what the former owners did? **Lieutenant Clements** said we are not pursuing the new owners, it is based on the activity of the former owners and the activity that occurred then. We have to satisfy the administrative proceeding before the transfer can be completed. **Senator Darrington** said then the administrative proceeding will involve the former owner and not the Knitting Factory. **Lieutenant Clements** stated there was a partial purchase and it was finalized by the purchase of the remainder more recently. **Senator Darrington** asked if the violation occurred prior to the partial owner exchange, or after? **Lieutenant Clements** said some of it was before and maybe some was after, but he isn't certain. **Senator Darrington** asked if there has been any violations since the new owners took over? **Lieutenant Clements** replied none that he knows of.

Ms. Darrington said she wanted to clarify **Senator Davis'** question as to whether or not she had met with ISP prior to the hearing. Initially they met with the Governor's Office and the task force. At the same time she requested a meeting with ISP and there was some confusion because of the pending administrative hearing. She did meet with the Deputy Attorney General yesterday regarding the proposed language.

Senator Stegner said potential corrections have been identified here today. He would prefer they be worked out with the committee and not in the amending order. He would like to see some discussions with the ISP

for acceptable language.

MOTION:

Senator Stegner made the motion to hold **S1351** in committee until further specific amendment suggestions are provided. **Senator Little** said or a new RS. **Senator Little** seconded the motion. **Chairman McKenzie** said the motion is to hold **S1351** with the intent to have a new RS or the specific language for the amendments, and calendar this for another hearing. **Senator Davis** said he would like to know if the ISP is willing to participate and provide language even though they may still have opposition to the bill. **Lieutenant Clements** responded that he has always been willing to sit down, throw out ideas and maintain the integrity and security of minors being present in the same atmosphere.

Senator Geddes said it appears that **Lieutenant Clements** may be in a difficult position if your director has chosen not to meet with the Knitting Factory. **Senator Geddes** asked **Lieutenant Clements** if it will be difficult for him to meet with them? **Lieutenant Clements** replied the director cannot meet with them because he is involved with the final decision regarding the administrative process. The director doesn't have a problem with the agency meeting with them. **Lieutenant Clements** said that typically he is the one involved in the day to day operations of ABC and he has extensive knowledge of the laws. It would be referred back to him and he would be involved anyway.

Vice Chairman Jorgenson said based on your testimony and history over time I have the impression that any type of operation such as this should not exist. Is that the case? **Lieutenant Clements** responded no that is not the case. The Big Easy is a nice place, but it is a bar atmosphere. Something needs to be done to make it for twenty one years and older, or figure out a way through a legislative change to separate the minors from being in that kind of atmosphere.

Chairman McKenzie said the motion to hold **S1351** is before us. The motion carried to hold **S1351** by **voice vote**.

S1367

Chairman McKenzie said it is his intent to take testimony until 10 a.m. and those who have traveled a distance to be here today will be heard first. General testimony will be limited to three minutes or less.

Senator Corder presented **S1367** to the committee. **Senator Corder** said this issue affects all of us. There are few Idahoans who have experienced the atrocity of war first hand. If they have then most likely they remember it every day. It is a fear that never goes away. The atrocities must be considered by us if we are making the claim of humanity. That is the question with this piece of legislation. The Public Employee Retirement System of Idaho (PERSI) is doing something that we haven't given them any right to do.

Senator Corder referred to Idaho Code Section, Title 68, Chapter 5, which deals with the responsibilities of the trustee. A trustee shall invest and manage trust assets of the prudent investor, by considering the purposes, terms, distribution requirements and other circumstances of the

trust. In satisfying this standard the trustee shall exercise reasonable care, skill, and caution. Among the circumstances shall be general economic conditions, possible effective inflation or deflation, expected tax consequences, the role of each investment etc. That is the job of PERSI and they have done it well. **Senator Corder** stated what the Legislature is asking here is a determination of conscience. This is a rare and unique time and place, and it is the responsibility of the Legislature to take the responsibility of a conscience.

Senator Corder stated The Sudanese Accountability and Divestment Act was enacted by Congress. In part it states that the governments of all other countries should adopt measures similar to those contained in this act to publicize the activities of all persons, that through their financial dealings knowingly or unknowingly enable the government of Sudan, to continue to oppress and commit genocide against people in the Darfur region and other regions of Sudan. **Senator Corder** said we are back to conscience and what we know about it. We can excuse ourselves from things that we don't know about, but nothing about Darfur is silent. There is more than enough evidence for us to take an act and make an act of conscience. The trustees of PERSI should not be the conscience of the PERSI fund. **Senator Corder** said this is a philosophical argument and these atrocities are not acceptable anywhere or at any cost.

John Sullivan, from the Sudan Divestment Task Force addressed the committee and stated this legislation is a win - win situation for all concerned. This legislation does not damage the investment portfolio of PERSI. PERSI members will not experience any diminishment of their retirement income, and this legislation sends a clear message to the Government of Sudan that America and our state retirement institutions will not financially enable genocide.

Mr. Sullivan said the Task Force was organized in November 2006, and the mission is to cut the flow of money from foreign companies enabling the genocide in Darfur. Congress has declared the atrocities in Darfur to be genocide, but little is understood by most Americans. Behind the genocidal campaign is Sudan's President Al Bashir who wants to rid Sudan of tribes because they do not pass the government's threshold of ethnicity and loyalty. Since 2004, 400,000 lives and 2.5 million people have been displaced. **Mr. Sullivan** stated that the genocide in Darfur will continue as long as the Bashir government has the ability to wage it. Approximately two dozen foreign corporations, particularly the oil industry, continue to fund the government of Sudan. Three years ago states began divesting from these foreign companies. Two months ago Congress passed the Sudan Accountability and Divestment Act which authorizes all the states to divest.

This legislation proposes to dissociate Idaho and PERSI from indirectly financing genocide through the high offending companies that support the Sudan government. **S1367** was modeled after the legislation enacted by 15 other states, and despite its track record, it has been met with opposition. **Mr. Sullivan** stated arguments opposing the legislation are 1) the slippery slope, 2) divestment is only symbolic and ineffective and 3)

70% of every oil dollar received by the government of Sudan goes to support its military operations, including the arming and supplying of the janjaweed militia. **Mr. Sullivan** said what the Bashir government is relying upon is indifference of a world too preoccupied with profit making, to concern itself with a conflict thousands of miles away. Economic pressure must be applied to the Sudanese government by squeezing off the capital flow from retirement funds with large sums available for investment, which are indirectly financing the genocide.

Mr. Sullivan stated turning a blind eye to a slaughter that is being funded indirectly by PERSI investments assaults our conscience, it erodes our basic values, and it stains our souls. This is an important decision to make. Idaho needs to lift its voice and join in unison with the rest of the country, and say to the government of Sudan that we will not finance this genocide.

Mr. Sullivan introduced **Dan Millenson**, who is one of the co-founders of the Sudan Divestment Task Force and its National Advocacy Director. The Task Force is responsible for drafting the model legislation, and instrumental in the drafting of the Sudan Accountability and Divestment Act. **Senator Davis** said we have limited time remaining and he would like to hear from those who have traveled and cannot be here next Wednesday. **Chairman McKenzie** stated he would have **Mr. Millenson** testify and continue with the others.

TESTIMONY:

Mr. Millenson addressed the committee and stated his organization has worked in a number of states on divestment issues. Of the twenty two states that have divested, fifteen have used the targeted divestment model. This is the only time in history that the federal government has authorized and encouraged states to divest. The approach they have taken is to be effective and not harm pension fund returns. Divestment is inappropriate 99% of the time because it usually doesn't work. One reason it does work in Sudan is because it is combined with engagement.

Senator Davis said you are very familiar with the language. Genocide is something that should be given more than casual consideration. **Senator Davis** said he wants to be sure that this legislation is specifically targeted, that it exclusively picks up this problem, and that there isn't an unintended consequence. He asked **Mr. Millenson** to speak to that. **Mr. Millenson** said this legislation is customized to the nature of the Sudanese economy. In some states the slippery slope argument has been a concern, so they included language to establish the high threshold for divestment.

Senator Stegner asked **Mr. Millenson** he has been traveling? **Mr. Millenson** said he had a hearing in Atlanta on Wednesday, he was in New Hampshire yesterday, and he lives in Boston. **Senator Stegner** asked **Mr. Millenson** if he is a student. **Mr. Millenson** answered yes.

Vice Chairman Jorgenson said unfortunately in history we have experienced situations like this before. If PERSI were to divest what would you recommend if new companies were to do business with the

Sudan government? **Mr. Millenson** replied many of these companies are not going to leave. Divestment can and will put pressure on them to change problematic operations, which means not facilitating weapons transfer, not refueling military aircraft, not providing subsidized loans to the government, and not protecting the Sudanese government at the United Nations. The Task Force believes this will be an effective response. It is a unique combination of factors apart from the federal authorization, and this is being underwritten and financed by companies that can be influenced. **Vice Chairman Jorgenson** said he applauds **Mr. Millenson's** conviction and effort, and he encouraged him to continue with what he is doing. When sanctions were placed on South Africa it ultimately affected the people negatively, it was intended to help them, that is a concern. **Mr. Millenson** said South Africa is one of the reasons the Task Force created targeted divestment. There was a blanket divestment in South Africa. Most of the companies were employing the South Africans that they were trying to help. Targeted divestment means going after the companies that are aiding the government but not helping the civilians outside of government. For example, agricultural companies, medical companies or humanitarian services would be exempt from this legislation. **Vice Chairman Jorgenson** said then you are not talking about blanket divestment from PERSI. **Mr. Millenson** replied we are not targeting firms that are helping the people of Sudan.

Senator Little said there are 22 states that have divested, 15 have this program, what are the other 7 states doing? **Mr. Millenson** said a few are using the list, but have not completely adopted the entire model. Some states adopted a blanket divestment which is problematic.

Mark Van Skyver testified in support of **S1367**. **Mr. Van Skyver** said his daughter recently returned from South Africa as a counselor in displacement camps on the Sudanese border. Personally, he is involved. He is a member of PERSI and he testified before the board and urged them to divest. The response has been there is no fiscal rationale for divestment. In short, making money is more important than saving lives. PERSI fails to see that they can accomplish both.

Dwight Scarborough said he is here representing himself and Veterans for Peace, Chapter 117 here in Idaho. **Mr. Scarborough** stated they are in favor of **S1367** because it provides an opportunity to do the right thing. With **S1367** the state of Idaho and PERSI have an opportunity to be in line with federal government.

Nita Sherrill, a retired teacher and a member of PERSI testified in support of **S1367**. **Ms. Sherrill** stated she would gladly give up \$8.94 a month to save any life of a child in Darfur.

Tony Napier a student representing Northwest Nazarene University read a resolution passed by the students. This resolution urged the Legislature to divest all funds from PERSI in an effort to publicize the activities of all persons that, through their financial investments enable the Sudanese government to commit genocide against the people of Darfur. **Mr. Napier** asked the legislature to pass **S1367**.

ADJOURN:

Chairman McKenzie stated we have heard testimony from those who have traveled a distance to be here today. The committee needs to adjourn and the committee will hear additional testimony on this issue on Wednesday, February 20. **Chairman McKenzie** adjourned the meeting at 10:02 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 18, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly

MEMBERS ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

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

RS17944 **Chairman McKenzie** said **Senator Corder** cannot be here this morning, so **Senator Geddes** will present the Proclamation. **Senator Geddes** stated this Proclamation is merely to commemorate the 100th anniversary of the founding of the Army Reserve.

MOTION: **Senator Stennett** made the motion to print **RS17944** and **Senator Davis** seconded the motion. The motion carried by **voice vote**.

H351 **Representative Wendy Jaquet** presented **H351**. **Representative Jaquet** said **Speaker Denney** is the co-sponsor. This bill provides for a contribution to the election campaign fund by designating one dollar on your income tax return. The funds are disbursed by the Secretary of State in August every two years. This bill will disburse the funds annually.

Chairman McKenzie asked **Representative Jaquet** how much goes into the fund? **Representative Jaquet** answered right now the Democrats are ahead of the Republicans with \$19,376, and the Republicans have \$17,087. The funds fluctuate all the time and should be dispersed annually instead of every two years.

Senator Little asked if we could amend this to put the Republican party above the Democratic party? **Representative Jaquet** replied it is in alphabetical order.

MOTION: **Senator Little** made the motion to send **H351** to the floor with a **do pass**. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

RS17850 **Jeff Youtz**, from the Legislative Services Office presented **RS17850**. **Mr. Youtz** said this proposes to make a small change in the administrative

rules process. Currently, Legislative Services Office (LSO) and the Administrative Rules Office (ARO) receive the same copy. LSO sends it out to the various committees for review. In that process the ARO often make typographical or clerical changes before it is posted in the Administrative Rules Bulletin. The bill provides for one clean version to be delivered to LSO after ARO has made the changes, and everyone can review the same language.

Senator Davis said the Statement of Purpose needs to be changed to include the Speaker, Pro Tem, and majority leaders. This is part of the ad hoc committee that was put together by the Legislative Council and one of two proposals that were considered.

MOTION:

Senator Davis moved to print **RS17850**. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

RS17908

Senator Stan Bastian presented **RS17908** to the committee. **Senator Bastian** said this will transfer the responsibility of the integrated property records system, principally the Geographic Information System (GIS) from the Department of Lands (IDL) to the Department of Administration (DOA). The IDL would like to give up the function because each real estate property management system have separate agencies that compile the data. The information on state property will be compiled and accessible. It will have common standards for the data system.

Senator Kelly asked **Senator Bastian** if all the GIS would be under the DOA? **Senator Bastian** replied yes it would. There are two key participants in the DOA, the Department of Public Works and Risk Management, and they would like to include other agencies that hold property in Idaho and have one complete management system.

Senator Stennett asked **Senator Bastian** if Fish & Game would give up their opportunity to manage their property and turn it over to the IDL? **Senator Bastian** responded to the extent that there is information compiled and if it were made available through GIS and integrated property record systems. The actual management of the property and day to day use would remain under the agency.

Senator Little said there is more than one full time employee (FTE) at the DOA. He asked **Senator Bastian** if they were moving one to the DOA. **Senator Bastian** responded that is the request and the funds for that. **Senator Little** asked if any of these services are being done at DOA now? This is not a \$32,000 project, it is a big deal. IDL already has that function, I question IDL giving up their mapping process, unless this is for non-state of Idaho land. **Senator Bastian** answered as he understands this it is for state of Idaho lands. **Senator Little** said he is skeptical that IDL will call DOA for mapping. **Senator Bastian** said the idea is to make the information available on the internet and anyone in Idaho government could access it.

Senator Davis asked **Senator Bastian** who contacted you about the RS? **Senator Bastian** answered **Kevin Iverson** and **Joanna Guilfooy**. **Ms.**

Guilfoy has left DOA and another person has been assigned this task.

MOTION:

Senator Darrington moved to print **RS17908**. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

S1414

Roger Batt presented **S1414**. **Mr. Batt** said he represents Idaho Grape Growers & Wine Commission and the changes needed in this code will make the Wine Act and liquor codes more consistent. Chapter 9 of the liquor code allow a micro-brewery and distillery to sell beer, wine and liquor. Chapter 13 of the Wine Act states that wineries may only sell the wines that they produce. The wineries that wish to get into the restaurant business would like to sell wine, beer and liquor, especially those that are not manufactured in their winery to be competitive. **Mr. Batt** stated the passage of this legislation will not allow the wineries to have a liquor license. Similar legislation was adopted in 1999 with **S1118** which allows for distillery, micro-breweries etc. to sell liquor by the drink. The Commission has met with **Lieutenant Clements** from the Alcohol Beverage Control (ABC) and he is not opposed to this legislation.

Senator Davis stated as he understands this there isn't a problem with an individual in this industry being able to sell wine and have a restaurant. The limitation is being able to sell beer, wine and liquor that is not produced by the winery. He asked **Mr. Batt** if that were correct? **Mr. Batt** answered that is correct. **Senator Davis** asked **Mr. Batt** to explain the 50% language on page 1, line 24. **Mr. Batt** responded the 50% language means if an entity wants to be in the restaurant business, then not more than a 50% gross revenue will be from alcoholic beverages on site. If it is more than that it is considered a bar rather than a restaurant.

Senator Kelly said if the wineries sell different types of alcohol, who will oversee that. **Mr. Batt** responded ABC is the regulatory authority. The wineries will keep track of their sales and receipts.

Melanie Krause from Cinder Winery stated that this bill will allow for a retail and wine license. Both licenses are administered and overseen by ABC. That function will not change, it will just make it possible for a winery to have a retail license and an on site restaurant with a bar menu.

Senator Kelly asked are the fees paid to ABC? **Chairman McKenzie** said if we expand what is permitted, will there be an economic impact to oversee it or additional costs to ABC that needs to be funded? **Chairman McKenzie** asked if someone here knows the answer to that. **Sherise Jones**, the Executive Director of the Wine Commission, said with the approval of this bill the fees are paid to ABC when an entity applies for a liquor license. The wineries need to go through this process and pay the fees. An economic impact would be favorable with this. The Commission is working closely with the Department of Commerce and the Department of Agriculture to encourage culinary tourism. The experience of more than just a winery and wine tasting would include dining, and that is what this clarification is really intended to do.

Senator Davis asked **Mr. Batt** how will this apply to other entities, such as corporations, associations, partnerships, and what does the date July

1, 1975 apply to? **Mr. Batt** responded corporation, association, and partnership language is difficult for him as well. Most of this language was taken from *Idaho Code 23-912*. **Ms. Jones** said when they began to look at the language they wanted to make it as easy as possible, so they didn't include the partnership rules that were in the alcohol bill. **Senator Davis** said prior to the Bardenay Bill, has the ISP had any problems using that language to issue a license to a limited liability company? **Ms. Jones** said she does not know, but both sets of language are convoluted and ABC would like to see this changed. Other parties would like this changed as well because it is confusing. It may also impact the alcohol legislation being looked at by the Governor's Task Force. **Senator Davis** said what I think I'm hearing is this is lousy language, we know it, and we hope to have better language, but not this year. Please pass this bill. **Ms. Jones** responded that is an accurate statement. **Senator Davis** asked **Ms. Jones** what is the July 1, 1975 date and is it needed? **Ms. Jones** said I have no idea. **Senator Davis** said on line 11, sub part 1, it appears that no one can have a financial interest in a licensed retailer's business. He asked what does this language really do? **Ms. Jones** responded as an example, the 8th Street Wine Company has a wine shop and a restaurant. Currently, it is not permitted for the owner to have any ownership in a winery as stated in the Wine Code. This would provide for a retailer to have an interest in a winery and to have ownership in a restaurant as well. The guidelines for a liquor license still would apply.

Mr. Batt stated the intent of the bill is to allow wineries who wish to get in the restaurant business to be competitive in the market place. **Senator Stegner** said you have been told that is what the language will do, but the Legislature is not sure what the language will do. Who wrote this language? **Mr. Batt** responded the original language of the Bardenay Bill is basically what is in this legislation, and **Bill Ringer** restructured it. **Senator Stegner** said he cannot find any justification for the state of Idaho to restrict a vintner from having a financial interest in a licensed retailer business. **Senator Stegner** asked why isn't the Commission asking to change that? That seems a far simpler solution and just clean up the language. **Ms. Jones** said the Governor's Task Force was working on the alcohol language. The wine industry is not represented on the Task Force, however they recognized that there is conflicting language in the Wine Code. The Commission did not want to circumvent what is being done through the Task Force.

Bill Roden, from the Idaho Beer & Wine Distributors Association, stated they do not have a position on **S1414**. **Mr. Roden** said he has read this bill and he told **Mr. Batt** that he doesn't understand it. There are some technical problems with this legislation. **Mr. Roden** stated he is not speaking against the bill and some things may be needed to be considered for amendment. One issue is the enforcement by ABC which was raised by **Senator Kelly**. ABC takes in close to 1.5 million dollars in licensing fees for the purpose of regulating the industry, and to regulate the activities of the licensees. Out of that amount four to five hundred thousand dollars is for the enforcement of regulations. ABC claims all they can do is enforce on the restriction laws, and that they have no man-power or bill ability whatsoever to enforce the other business regulations.

Secondly, **Mr. Roden** said a winery that wants to have a restaurant on their premises wants to be able to promote liquor by the drink, in addition to wine. The Association does not have an objection to that as well as beer. The problem is not to compound what was done in 1999 with what the rules are today. ABC has adopted rules to define a restaurant, and the definition in this bill is not the definition that ABC has adopted. **Mr. Roden** stated he wrote the wine law in 1972. It has been amended many times since then, but essentially it is the same as it was written. The Association wants to promote the Idaho wine industry. This bill opens it up to the Gallos, Mondavis, Italian Swiss Colony to come in and set up their restaurants to sell wine and liquor by the drink. A vintner is not a licensed entity in the state of Idaho, but a business that sells to importers. The importer is the licensed entity to bring wine into the state of Idaho. The prohibition is in that context. The concept to allow wineries to have restaurants and sell liquor, wine and beer by the drink needs to be consistent. Liquor by the drink law, chapter 9, is an important distinction. The Bardenay is a distillery, but they cannot take their products and move it into its retail sales outlet. They can only sell their product to the Idaho State Liquor Dispensary. It is not what is being proposed in this legislation.

Senator Little stated this is different, we don't give anyone a liquor license, it has to be within a quota or they have to purchase an existing one, isn't that right? **Mr. Roden** answered the quota system has about nineteen different exemptions and ABC Task Force is considering one for restaurants. **Senator Little** said if you are just setting up a restaurant will this bill give anyone a liquor license outside of the quota? **Mr. Roden** said that is correct and some wineries have liquor by the drink. **Senator Little** said what about a year-round resort, can they get a liquor license regardless of this bill? Will this proposed bill change that? **Mr. Roden** said no it will not.

Chairman McKenzie said the standard here is 50% from sales other than alcohol beverages for consumption on site. The intent of this bill is different from a restaurant, they will sell wines for consumption off site as well. Customers will eat at the restaurant and then purchase wine for off site consumption. **Mr. Roden** said he still isn't clear about the definition and licensees can do different things to get around rules.

Senator Davis said that is not the most neutral testimony I have ever heard. He asked **Mr. Roden** if he could explain the July 1, 1975 date. **Mr. Roden** said when the wine bill was enacted, this is a grandfather clause for those who might have an interest in a winery, but also in the real property of the retail premises.

Senator Kelly asked **Mr. Roden** who do you represent or who are you not talking for today? **Mr. Roden** answered today he is testifying as someone who is interested and involved in these laws over the years. The association that he represents has not taken a position on this bill. **Senator Kelly** said what is that association. **Mr. Roden** said the association is the Beer & Wine Distributors who sell to retailers. A

distributor under this bill cannot have an interest in a retail establishment.

Senator Stegner said has the task force looked at this to make sense of it and clean it up? **Mr. Roden** replied they spent most of the time discussing the quota system. **Senator Stegner** asked **Mr. Roden** what does he see in the near future with regard to this? **Mr. Roden** said he isn't sure if anything will be accomplished this session.

Senator Little asked **Mr. Roden** if this bill passes can Mondavi or Gallo open a restaurant, bring in their product, market it through their restaurant, and would your clients receive a margin on that product? **Mr. Roden** responded the wineries that you are talking about would have to go through distributors. This will not have an effect on the distributors net worth. **Senator Little** asked would any of your clients be impacted by the enactment of this legislation? **Mr. Roden** answered I do not think so, however, they want to preserve the three tier system.

Erik McLaughlin, the owner of the 8th Street Wine Company testified in support of **S1414**. **Mr. McLaughlin** said that he worked with the Commission and **Mr. Batt** in the drafting of this legislation. He has worked his entire life in the wine industry with wineries, distributors, and importers. As a national retailer he has done business in most states and he was the national wine buyer for Cost Plus World Market. **Mr. McLaughlin** stated he is very familiar with wine laws across the country. He returned to Boise a few years ago so he has a specific interest in this bill. As a restaurateur and retailer he would also like to produce wine. The passage of this bill will not grant additional licenses or privileges to do business. The prohibitions are currently in conflict. Looking at the liquor code where the Bardenay language was inserted in 1999, that section allows for distilleries to do business. It does specifically refer to wineries and breweries as well, which is the conflict with ABC. As convoluted as the language may seem, the simple solution is to make the two sections in code consistent. Going forward the language needs to be cleaned up, and this bill will put the sections in agreement. Wineries will not become different entities. They will have the right to have a financial interest in another business.

Senator Davis stated he is confused by the definition of a restaurant. **Mr. McLaughlin** testified that the language was lifted from Bardenay. **Senator Davis** asked **Mr. Laughlin** if the language was lifted in part or in whole? **Mr. McLaughlin** answered the language is almost the same. The only change was the addition of the words "for consumption" before "on site", to improve the language and make it clear that the restriction on percentage of sales applied to alcohol beverage sales on site. If the winery has a tasting room and the customers were purchasing retail bottles and not consuming it on site, it would skew the percentages and the intent is not to prevent a winery from having a restaurant or food service operation because of it. With that exception it is consistent with the Bardenay language. The clarification is for consumption on site. The reason for not using the strict restaurant definition is because of the additional burdens. **Senator Davis** said that is where I wanted to go, and I understands on site consumption, and the difference between purchase

for later, but you used the phrase "stricter restaurant definition". **Senator Davis** stated he recalls a more aggressive definition of restaurant than what he is seeing. He asked **Mr. McLaughlin** to explain if they liked the language of Bardenay, why did they change the language, except for the restaurant definition. **Mr. McLaughlin** replied the section that defines what a restaurant is, is in the definition section of code, not in the Bardenay section of the code. Nothing was left out from the Bardenay section that refers to a restaurant. The code does not state that Bardenay can be a restaurant, it says exactly what this does. A distillery can be a business that fits this definition, it is the same as what we are doing here. **Senator Davis** asked if the definition of a restaurant is different from what applies to the Bardenay? **Mr. McLaughlin** responded no. The only difference is the words "for consumption" was added. **Senator Davis** said are you incorporating by reference that definition? **Mr. McLaughlin** stated that definition applies to restaurants. The section that was added for Bardenay does not specifically state that business entity is a restaurant. The Bardenay is a restaurant, but the Bardenay language states it can have a financial interest in a licensed premises. The wineries want the same thing, to have a financial interest in a licensed premises.

Senator Davis asked **Mr. Roden** to refresh his memory regarding this. **Senator Kelly** asked in what section of the code is the Bardenay language? **Mr. Roden** replied it is 23-912. **Senator Davis** said was the definition put in rules or code, he just doesn't remember. **Mr. Roden** stated the discussion of restaurants was found to be an insufficient definition for the purpose of defining a restaurant. ABC adopted rules for a definition of a restaurant, and there was controversy surrounding that rule. The rule today is 40% of consumables have to be non-alcohol beverage products. **Senator Davis** said what he believes **Mr. McLaughlin** is saying is, that they want the benefit of the definition of a restaurant, and be bound by the administrative codes definition of a restaurant. **Mr. McLaughlin** responded yes to allow wineries to have an interest in a business that may or not be a restaurant, but would meet the definition of a business as set forth in the code.

Mr. Batt stated when he met with **Lieutenant Clements** last week about this definition, he did make him aware that the rule definition was different from statute. He also stated that Lieutenant Clements was not opposed to the changes they were proposing.

Senator Kelly asked **Mr. Batt** to explain the emergency clause. **Mr. Batt** responded there is a restaurant in Eagle that would like to start a business right away.

Senator Little asked **Mr. Batt** what will the emergency clause do for this restaurant in Eagle? **Mr. Batt** said they would be able to apply for a liquor license, and sell liquor, beer and wine by the drink. **Senator Little** said then is it just a matter of applying for a liquor license, because of the barrier in the code which prohibits them because they have an interest in a winery. **Mr. Batt** replied they can apply for a liquor license, but they can only sell what is produced by the winery. They cannot sell beer or liquor

and this bill will allow them to do so.

MOTION: **Senator Little** moved to send **S1414** to the floor with a **do pass** recommendation. **Senator Stegner** seconded the motion. **Senator Davis** said if this bill does what **Senator Little** said, I would probably support it. **Senator Davis** said he would rather send this to the amending order and clean up some of the language.

SUBSTITUTE MOTION: **Senator Davis** made the substitute motion to send **S1414** to the amending order. **Senator Kelly** seconded the motion.

Chairman McKenzie requested a roll call vote on the substitute motion.
Senator Darrington - Nay
Senator Geddes - Aye
Senator Davis - Aye
Senator Stegner - Nay
Senator Little - Nay
Senator Stennett - Absent
Senator Kelly - Aye
Senator Jorgenson - Aye
Senator McKenzie - Nay
Motion **failed**.

A roll call vote was taken on the original motion to send **S1414** to the floor with a **do pass**.

Senator Jorgenson - Aye
Senator Darrington - Aye
Senator Geddes - Nay
Senator Davis - Nay
Senator Stegner - Aye
Senator Little - Aye
Senator Stennett - Absent
Senator Kelly - Nay
Senator McKenzie - Aye
The motion **carried**.

S1415 **Mr. Batt** stated this bill will alphabetize the definitions. The only change is to the definition of winery. The Legislative Services Office looked at this and noted that table and dessert wine are in the same definition and it should be separated. On page 2, lines 47 and 48 regarding two or more wineries sharing the same premises and equipment, ABC's interpretation is that they cannot share equipment. **Mr. Batt** said there is an amendment to this bill with regard to federal regulations.

MOTION: **Senator Little** moved to send **S1415** to the amending order. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

MINUTES: **Chairman McKenzie** said the minutes from February 4 have a few changes.

MOTION: **Vice Chairman Jorgenson** said he reviewed the minutes from February 6, and February 11, and found them to be accurate and recommend they be accepted as presented. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

ADJOURN: **Chairman McKenzie** adjourned the meeting at 9:31 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

- DATE:** February 20, 2008
- TIME:** 8:00 a.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENE:** **Chairman McKenzie** called the meeting to order at 8:00 a.m. **Chairman McKenzie** stated a few things were added to the agenda today because they are time critical in addition to **S1367**.
- RS17943C1** **Senator Goedde** from the Education Committee presented **RS17943C1** to the committee. **Senator Goedde** stated this is the second version of the ISTAR Program. The bill will pump twenty million dollars into the teachers' pockets. The Education Committee was unanimous in their request to have this printed and sent back to the committee for hearing. **Chairman McKenzie** said this is before our committee because we are a privileged committee.
- MOTION:** **Vice Chairman Jorgenson** moved to print **RS17943C1**, and **Senator Little** seconded the motion. The motion carried by **voice vote**.
- RS17959** **Senator Goedde** addressed the committee regarding **RS17959** and **Senator Goedde** stated this bill deals with streamlining the process by which a teacher may be terminated. The Education Committee requests it be printed and returned for hearing in the Education Committee.
- MOTION:** **Senator Geddes** made the motion to print **RS17959**. **Senator Little** seconded the motion, and it carried by **voice vote**.
- INTRODUCTION:** **Chairman McKenzie** introduced the committee page, **Kristen McIntosh**, for the second half of the session. **Kristen** said she is from Lewiston, Idaho. The first time she visited Boise she was in first grade and she saw a page and thought it would be a great opportunity for her.
- H445** **Tim Mason**, Administrator for the Division of Public Works, presented **H445**. **Mr. Mason** stated **H445** is a request to repeal Title 44, Chapter 10, as it applies to the Capitol Building only. This has not been an issue on any other project and it has never been challenged. The chapter requires

that 95% of laborers working on the project have to be Idaho residents, meaning living no less than one year in the state. For small business, it requires 90% to be Idaho residents. The Capitol project is the largest one the state has had to date. The construction manager signs a contract with Public Works and then he contracts for the work. As things have progressed we have not gotten any bids at all for some of the work. High bids involving Idaho contractors is not uncommon because there is no competition. Out of state contractors have bid and some are reluctant to bid because of the violation of the 95% rule. This violation is a misdemeanor with no provision for how, when, or what manner to account for that. **Mr. Mason** stated we have received a number of bids but no Idaho contractors have bid on the seismic work. They would need to hire an outside consultant which will cost one half million dollars and added time to the schedule. The out of state marble bidder was lower in cost. The in state contractor who did bid, bid only for a portion of the work. The ornamental metal work was not bid on and the out of state contractor who bid on the doors is lower. For the windows, the bid was eight hundred thousand dollars lower. The ornamental plaster restoration was not bid on as well.

The contractor estimates that the impact of Title 44 remaining in place is approximately six million dollars, and about six more months to complete the work. **Mr. Mason** said he understands the concern of stacking the deck against Idaho contractors, and it is cheaper for a contractor to use Idaho labor rather than bringing in labor. This will not be a significant impact to the contracting community. The Capitol project is time critical and the continuing work is contingent on this bill.

Senator Little asked **Mr. Mason** if this section has ever been challenged? **Mr. Mason** replied this issue surfaced in the fall and we have never faced this situation before. **Senator Little** said he understood that similar laws in other states have not been upheld constitutionally. **Mr. Mason** replied that question has been raised, but he cannot speak to the constitutionality.

Senator Kelly asked **Mr. Mason** to explain section 2. **Mr. Mason** said that section 2 provides that this is an emergency and the repeal would take affect as soon as it passes. It also provides for a retroactive exemption to January. **Senator Kelly** said it actually states that it is retroactive to July. **Mr. Mason** replied the exemption for this chapter would repeal the 95% rule and it would be effective immediately. It would be retroactive back to January 2007, which was the beginning of the project. **Senator Kelly** said the section states that it is retroactive to July 2007. **Mr. Mason** said the following sentence clarifies that it covers the period from January to June 30, 2007. **Senator Kelly** said additionally it states shall be null and void after June 30, 2010. **Senator Kelly** asked **Mr. Mason** what is null and void? **Mr. Mason** answered the repeal. It has a sunset clause so that it applies only to this project. **Senator Kelly** asked what does Capitol Project mean? Are we repealing this for all building projects in Idaho? **Mr. Mason** replied this applies to the Capitol restoration and the wings only.

Senator Davis asked if the Attorney General has an opinion about the constitutionality of this, and why didn't we just repeal this? **Mr. Mason** said when this came about the Deputy Attorney Generals consulted and talked, but he isn't sure if they got an opinion.

Chairman McKenzie said if the attorney general is here, I would like their opinion on that issue. **Joanna Guilfoxy** said until two weeks ago she was the deputy, and we did not ask for an official opinion. **Ms. Guilfoxy** stated the U.S. constitutionality would be vulnerable.

Senator Davis said he would like a formal opinion on this from the Attorney General's Office. If it has constitutional problems then maybe we need to look at some modifications to the statute all together. **Mr. Mason** replied he would be happy to do that.

Senator Kelly asked **Mr. Mason** if this will temporarily repeal section 44-1005? **Mr. Mason** responded that the 95% rule is negatively impacted. Employment of illegal aliens is not a part of that and addressed by other statutes. **Senator Davis** said **Senator Kelly** has a good point. It does repeal all of chapter 10. **Ms. Guilfoxy** stated it does repeal Title 44, chapter 10. There are other state, federal and executive orders that address the employment of illegal aliens.

Senator Stennett asked for unanimous consent of the committee to hold this until we have the opinion of the Attorney General. **Senator Davis** said we should have a better understanding of what the other state and federal laws are.

Senator Little asked **Mr. Mason** what is the time frame of this? **Mr. Mason** said we have contracts, guaranteed prices, and in the absence of this the Capitol project cannot go forward. **Senator Davis** said we could have this on our calendar Friday, and as a committee we have a duty to ask these questions. **Chairman McKenzie** said is that a unanimous consent request to have this on our agenda for Friday. **Senator Davis** said this is a modification of **Senator Stennett's** request. **Chairman McKenzie** said we will plan to hear this on Friday and do whatever is necessary to expedite it.

S1367

Chairman McKenzie stated there are members of the PERSI board here to testify. Those who are here today that signed up last week will be heard from first, and at closing we will allow time for the sponsors to speak.

TESTIMONY:

Jody Olson, Chairman of the PERSI board addressed the committee regarding **S1367**. **Mr. Olson** said **Kirk Sullivan**, **Bill Deal** and **Jeff Cilek** are here today as well. PERSI was formed in 1965 and virtually every public employee in Idaho is covered. There are two systems, defined benefits and the defined contribution plan. Four hundred twenty two million dollars a year are paid in benefits. At year end PERSI was fully funded, and even with the market drop the fund is 95% plus funded. Contribution rates are lower than ten years ago, benefits are higher, and all retirees have purchasing power equal to the day they retired. Last

year when this bill was presented to them, PERSI spent six months reviewing it. The Board condemns the situation in Darfur and recognizes that it is desperate and serious. Under the statutes governing PERSI, the Board's responsibility is to act solely for the benefit of the participants. The Board feels that divestment is not in the best interest of the beneficiaries of PERSI. Divestment will cost money and lower returns; it will have no impact on the situation in Darfur. The Board strongly opposes this legislation.

Alan Winkle, Executive Director for PERSI, stated **Senator Corder** testified on Friday that this is a matter of conscience, and that the Board did not exercise their conscience when they decided not to divest. **Mr. Winkle** said he disagrees. Forty years ago the Legislature established PERSI to provide benefits to the beneficiaries of the plan. The PERSI Board is charged with setting contribution rates and investing assets to fund the benefits. The enacting clause states the fiduciaries of the fund shall discharge their duties with respect to the fund solely in the interest of the members and their beneficiaries, for the exclusive purpose of providing benefits to the members and their beneficiaries. During the past twenty years he has worked with the Legislature, and this is the first time the Board has opposed a bill. The Board has an awesome responsibility for ten and one half billion dollars in liability, and they manage eleven billion dollars in assets to ensure the fund. The situation in Darfur is horrendous and despicable and PERSI has no investments in Sudan, the Sudanese government, or with companies domiciled in Sudan.

Mr. Winkle stated the Board condemns the actions of the Sudanese government and encourages the support of the U.S. and United Nations in this effort. However, divestment of PERSI retirement as a tool to express the Legislature wishes for change in international events, is inappropriate and ineffective. The federal legislation was discussed last Friday. The presidential support is clear that his administration has been opposed to this bill all through the process. It is an encroachment on the exclusive role of the federal government in conducting foreign relations. This opposition was reflected in the signing statement. A recent news article stated the President's signing statement could have the practical effect of raising doubt in the minds of some state and local legislators, who are considering whether or not to enact Sudan divestment.

Mr. Winkle said technically this bill leaves open some untested issues, and raises the question of unintended consequences. **S1367** raises several issues. The federal bill allows four areas or activities for companies in divestment, military equipment, mineral extraction, oil related, and power production. **S1367** adds phrases to each of those that are not included in the federal bill.

Bob Maynard, the Chief Investment Officer of PERSI, stated he is here to talk about investment implications, not the general policy. **Mr. Maynard** stated investing institutional assets is a matter of risk versus return. PERSI does not invest in Sudan, the Sudanese government, or any companies that are in Sudan. This is about companies that are outside of Sudan. Sudan is one of the worst governments, and one of the worst places on earth. PERSI does not believe it is appropriate to put our

money there. Companies can only be bought if they are on listed exchanges that we allow our managers to purchase from. There is a judgmental aspect by the managers as to whether or not there is potential return, including risks of this nature. **Mr. Maynard** said out of thirty-five companies, PERSI invests in six. All the other companies have been rejected for many reasons. Some companies may be distasteful and one example is PetroChina. PetroChina is a company that meets minimum requirements. California has passed divestment legislation but they voted their proxy not to divest in PetroChina. PetroChina has no interest in Sudan, so what is all the fuss about. On Friday, **Mr. Millenson** said that it doesn't matter if every single company on the list gets out of Sudan, unless China changes their behavior. **Mr. Maynard** said it is clear, this bill is an engagement bill, and about trying to change behavior.

Chairman McKenzie said there are several here today to testify and if someone was here at the first hearing, he would like to hear from them first.

Joe Seiders, a student from Northwest Nazarene University testified in support of **S1367**. **Mr. Seiders** stated this is very personal to me because it involves my family. His uncle is a Sudanese refugee who came from Darfur. His father and family members were slaughtered as they fled their village. After graduation he plans to serve in the Peace Corp and go to Africa to do his part and work in the refugee camps.

David Christensen testified in opposition to **S1367**. **Mr. Christensen** said he was with the U.S. State Department Diplomatic Service for twenty-five years, and almost twelve years of that was spent in Africa. He has taught classes at Boise State University for fourteen years in International Business, and the history of modern China. **Mr. Christensen** stated he is here today on his own behalf. No one questions the magnitude of the human suffering, it is a tragedy of gargantuan proportions. Divestment worked in South Africa and Rhodesia because the entire world was united. **Mr. Christensen** said he does not believe that divestment will work in this case.

Senator Little asked **Mr. Christensen** if it is China and it is a big company, should we just give up? **Mr. Christensen** replied no, but there are other ways to work through the United Nations. Applying pressure on China because they are vulnerable with the Olympics, that could be a prestige blow to them.

Vice Chairman Jorgenson said you mentioned South Africa and Apartheid and the sanctions that were imposed. It is true that the American companies were essentially forbidden from doing business in South Africa. Weren't there third party countries set up as a conduit for every product that was needed? **Mr. Christensen** replied that American companies were pressured to dis-invest, but many stayed and the Fair Employment Practices Act helped them.

Jerry Quick, a retired state employee, testified in opposition to **S1367**. **Mr. Quick** said that he takes an active interest in PERSI matters because

it is his primary source of income. The slippery slope argument is not frivolous. If this legislation is passed it will put up a red flag for every cause that comes down the pipe. It would be a clear message that the funds entrusted to PERSI, are no longer to be held and invested for members and their beneficiaries' exclusive benefit.

Amber Corner representing the Catholic Charities of Idaho stated that she is testifying in support of **S1367**. **Ms. Corner** said the U.S. government is imposing economic sanctions against the government of Sudan, and discouraging U.S. companies from doing business in Sudan. Twenty-two states have passed legislation to divest their trusts and pension funds from companies doing business with Sudan. **Ms. Corner** said the Catholic Charities is asking the state of Idaho to consider similar action. Idahoans have the opportunity to diminish genocide and systematic terrorism by divesting in companies that directly contribute to the revenue of the Sudanese government. **Ms. Corner** urged the committee to show moral leadership and global compassion by supporting Idaho's divestment from Sudan.

Ben Sherrill stated he speaks today as a citizen and a recipient of PERSI retirement funds. **Mr. Sherrill** said he supports **S1367**. The members of PERSI trust the Board, however, he proposes that a decision to invest in Sudan which facilitates the military attacks on helpless citizens, that the Board has failed. This bill will bring about a reversal of this tragic decision and a reinvestment in areas that provide a good return, yet are not engaged in support of genocide. **Mr. Sherrill** urged the committee to allow this bill to advance, so that these investment decisions and divestment as an alternative will receive the attention the matter demands.

Mike Walker, who represents the Professional Fire Fighters of Idaho (PFFI) testified in opposition to **S1367**. **Mr. Walker** said almost all of the fire fighters are members of PERSI. This issue is difficult and something the members do not take lightly. The members are opposed to using PERSI funds for this purpose. They are concerned about the message this bill will send, it is a just cause. The passage of this bill will tell other interest groups that PERSI is an acceptable vehicle for advancing their social agendas. Developing a policy for social investing would jeopardize the stability.

Mary Grant, testified on behalf of the Idaho Human Rights Commission in support of **S1367**. **Ms. Grant** said this bill will give us the opportunity to do nothing, or to act. The President signed this Act as an encouragement and it is a united effort by many countries that are all calling for divestment.

Jim Shackelford, Executive Director of the Idaho Education Association (IEA), stated after debate and consideration the Board of Directors voted to oppose this legislation. **Mr. Shackelford** said IEA's position on this specific measure should not be interpreted as a lack of understanding of the tragic situation in Darfur. There are many issues of consequence surrounding the proposal represented by **S1367**. The IEA Board of Directors opposes this measure for two very specific reasons. First, when

PERSI was created it was clear the Legislature intended there to be a division of responsibilities between itself and the PERSI Board it was creating. The details of managing the system and what the contribution rates will be, how the funds will be invested, and who will be employed, are statutorily the discretion of the PERSI Board. **Mr. Shackelford** said the second reason IEA opposes this legislation is most succinctly described as a concern about applying a “social screen” to investment decisions. The application of one social screen may well set a precedent that could be used by individuals and/or groups in the future, to seek similar legislative support of addressing an array of other concerns.

Karen Echeverria, Executive Director of the Idaho School Board Association (ISBA) testified in opposition to **S1367**. **Ms. Echeverria** said ISBA recognizes that this is a difficult and horrific situation, and they in no way support what is happening in Darfur. The Association is opposed to this legislation for two main reasons. One, the PERSI Board has a fiduciary responsibility to administer the PERSI funds solely for the best interest of the beneficiaries. Secondly, PERSI has provided a Sudan free investment for which persons who wish to invest can participate.

Charlie Brown, a retired citizen said that he opposes **S1367**. **Mr. Brown** said he represents the Retired Educators Association of Idaho (REAI) and that he is a member of PERSI. The Association provided a statement to **Mr. Winkle** regarding their position on divestment. Every member of PERSI has received a letter regarding Darfur. **Mr. Brown** stated that he attends every meeting of PERSI to keep the members informed.

Senator Langhorst said he appreciates everyone who has come to speak regarding this issue, and the patience of the committee. **Senator Langhorst** stated he would like to defer the closing statement to **John Sullivan**. **Senator Davis** stated we need to limit the remaining testimony to five minutes, so we can have time available for debate of this bill. That is more important than having a repeat of the principles we all understand surrounding this. **Senator Langhorst** said he appreciated what **Senator Davis** is saying, but he would like **Mr. Sullivan** to have an opportunity to respond.

Mr. Sullivan said a lot has been said in opposition, but I would like to draw attention to the Sudan Accountability Divestment Act. It was passed by Congress and signed by the President on December 31. One provision in section 7 hits the major points of this, and it captures what **S1367** is all about. Seventy percent of the oil revenue paid by PetroChina to the government of Sudan goes to support the Sudan military. PERSI is invested in those companies, which is enabling the genocide. There is a worldwide movement of divestment. Twenty-two states around the country have divested, fifteen followed the language of this exact bill, and twenty-three other legislatures around the country are considering this bill. Nine companies have withdrawn from Sudan because of the divestment movement. There is a fear that this will hurt the PERSI fund, and there are other alternatives that are equal or superior that PERSI can invest in. This is a win-win situation for everyone.

Senator Davis said he believed **Mr. Winkle** did a comparison regarding the federal enabling and the language in this bill. **Senator Davis** asked **Mr. Sullivan** if the language goes substantially beyond what the federal legislation refers to? **Mr. Sullivan** stated he disagreed, this bill is even more narrow than the Sudanese Accountability Divestment Act (SADA). It focuses on companies who are doing business in oil, mineral extraction, power generating fields, and who are supplying military arms. This is more specific in terms of engagement. In SADA you have to give notice that you are intending to divest from them. Engagement in the bill will allow that to happen. There is no difference in terms of the companies that are targeted.

Vice Chairman Jorgenson stated genocide is one of the worst types of travesties. **Vice Chairman Jorgenson** asked **Mr. Sullivan** how many Sudanese have been murdered? **Mr. Sullivan** replied the estimates range as high as four hundred thousand that have been killed and two and one half million have been displaced. **Vice Chairman Jorgenson** said any type of extinction of life of that scale is irreprehensible. **Mr. Sullivan** said this is unprecedented and the first time in the history of the world that an ongoing atrocity has been declared to be genocide. **Vice Chairman Jorgenson** said the taking of lives whether or not it is genocide or otherwise is a matter of semantics. **Mr. Sullivan** replied that he disagrees. Genocide was specifically defined by treaty, and the fact that this is a systematic extermination of an entire people.

Chairman McKenzie said **S1367** is before the committee. If there are additional questions of the sponsors we can do that, but we need to allow time for debate in the committee.

Senator Little asked **Chairman McKenzie** if **Mr. Winkle** would yield to some questions. **Senator Little** asked **Mr. Winkle** what the average payment is per month to a retiree? **Mr. Winkle** replied the average benefit is fourteen thousand two hundred fifty four dollars per year. **Senator Little** asked if the total investment as of January 1 was twenty four million dollars? **Mr. Winkle** said yes that is correct. **Senator Little** asked **Mr. Winkle** what is the difference between the divestiture list and the rest of the portfolio? **Mr. Winkle** responded **Mr. Maynard** can answer that. **Mr. Maynard** said it is minimal. **Senator Little** asked is it twenty percent more? **Mr. Maynard** replied as of today, we have very little, maybe two to three million dollars. **Senator Little** said at twenty percent, my math says it is forty eight cents per month per beneficiary.

MOTION:

Senator Stegner made the motion to send **S1367** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion.

Senator Little said this bill is better than the first draft, but the overriding issue here is the slippery slope. The Board created a 401K Free Sudan and their board time is an issue. **Senator Little** stated he would rather the Board do this and keep the Legislature out of the policy. Once we start down this road it will continue, and I am afraid we will see this again. Every major corporation has a policy statement as well as private endowments, they have that same language. At some point PERSI will

have to address that.

Senator Davis stated this is a harder issue than he realized. The questions that have been raised are beyond the federal enabling authority. Playing politics with retired Idaho citizens primary source of income is an area of substantial concern. **Senator Davis** said he was not as persuaded as he is today, on the likelihood of others to present future legislation that will impose statutory investment limitations. As he balances the factors his vote on this issue weigh against him supporting this Legislation. On the plus side, however, he isn't sure where the line should be drawn. Today, the line is at genocide. **Senator Davis** stated he will support the bill.

Senator Geddes said he has struggled with the same points that **Senator Davis** has raised. I have never witnessed genocide and I have great respect for **Mr. Christensen** having lived there and seeing it first hand. **Senator Geddes** stated he trusts the judgment of the PERSI Board and he has confidence in the decisions they make, now and in the future, as they carry out their responsibilities and duties with regard to the fund. From what he has heard today he appreciates the effort and time that the Board has placed on this issue. We have had this hearing and it was debated well on both sides, and he does not believe anyone supports what is happening in Darfur and Sudan. **Senator Geddes** said he is not convinced that Idaho's small contribution will significantly change the outcome, and he is going to vote against the motion.

Senator Stegner stated it is obvious that my name is on the bill so I will be supporting the motion. The slippery slope argument is compelling, and we are about to consider a change in policy in this state. We are embarking on changes that we may regret at some point, in terms of opening the door for consideration of outside influences on decisions that state government has traditionally tried to avoid. The PERSI Board suggests that they do not have authority or the responsibility to make these changes. **Senator Stegner** said this is our responsibility, we set policy, we are responsible. To that degree this issue rises above those concerns. We have to have faith that this Legislative body will continue to use good judgment. The decision in itself is the manifestation of that good judgment, as we try to do the right thing for our society, state employees, this nation and the world.

Vice Chairman Jorgenson said for anyone to say that this does not affect us deeply would be inaccurate, it is a very serious issue. The PERSI Board has made a significant effort to offer the option to opt out.

Vice Chairman Jorgenson stated as well intended as this bill is, it is the vehicle of every single issue that may arise in the future. PERSI needs to maintain its sovereignty, so I am voting against this.

Chairman McKenzie said this is a hard vote and looks like the committee is divided on this issue. He agrees with what has been said and the feeling is that this is a significant issue. **Senator Stegner** said we are embarking on a change in policy in order to address the significant issue if we pass this bill. **Chairman McKenzie** stated where will we draw the line

on other issues. There are areas of our country and issues in our own society that I see equal justification for divesting. If we go down that road I don't know where we stop, and I don't know where we draw that line. The argument for the slippery slope is not false or a light one, and I give that a lot of weight.

Chairman McKenzie requested a roll call vote on **S1367**.

Senator Darrington - Nay
Senator Jorgenson - Nay
Senator Geddes - Nay
Senator Davis - Aye
Senator Stegner - Aye
Senator Little - Nay
Senator Stennett - Aye
Senator Kelly - Aye
Chairman McKenzie - Nay
The motion **failed**.

ADJOURN: **Chairman McKenzie** adjourned the meeting at 10:08 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

- DATE:** February 22, 2008
- TIME:** 8:00 a.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENE:** **Chairman McKenzie** convened the meeting at 8:10 a.m.
- RS17993C1** **Chairman McKenzie** said the first order of business is **RS17993C1** which is the firearm preemption bill that was before the committee before. There isn't any opposition to printing this, and the intent is to return next Wednesday for a hearing. What is different about this is section 5(c) where they addressed the three concerns from the previous bill. The biggest change is for higher education to regulate on campus. **Chairman McKenzie** asked the committee to print the RS.
- MOTION:** **Senator Davis** made the motion to print **RS17993C1**. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.
- RS17525C1** **Senator Langhorst** presented **RS17525C1** to the committee. **Senator Langhorst** asked the committee to print this and then it will be returned to the Transportation committee. This bill will create a license plate to provide recognition for the 2008 World Winter Olympics Games and to provide funding for the 2009 Special Olympics Games.
- Senator Davis** asked **Senator Langhorst** if the Transportation committee formally requested this committee to print this? **Senator Langhorst** replied yes.
- MOTION:** **Senator Davis** moved to print **RS17525C1** and **Senator Stennett** seconded the motion. The motion carried by **voice vote**.
- H445** **Tim Mason**, the Administrator for Public Works, addressed the committee regarding **H445**. This bill will exempt the Capitol project from the requirements of Title 44, which is 95% Idaho labor and 90% for small contractors. The reason is the difficulty they are encountering for bids on the project. The construction manager at risk submitted that the project

will be impacted by approximately six million dollars and an additional six months time to complete the work. **Mr. Mason** said at the hearing on Wednesday there was a concern for exempting the project from that law, that it will include the part that addressed illegal aliens.

Senator Davis asked if **Melissa Vandenberg**, the deputy attorney general was here today. **Senator Davis** said he sees five reasons that the Legislature should not be concerned with hiring illegal aliens. 1) Idaho Constitution, 2) the Governor's Executive Order, 3) it is in the contract, 4) the Immigration Reform and Control Act of 1986, and 5) 8 USC §1324a. **Senator Davis** asked **Ms. Vandenberg** if these apply to states within the United States? **Ms. Vandenberg** answered yes they do. **Senator Davis** said if the federal government did not pursue the enforcement of the federal laws, what remedy is there for the state options should there be a breach. **Senator Davis** asked **Ms. Vandenberg** to speak to that. **Ms. Vandenberg** said the remedy under the federal law would be sanctions for the employer and deportation of the alien. There isn't a remedy under the Idaho Constitution provision. Because it was put in the contract, the remedy for the state is the breach of contract provision, and therefore we would be able to terminate the contract for cause.

Senator Kelly said she thought what she heard the other day was that you are having difficulty overseeing the existing contracts, until you know where the employees are coming from. She asked **Mr. Mason** if it is a management issue to implement the project? **Mr. Mason** responded it isn't the management of it. There are contractors who are unwilling or who won't bid on the contract because of Title 44, and that they would be subject to enforcement. **Senator Kelly** asked **Mr. Mason** why isn't it achievable for the contractors to hire 95%? **Mr. Mason** said it is for a variety of reasons. One is the magnitude of the project, and two, the complexity and specialization of the work. There are no Idaho contractors to perform some of the work, so we are looking outside of the state. Some Idaho contractors may be able to do the work, but he doesn't have the manpower. **Senator Kelly** said so the intent is to provide Idaho residents employment, and keep tax payer dollars in the state. **Senator Kelly** asked **Mr. Mason** if that is the intent and is it no longer valid? **Mr. Mason** replied in 1930 that was the case, but the world is somewhat different today. Idaho contractors work in other states all the time. The impact will be small on the Idaho labor force. **Senator Kelly** asked **Mr. Mason** if this is only for this project? **Mr. Mason** answered yes. We are past the critical point and there aren't any other projects of this magnitude in the state.

Senator Davis asked **Ms. Vandenberg**, in her opinion, if someone were to challenge the current statute, is it enforceable? **Ms. Vandenberg** replied she has done some research on that, and it appears the statute is subject to constitutional attack. **Senator Davis** asked whose side would you rather argue? **Ms. Vandenberg** said the other side.

TESTIMONY:

Harry Tucker, representing the Pacific Northwest Regional Council of Carpenters (PNWRCC) testified in opposition to **H445**. **Mr. Tucker** stated

many of the issues surrounding the project were created when the wage law was repealed from Title 44. The biggest issue the out of state contractor has is the bids from the sub contractors. It wouldn't be an issue if we had prevailing wage rates. The projects would be bid on a level playing field. The prevailing wage law will ensure that we don't have out of state contractors coming to Idaho and undermining our area standards. **Mr. Tucker** said he thought everyone would agree that we don't want a contractor who pays substandard wages working on our Capitol just because it is cheaper. The issue of unqualified workers is another example of not having a prevailing wage rate. When the jobs with good pay and benefits left, so did the best and brightest.

Ron Robbins stated that he represents PNWRCC as well. **Mr. Robbins** said he opposes **H445** because workers in the state have very few protections. We are giving up on Idaho and taking the easy way out by shopping around the country for contractors to do the work. Repealing this law sends the message that we aren't going to use you on state projects, we don't plan to in the future, and don't buy Idaho.

Senator Davis asked **Mr. Robbins** where he was from? **Mr. Robbins** replied Nampa, Idaho. **Senator Davis** asked if this were a personal issue for him. **Mr. Robbins** answered yes it is. **Senator Davis** stated he is very sympathetic. He asked if he or the union have asked for a legal opinion as to the enforce ability of this statute? **Mr. Robbins** said no they haven't, and that is a good point. The law as is doesn't make a big difference because there isn't any enforcement. No one wants to take the time at the job site for identification. We should want to know who is working on the restoration.

MOTION:

Senator Geddes made the motion to send **H445** to the floor with a **do pass** recommendation. **Senator Darrington** seconded the motion.

Senator Kelly said that she is very uncomfortable, and it seems that the public policy undermines the law. The issues that **Mr. Mason** addressed are real, but there could be other ways around this. **Senator Kelly** stated that she is not convinced that there are constitutional issues.

Senator Geddes said a lot of people have been involved in the planning and the effort to expand the Capitol for about seven years. Some of the craftsmen who were originally hired to construct the building were from Italy. They are the ones who built those columns. Over the last one hundred years it has become a lost art. We cannot find anyone who knows how to do that and do it well. It would be hard to replace any of the structure to the level of quality that it is. A lot of the basis for the underground wings was simply because we can't find the materials, and two, we don't have the craftsmen and technology anymore to duplicate the workmanship of the Capitol. **Mr. Mason** has identified the concerns and we still have no bids for the specialized projects. **Senator Geddes** stated in order to stay on schedule and budget we need to offer an alternative to the Department of Administration, so the work can continue and go forward. If not, we will see additional costs and perhaps quality being sacrificed.

Senator Kelly said she would like to respond to that. The Capitol is certainly a very special building with needs that need to be addressed. An exemption could be crafted that would allow for contracting out of state, but that is not what we have before us. This is a complete repeal for all of the work.

Senator Davis said another member of this committee carried a bill on the floor some years ago. It wasn't identical, but it was unique. **Senator Kelly's** argument is compelling, but for me this is not narrowly crafted. I am against this bill, however, I am troubled by keeping a law on the books until we have some direction from our Attorney General's Office that it is not enforceable. **Senator Davis** said he will vote for this, he is not happy about it, and he does not like the position we are being put in.

Senator Darrington said there isn't another alternative. The delay will add a year or more and millions of dollars more in costs. It is specific to the project, it is timely, and the project needs to go forward.

Chairman McKenzie said the motion is to send **H445** to the floor with a **do pass**. **Senator Stennett** requested a roll call vote.

Senator Darrington - Aye
Senator Geddes - Aye
Senator Davis - Aye
Senator Stegner - Aye
Senator Little - Aye
Senator Stennett - Nay
Senator Kelly - Nay
Vice Chairman Jorgensen - Absent
Chairman McKenzie - Aye
The motion **carried**.

S1412

Chairman McKenzie said **S1412** is before the committee and he needs to speak to it. He turned the gavel over to **Vice Chairman Jorgenson**. **Chairman McKenzie** stated both co-chairs of the interim energy committee have sponsored this bill. The main task was to come up with an energy plan for the state and they tried to do that by involving all states. Idaho has the most conservative plan of any state. We did not impose mandates on private citizens and we made recommendations about incentives that we could do. The analysis that was done by consumer owned utilities projected that the increased energy demands will only be met by demand side management. In other words, trying to use less energy to do the same things. The three ways we are going to need to meet the increased demands will be nuclear, natural gas, or nothing. This is what analysis show us. **Chairman McKenzie** said as one of the co-chairs of the energy committee, they looked at what can be done to be more energy efficient with little or no cost, without an imposition on private citizens. One idea was to make state buildings more efficient and the other was this bill, **S1412**, which addresses school buildings constructed after January 1, 2009. The bill will require two things, fundamental commissioning and integrated design. It focuses on these two things because the school buildings that have done that, have found

almost an immediate return on the investment.

Chairman McKenzie stated integrated design is a collaborative process from the beginning of the design through the building. The second is fundamental commissioning which will verify that we are achieving the integrated design. The management and operations (M&O) was shifted to the general fund and as a result of that we are responsible for energy related costs. **Chairman McKenzie** said there will be a cost savings, and he has seen this from the schools that have done this. Schools in particular have a long life time, and the benefits will be reaped quickly. The bill will not mandate energy efficient standards to the school district, it does not require them to yield control of the building project, and it does not add additional costs.

Senator Geddes stated the efforts of the energy committee have been tremendous and outstanding and he likes the policies that you have put in place. This is good common sense and practical. In order to get his support he needs to be convinced that this isn't something already being done. In my own community a new school was built, and efforts were put forward to ensure it would be energy efficient by deviating from the standard for heating. **Senator Geddes** asked **Chairman McKenzie** why in 2008 aren't schools being built for maximum energy efficiency? **Chairman McKenzie** responded there are a lot of schools that are designed to be over code, but not all are doing it. In Nampa a few schools have been designed to meet those standards. A recent study showed that they are right at code rather than over. Fundamental commissioning is important to ensure that the design is hitting the target. In Jefferson County there were issues between what the architect designed and what was actually built. They are looking at approximately six and one half million dollars to fix the construction problem.

Senator Davis said this would not have solved the problem in Rigby. It was a mess from the beginning and it doesn't revolve around energy consumption. His understanding is that it was a disaster for a variety of reasons. **Senator Davis** asked **Chairman McKenzie** what two or three things will this bill do today, that they are not currently doing? **Chairman McKenzie** answered the two things are for schools to use the integrated design process and fundamental commissioning, to ensure that the results are being achieved. Using these two things, you will save money. **Senator Davis** asked **Chairman McKenzie** if the schools will perceive this as an unfunded mandate? **Chairman McKenzie** replied no because this will be funded through the bond levy equalization, so the state will pay for that additional cost. **Senator Davis** asked **Chairman McKenzie** to teach him how the fund will be modified? The fiscal note suggests this will be moderate. **Chairman McKenzie** responded the formula is not being changed for the amount that goes into the bond levy equalization. This does not address that either way.

Senator Werk addressed the committee regarding **S1412**. **Senator Werk** said there is a packet provided to you with information about what the bill will do and not do. There are some interesting newspaper articles, and one is about the fact there is no building code enforcement in

schools. An article about the Jefferson County schools and what happened is included, some information about cost benefit analysis regarding the process, and some case studies with building commissioning and integrated design to show what the return on the investment will be. **Senator Werk** stated with cumulative costs you will have cumulative savings each year.

There are some sections with legislative intent. The bill will provide consistent statewide processes that will result in higher performing and low energy efficient buildings. Schools will not be mandated to do this, but by using this process they will build more energy efficient buildings. Section 1 of the bill is the intent language, section 2 deals with the practice of integrated design and outlines the resource of the Division of Building Safety. The Division currently takes school plans and reviews them to ensure that they comply with code compliance. Rules will be promulgated by the Division so that they are clearly spelled out. The definitions in 33-356, subpart 5 (a)(b) are very broad characterizations for the processes we are asking the schools to adopt. Section 3 outlines the transfer from the bond levy equalization program.

Senator Davis stated in subpart 5 it states “to develop consensus among the project team and owner as to energy savings in building performance”. The word consensus is an invitation for a lawsuit, and what is a project team, and where is it defined? **Senator Davis** asked **Senator Werk** to help him with those definitions. **Senator Werk** replied the broad definitions will be defined in rule and will be operative for compliance. What needs to be clear is that the school, the owner, is in charge of the process. They own everything about the project. All of this will be promulgated in rules, and the intent is that the school districts will have a very clear road map. **Senator Davis** said he liked a lot of what is behind the concept of this bill. Most of this makes sense, he is just not sure how a rule will be written to define consensus. If you can’t write it in code how will you in rule. **Senator Werk** said **Ken Baker**, who is an expert in the field can better answer that. Because the definitions will be promulgated in rules, the rules will be what is operative and specific to what the school districts will follow. **Senator Davis** said it may be that the school district is the reasonable person. He said it troubles him that the state is driving this. If the project team excludes the state and they are nothing more than a facilitator, it softens his anxiety over subpart (a). **Senator Davis** asked **Senator Werk** if he understands his concern? **Senator Werk** answered it is not the intent of this legislation for the state to be part of the design team. The implementation of the project is at the district level.

This bill only applies to new construction of school buildings, not remodels. Language was added to the bond levy equalization fund that will transfer money to be distributed to school districts, much like they are now, to cover the costs of fundamental commissioning.

Senator Darrington asked **Senator Werk** who is the fundamental commissioner, who will select the commissioner, and what will the qualifications be for that person? Will there also be a list of qualified

individuals who will think the same? **Senator Werk** responded there is a list of people in Idaho and Washington who can provide those services. **Senator Darrington** asked what are the credentials to be a fundamental commissioner? Are they an architect, an engineer, an interior designer, or a project manager? So who might it be? **Senator Werk** stated he thought that would be much better answered by Ken Baker. **Senator Darrington** asked who will maintain the list and who will decide who the fundamental commissioner will be? **Senator Werk** said the person that makes the decision of that entity is the school district. They control the project, and they make the selections. They may defer to the architect because they have had a relationship in the past. **Senator Darrington** asked **Senator Werk** if the legislation speaks to that? **Senator Werk** stated the legislation talks about third party commissioning and **Mr. Baker** can specifically answer that question. In the legislation the Division of Building Safety is instructed to provide assistance to the school districts, and they would maintain a list of qualified individuals. **Senator Darrington** asked **Senator Werk** if the Division of Safety will compile a list of fundamental commissioners? **Senator Werk** said no, he wouldn't go that far. They are to assist in implementation and education.

Senator Stegner said on page 4, line 16, it lays out a reimbursement to the district for their costs in acquiring the services of a fundamental commissioner. Will the Department of Education reimburse or make payments to the school districts, in an amount equal to 1% of 85% of the bond interest and redemption payment costs? **Senator Werk** replied if the question is how much money are we dedicating for fundamental commissioning and where it comes from, **Mr. Baker** can best answer that question as well as how you get to 1% of 85% of the construction costs. **Senator Stegner** asked if your intention is an increased payment to the school district as a reimbursement for additional costs in the design phase? **Senator Werk** responded that is correct, and the idea is not to supplant current bond levy equalization program payments. **Senator Stegner** asked **Senator Werk** if he is estimating that cost to be ninety thousand dollars? **Senator Werk** said that is correct. It is about eighty nine thousand the first year and increases in the second year, and it is carried over because of the lifetime of the bond. The wording in the fiscal note was difficult to make that clear.

Senator Davis said he is hearing a lot of what the intent is, and not what he is being asked to vote on. **Senator Darrington** has raised some excellent points, and it isn't clear who the third party individual will be. **Senator Werk** mentioned there is a limitation on remodels, but on page 5, line 17 it talks about all school construction or remodeling. This is another challenge and maybe this bill is one that says we are on the right track, but the bill before us isn't necessarily the one that should pass. **Senator Davis** stated he shares that for whatever value it might have. **Senator Werk** said this is an issue and whether every provision in the bill is correct, or fits our needs, it is only talking about new school buildings.

Ken Baker, an energy efficient consultant, spoke to the committee and presented a power point presentation about integrated design and fundamental commissioning. **Mr. Baker** said he worked with **Senator**

Werk on this bill and he also served on a subcommittee for the state's energy plan. Integrated design is a process to guide the building owners and design team through the systematic and collaborative discussion of climate, use, loads and systems with the goal of achieving a more comfortable and productive environment, and a building that is more energy efficient than current code. Nothing will be mandated for the design itself. Integrated design provides the potential for creating buildings with lower first costs and large energy savings. The first goal should always be to reduce the load on the buildings.

Mr. Baker said the second process is fundamental commissioning. This process provides assurance that a new buildings electrical, mechanical and control systems will operate to the design process. Fundamental commissioning requires a third-party review of building design and building system specifications, and pre-occupancy system testing to ensure functional integration of specified systems and functional operation of systems at project completion.

Senator Darrington asked **Mr. Baker** if his firm contracts with districts and public agencies to do energy auditing? **Mr. Baker** replied he does not contract for energy auditing. When he worked for the State Office of Energy Resources they did some auditing for the school districts.

Senator Stegner asked **Mr. Baker** if his firm is experienced in this process? **Mr. Baker** responded it is. **Senator Stegner** asked **Mr. Baker** if he is familiar with this bill and the cost reimbursement of it? **Mr. Baker** answered he is familiar with the bill. **Senator Stegner** asked **Mr. Baker** if he can represent to this committee that he can provide this service for less than one percent of the total cost of the construction? **Mr. Baker** said yes, somewhere between one half and one percent.

TESTIMONY:

Ryan Kerby, the Superintendent from New Plymouth Schools testified in opposition to **S1412**. **Mr. Kerby** said in his district they have financial reasons to be the most energy efficient schools that they build and design. During the planning stages they use this same process, and he doesn't see anything here that they aren't already doing. The school board members, administration, maintenance, the architect firm, electrical and mechanical engineers all work together to design the most energy efficient building that they can. Environmental factors are taken into consideration such as the windows and lighting, and they maximize the outside air for a desired temperature in the rooms. **Mr. Kerby** said it is difficult to believe doing something different will save twenty percent of energy costs based on the studies they have done. When the plans are submitted to the Division of Building and Safety they are fifteen to twenty percent more efficient than what is required by code.

Rich Bauscher, the Superintendent of Middleton School District stated he served on several committees with Mr. Baker and discussed this topic. He is very aware of this process and he opposes this legislation. We need energy efficiency in our buildings. **Mr. Bauscher** said the bill may have merit if it were changed. First, he doesn't like mandates and districts are already doing this. He suggested incentives that would allow

for a design bonus for energy efficiency. Secondly, the cost for the commissioning is high. That process could be done for considerably less. There are a variety of ways to do what is suggested in this bill. **Mr. Bauscher** stated that he ran costs on five elementary schools, either newly built or in the process. **Senator Werk's** analysis estimates about seventy-eight cent savings per square foot. The energy efficiency for the five schools is about twenty-two cents less. **Mr. Bauscher** said he would rather see some sort of an incentive than paying for a commissioning fee. **Senator Stegner** asked **Mr. Bauscher** if he sees more value in an incentive program than a mandate? **Mr. Bauscher** said yes, if there is some sort of incentive he is more apt to do it.

Senator Little asked **Mr. Bauscher** to explain the benefit of per square foot? **Mr. Bauscher** responded if the costs are predicated on the fact that they will be about seventy-eight cents per square foot, the five elementary schools in his district were about fifty-six cents, so the initial estimate is high. The five schools he ran the numbers on are at fifty-six cents, not seventy-eight. **Senator Little** asked if the seventy-eight cents was the annual savings per square foot? **Mr. Bauscher** said yes that is right.

Chairman McKenzie suggested maybe the committee should make a unanimous consent to hold this and continue the testimony on Monday. **Senator Geddes** said we are scheduled to go on the floor at 10 a.m. **Senator Geddes** stated that he passed a note to **Russ Westerberg** who is here today, and he represents a power supplier in the state. He asked **Mr. Westerberg** if any of the power companies offer any of these services that have been discussed today? **Mr. Westerberg** responded yes they do. **Senator Geddes** said if we hold this until Monday the power companies would have an opportunity to testify.

Senator Darrington made a unanimous consent request to hold **S1412** until Monday.

ADJOURN: **Vice Chairman Jorgenson** adjourned the meeting at 10:02 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 25, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly

MEMBERS ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENE: **Chairman McKenzie** called the meeting to order at 8:00 a.m. He turned the gavel over to **Vice Chairman Jorgenson**.

GUBERNATORIAL APPOINTMENT: **Tim Ridinger** addressed the committee regarding his appointment to the Idaho Racing Commission. **Mr. Ridinger** stated he was asked to serve on the commission by the Governor.

Vice Chairman Jorgenson asked **Mr. Ridinger** if he was formerly a Representative. **Mr. Ridinger** replied that he served in the House of Representatives for ten years. **Vice Chairman Jorgenson** asked **Mr. Ridinger** what are his duties with the Commission? **Mr. Ridinger** said his duties are to look over the racing industry and carry out the rules and laws of the state of Idaho. He is not affiliated with the racing industry in any way.

Senator Geddes asked **Mr. Ridinger** if he is still the mayor of Shoshone? **Mr. Ridinger** answered for twelve or fourteen years.

Senator Stegner commented that he personally welcomes **Mr. Ridinger** back to the Capitol. He misses their association and he is glad to see him back in state service. **Senator Stegner** thanked him for stepping up to service in another capacity.

Vice Chairman Jorgenson advised **Mr. Ridinger** that the committee will vote on his appointment at the next meeting.

PENDING FEE RULES: **Docket No. 03-0101-0701** **Roger Hales**, an attorney, representing the Bureau of Occupational Licenses addressed the committee regarding the pending fee rule. **Mr. Hales** said he has a brief overview and it is essentially a rewrite of the Athletic Commission, which has not been changed since 1994. They were previously based on the Nevada Commission's rules. Last year they

updated the law to clarify that the Commission has clear jurisdiction over martial art competitions.

Senator Darrington stated he does not have a copy of the rules. **Vice Chairman Jorgenson** stated we will hold this until the committee has a copy of the rules before them.

RS17961

Senator Geddes presented **RS17961** to the committee. **Senator Geddes** said this RS comes from the transportation committee regarding how to differentiate from the driver's education training courses in the public schools versus private driving instruction. This legislation will simply allow both entities to have the same rules and be uniform in their efforts to provide driver's education. In addition, it has a number of updates. It was discussed in the transportation committee and it has unanimous consent to be printed in this committee.

MOTION:

Senator Davis made the motion to print **RS17961** and **Senator Little** seconded the motion. The motion carried by **voice vote**.

S1433

Lyn Darrington addressed the committee regarding **S1433**. **Ms. Darrington** said that she represents the Idaho Floating Homes Association. The objective of **S1433** is to provide for two provisions. One, to allow a safe harbor provision as it relates to reasonable rental rates and the factors to be considered, and two, an arbitration mechanism that is binding as a way to resolve disputes over what is considered a reasonable rental increase. The Association was formed in 1994 due to significant moorage increases at a marina. Float homes were not covered by Idaho Law or any landlord tenant acts. In 1998 legislation was passed that was modeled after the Idaho Mobile Home Residency Act, called the Floating Homes Residency Act. Construction of new float homes were prohibited by rules promulgated under the Lake Protection Act, and all existing float homes were essentially grandfathered in.

Ms. Darrington stated the Idaho Land Board (IDL) adopted a policy in 1999 that sought to ensure that moorage rental rates charged by commercial arenas are equitable and reasonable. Moorage rental rates charged by some commercial arenas were increased in 2005 and 2006, by as much as one hundred ten percent in one year. The Association sought relief from the IDL. IDL does not have jurisdiction over float homes on navigable waters in Idaho. After several discussions, IDL requested that legislation be introduced to codify reasonableness and institute a method of dispute resolution, which is the purpose of **S1433**.

There are approximately 350 float homes in Idaho and most are moored on private property. Others are moored in marinas at Bayview, Lake Pend Oreille, Lake Coeur d'Alene and Payette Lake. The Bayview homes were built in the 1930's and they are historic, charming and quaint. **S1433** addresses only those float homes that are moored in commercial marinas, such as the Bayview homes. It is not practical to move a float home. There are no additional commercial moorage sites for float homes, and even if an alternate location can be found, it requires a permit and it is very expensive to move a float home.

Ms. Darrington said what **S1433** will do is provide arbitration when there is a dispute over whether or not a rental increase is reasonable. It will not limit float home moorage rental rates. **S1433** amends *55-2708 Idaho Code* to provide for a safe harbor provision that outlines the factors that would be considered in determining what are reasonable moorage rates. If twenty-five percent or more tenants within a marina assert that a rental increase is unreasonable, it allows them to appoint a single party to act as their agent and enter into dispute resolution. It creates a process by which the tenant's agent and the marina owner can obtain an independent arbitrator, and it also sets out how the cost of arbitration will be paid by each party.

Senator Kelly asked **Ms. Darrington** who she is representing? **Ms. Darrington** answered the Idaho Floating Homes Association, and they are the homeowners of the float homes in commercial moorage.

Senator Little asked **Ms. Darrington** if there is a moratorium on float homes on all the lakes in Idaho? **Ms. Darrington** replied that is correct, no more can be built. **Senator Little** asked if the endowment receives any revenue from the sites? **Ms. Darrington** responded she believes that is correct, but she is not positive. **Vice Chairman Jorgenson** said **Bob Brammer** from IDL is here today and maybe he can respond to that question. **Mr. Brammer** stated that is correct. These are public trust lands and endowment land revenues are not involved. **Senator Little** asked **Mr. Brammer** if a fee is paid to the state for the administration of the paperwork? **Mr. Brammer** replied that fees are paid by the marina owner for the encroachment permits and for the IDL lease. **Senator Little** asked if the health district charges a fee because of the septic systems on the float homes? **Mr. Brammer** said that he doesn't know for sure. **Vice Chairman Jorgenson** said he can weigh in on that. The dock owners provide the sewage and they have septic systems to handle that. The contracts with the marina owners are typically for ten years that are renegotiated and IDL offers the contract, then the marina owner is left to increase the rent as he sees fit. Overtime the difficulty has been that there are only four or five marinas that can facilitate these homes. **Senator Little** asked if IDL requested this and if they approve of this? **Ms. Darrington** replied that IDL asked for someone to resolve this problem and the homeowners have the most at stake, so they took it upon themselves to bring this legislation forward. **Mr. Brammer** said IDL submitted a bill, **H347**, which was similar but it had no provision for arbitration.

Senator Stegner said on line 13 it states rental rates should be reasonable. On line 32 we are saying a five percent increase is reasonable, and line 36 provides for arbitration if twenty-five percent agree to. This appears to be one sided if you are trying to structure agreements. **Senator Stegner** asked **Ms. Darrington** if the marina owners were involved in this and are they happy with this legislation? **Ms. Darrington** responded that she knows there were conversations with some of the marina owners, but she is not sure if all of them have seen this. Historically moorage rates of five percent is deemed to be reasonable.

Vice Chairman Jorgenson stated he would like to respond to some of **Senator Stegner's** questions. This legislation will offer something that other bills have not, and it sets out a list of criteria for the arbitrator. There were no guidelines to determine what might be a fair rate. With respect to the dock owners, one of the strongest supporters is the former **Senator Jim McDonald**. **Mr. McDonald** absolutely supports this legislation. There are three owners, two of which are the cause of this problem. The issue was taken before IDL and they could not reach a decision. IDL brought a similar bill before the House and the provisions for arbitration did not include guidelines for the arbitrator to use in determining a resolution. **Senator Stegner** asked **Vice Chairman Jorgenson** if he wrote this bill? **Vice Chairman Jorgenson** responded that he had input in writing the bill and there was a great deal of compromise and discussion with all parties involved. **Senator Stegner** said you referenced a former senator, is he a marina owner? **Vice Chairman Jorgenson** replied yes, he is. **Senator Stegner** asked where? **Vice Chairman Jorgenson** said in Bayview, and he is the oldest marina owner in this mix. **Senator Stegner** asked **Vice Chairman Jorgenson** if he supports this legislation as written? **Vice Chairman Jorgenson** answered that he does. **Vice Chairman Jorgenson** said he believes it is appropriate for him to pass the gavel if there is additional debate that he might respond to. **Senator Darrington** said he will assume the gavel for the duration of this legislation.

Senator Davis asked **Ms. Darrington** why are we using arbitration rather than mediation for resolution? **Ms. Darrington** answered that she does not have the answer to that. The provisions for reasonable rates were modeled after **H347**. **Chuck Goodenough**, an attorney from the Secretary of the State's Office replied the statute that we are amending already had an arbitration provision in it. **Senator Davis** said on page 2 (i) it states a hearing may be requested by a party for arbitration, and there isn't a specific time period that they must request arbitration. In (ii) it says other parties may request a hearing within five business days after service upon them of the request for arbitration. If either party can make the request what is the need for (ii)? **Senator Davis** asked **Mr. Goodenough** to explain that. **Mr. Goodenough** responded we didn't draft this. **Ms. Darrington** said she cannot respond to that either, but maybe an amendment is in order and a time frame can be included. **Senator Davis** said in (iii) it says the hearing may be informal, and then (iv) states the arbitrator has sixty days to issue findings and conclusion upon appointment. **Senator Davis** stated if the hearing isn't held before sixty days of the appointment, it seems it would work better if the decision was issued after the conclusion of the hearing. **Senator Davis** asked how doable is this? **Senator Darrington** said that **Vice Chairman Jorgenson** would like to respond to that.

Senator Jorgenson stated that he had input in the drafting of this and former legislator **Denney Davis** who actually did the drafting. He was also the one who wrote the codes for the Float Home Association. In subsection (i) it requires twenty five percent to initiate the process, but it isn't required for the dock owner to give notice. It will give the float home owners the opportunity to spread the word, and if twenty-five percent of

the occupants have an issue with the rate increase, then a formal notice will be served for arbitration. **Vice Chairman Jorgenson** said he will certainly welcome any suggestions that **Senator Davis** may have. This is a serious situation. A developer has bought two of the docks, he has increased the rental rate in excess of one hundred percent. The people who own these homes are on fixed incomes and the controversy has rendered the market valueless. They can't sell their homes or move them.

Ms. Darrington said the homeowners are stuck between a rock and a hard place. On Lake Pend Oreille there can be no additional development of the marina because the shoreline is entirely built out. **Senator Davis** said he understands the need but he needs to understand the bill. On line 38, page 1 indicates that the dispute shall be resolved by arbitration. That suggests that the arbitrator's decision is final, binding and not appealable. Additionally, on line 41 the parties must agree on one or more arbitrators, if not, they can petition the district court to appoint one. The first part of the bill explains how, but in (c) it states the procedure for requesting a hearing on arbitration. If it takes sixty days to request a hearing, in (iv) it requires that the decision be made one day before the hearing is held. **Ms. Darrington** said she believes **Senator Davis** is correct and that in (i) there needs to be some sort of time frame. **Senator Davis** said this is a legitimate need to solve a problem. By putting in statute a five percent rate as reasonable, and the desire in subpart (e) to maintain price stability, are you creating a statutory taking or are you compressing the market value of the property. **Senator Davis** asked are you creating an opportunity for the owner of the marina to initiate a lawsuit? **Ms. Darrington** responded that the attorney who drafted this is familiar with the statute. IDL does not see the price stability as a taking. **Senator Davis** said if the state is capping the amount at five percent for rate increases, this will drive the market value of the marina.

Vice Chairman Jorgenson responded that if the increase is five percent or more it could trigger an arbitration, it does not set it at five percent. The considerations for the arbitrator will allow for costs and maintenance, and it will justify the increases for the owners. **Senator Davis** stated the way he reads subpart 3 on page 1, lines 32 through 35, it creates a presumption for the marina owner to overcome a five percent increase in a given year. That is a serious statutory limitation.

Senator Stegner said if we cap the number of these homes in the state, they have a franchise of sort. Some have been grandfathered in on a premier vacation or living experience. There is no competition and the appearance of this bill is that the owners are not happy or satisfied, they want more, a guaranteed price protection. **Senator Stegner** stated he is unhappy that IDL has put this on the Legislature, it should be their problem to work out. This may be the owners only residence, but it appears that the state of Idaho has been very generous. They have a very unique situation and it appears that the Legislature is being asked to enhance it. **Ms. Darrington** said in response to your comment that there is no competition to expand this arrangement and that they have a franchise, she believes that her client would argue that there is also no

competition when it comes to commercial marinas as an option to moor their homes. The owners have nowhere else to go. The safe harbor provision is in the bill to allow the opportunity to be considered as to what is reasonable for rent, and provide the opportunity for both parties to dispute it in an objective way. Currently, they do not have the ability to do that. IDL has no jurisdiction over these homes. There isn't any competition for either party.

Senator Davis said he is not troubled by the language in subpart 2, but he is struggling with subpart 3. If the sponsors remove that it provides a mechanism for the parties to solve their problems, and it is less problematic. He asked **Ms. Darrington** to speak to that. **Ms. Darrington** replied that she cannot speak for her client today, but she believes they probably would. The key for them is to establish a binding arbitration process by which they can resolve these disputes. **Senator Davis** asked if subpart 3 is removed, what is the difference between **H347** and **S1433**? **Ms. Darrington** responded **H347** has no provision for arbitration. It speaks only to lines 13 through 31 on page 1.

Vice Chairman Jorgenson stated this has been an excellent debate. Ninety percent of all float homes lie within his district. The one issue that has not been raised is that the new dock owner wants to force all of the float home owners out, so that he can take them and make them condominiums. The float home owners are looking for assurance that they won't be driven out of their homes, and they are not asking for guaranteed rates.

Senator Little asked **Vice Chairman Jorgenson** what did the new owner actually buy? **Vice Chairman Jorgenson** responded the new owner purchased upland property. That is essentially the access to the marina. The marina is in terrible shape and that is a function of a ten year lease with IDL. **Senator Little** asked if that is revenue to IDL, and is it an endowment or just a fee revenue? **Mr. Brammer** answered IDL charges fees under the submerge lands lease. The revenue goes to the general fund, not to the endowment fund.

Senator Stennett asked **Vice Chairman Jorgenson** if the new marina owner intends to convert the homes to condominiums, and how does the county tax these homes? **Vice Chairman Jorgenson** responded he can't answer that, but he could look into it. **Senator Little** asked if they are taxed as real property? **Vice Chairman Jorgenson** said yes. **Senator Stennett** said he thought they were taxed as personal property. **Ms. Darrington** stated it is tax as personal property tax. **Senator Stennett** asked what is the process for the county? **Ms. Darrington** replied that she does not know.

Senator Little said the way he views this as the marina will get a five percent increase in revenue everyday, and if they want to do anything else, will they have to use arbitration? **Vice Chairman Jorgenson** replied that is my understanding. **Senator Little** asked **Vice Chairman Jorgenson** if the owners have other rights, or protection? **Vice Chairman Jorgenson** said he couldn't respond to that.

Senator Kelly said it appears to be very prescriptive about what the owner can or cannot do with regard to the rental agreement. Additionally, what about the problems with mobile home parks across the state, they are being shut down almost weekly. Even without section 3, **Senator Kelly** said there is still a lack of balance. **Senator Kelly** asked if the house bill is still proceeding and how does it fit here? **Ms. Darrington** said the short answer is yes, and the long answer is that the house bill did not include a binding arbitration process. The bill is in House State Affairs and it will not have a hearing unless requested by the sponsor. **Senator Kelly** said we have heard that IDL wants this to be resolved, so I assume the Department would bring that forward. **Mr. Brammer** responded yes, the clarification of this bill is that it provides binding arbitration, so we are willing to pull **H347**, and let this bill go forward. **Senator Kelly** asked if IDL supports this? **Mr. Brammer** replied it does because we want a resolution to the issue and **H347** provides arbitration, but not binding arbitration which this bill does. **Mr. Goodenough** said as the bill was drafted it allowed arbitration if the parties agreed to, and if they agreed to something they wouldn't need arbitration. IDL's bill provides for arbitration, but it didn't. It listed factors which could be used by an arbitrator in determining if a given rate was reasonable. The Floating Home Association agreed that there needs to be a mechanism to get to arbitration.

Senator Davis asked if subpart (e) of **H347** is in the **S1433**, and if not, why is this a factor in the consideration? **Ms. Darrington** answered it is not in **S1433** and she does not know why. She will recommend to her client that subpart 3 be removed and add a time line for the hearing to take place, and move subpart (e) of **H347** over to **S1433**. The bottom line is the owners want to stay in their homes and the only way to bring the other party to the table is through a binding arbitration process.

Senator Stennett asked **Ms. Darrington** how many Idaho residents own these homes? **Ms. Darrington** said in Bayview there are fifty percent who do, thirty-seven percent are from Washington, and the remaining thirteen percent are from California, Nevada, Oregon, Montana, Colorado, New Mexico and Utah. **Senator Stennett** asked when the marina is for sale is there an effort by the home owners to purchase the marina? **Ms. Darrington** said she does not know.

MOTION:

Senator Little said there are all kinds of codes for these floating homes. **Senator Little** moved to send **S1433** to the amending order. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

S1351

Ms. Darrington said she is delighted to be here and she doesn't expect this bill to be much easier. She represents the Knitting Factory who is the owner of the Big Easy Concert House in Boise and Spokane. **Ms. Darrington** stated that she has met with Idaho State Police (ISP) last Friday regarding the amendments to **S1351**. **S1351** will not change the type of entertainment that the Knitting Factory will provide, and they will continue to serve the same audience. The intent of this bill is to provide a more appropriate, more regulatory oversight than a restaurant endorsement which the Big Easy currently operates under. **Mr. Margolis**

met with ISP regarding the restaurant endorsement and the pending revocation of that endorsement. The Alcohol Beverage Control (ABC) suggested that the Big Easy run legislation to find a better place for them to reside in Idaho Code.

Ms. Darrington stated a copy of the new amendments are in your folders before you. At the last hearing, **Lieutenant Clements** from ISP brought forward several concerns. The concerns have been addressed and they are in the language before you today, including other provisions. After working last week and sending language to ISP, the end result is that we are closer, but not as close as ISP would like. The comments and concerns and the additional request that the event center definition be changed to an event center endorsement, were reviewed by her client. The event center endorsement would work much like the restaurant endorsement and require the approval of ABC in order for the Big Easy to operate. The Knitting Factory is not too keen on this idea, but they certainly recognize the concern that ISP has in other entities who wish to live under these new requirements.

The new language on page 2 excludes the parking lot, and a minimum of one hundred twenty-five events is required to be called an event center. Events must be a paid admission fee or the leasing of the event center for a private function. Subsection (b) clarifies what the events must be and chapter 41, title 18, Idaho Code is included which speaks to indecency and obscenity. The Knitting Factory is not open unless there is an event, so they included the language that a minor is not allowed to enter the facility unless there is an event. Subsection (d) is self explanatory and restricts the sale of alcohol to a person under the age of twenty one. A new combined revenue section was created in (e) which includes leasing the facility for private events. In response to the meeting of last Friday, subsection (f) was added to address the security plan for an events center. **Ms. Darrington** stated she has met the requests of the committee and asked the committee to send **\$1351** to the amending order.

Senator Davis stated as a state we have tried to keep minors away from environments that sell liquor, or where it is available. But this is an environment where minors are actively participating, and this is a pretty significant step forward in exposing those under the age of twenty one to a consumptive environment. **Senator Davis** asked **Ms. Darrington** to help him with that. **Ms. Darrington** responded that there isn't another entity in the state of Idaho that has a security to patron ratio as high as the Big Easy. The key to remember here is that this bill will not change how the Big Easy has been bringing events to Boise, and it allows teen audiences to continue to attend these events. It will establish a higher threshold for entities to meet these requirements. There are different types of entertainment at the Big Easy compared to other events. This is an effort to bring the same types of entertainment to the community, they are a different type of venue, and there are several exceptions from the restriction in Idaho Code today for dark lit areas. The event center definition is not the only entity that lends itself to a darkly lit area.

Senator Stegner asked **Ms. Darrington** why is the provision for one hundred twenty five events per year, and fifty percent of revenue must be from admission fees and other sales needed? **Ms. Darrington** replied that they struggled with this in the drafting and they concluded that section (e) and (f) will put ISP on notice that there is an entity using the event center definition, so they can watch closely. In addition her client believes that by including this, it is a high threshold for an entity to meet. The entities out there do not want to meet a minimum for events.

Senator Kelly said in (b) you are defining event pretty broad. What about unintended consequences which may include other venues. If we include other events, it is a broad scope. **Ms. Darrington** responded that if the events include the other requirements under the definition, it is a high threshold for any entity to meet. She does not believe that other venues such as the race track would want to meet the requirements in subsection (e) or (f). **Senator Kelly** said previously sports arena along with baseball park and convention center was defined in section 3, as a separate entity. Now this is defining event center with a broad definition. **Ms. Darrington** said she sees where **Senator Kelly** is going, but the other entities have a provision in Idaho Code in which they can operate today. The difficulty with her client is that in November, ABC acknowledged that the restaurant endorsement is not the most appropriate by which they must be regulated. ABC suggested they run legislation to address this and that is why we are here today. If you take all the provisions in its entirety it is a high standard, and she does not see the other venues wanting to become an event center. They already have a provision in Idaho Code to operate the way they do. **Senator Kelly** said as an observation, (f) seems like an empty qualification.

TESTIMONY:

Captain Pete Ritter, representing the Boise Police Department said they are opposed to any rules that broaden the access of juveniles to venues that serve alcohol. **Captain Ritter** stated although they believe the Big Easy is doing the best they can with security, the fact is there is a problem with staffing patrol officers to work those events. The definition of event is too broad, the state will regulate it, but the Department has to police it. The ISP will not come for these events to make sure the rules are being followed, it will be up to the Department. It is not the problems in the club, but the fall out around the club when you mix alcohol with juveniles. This legislation is for one venue that will cause a proliferation of these venues. The bottom line is that the Big Easy is a bar and they are in the business to sell alcohol. The easiest thing to do would be to not sell alcohol when juveniles are present.

Dan Thornton, from ISP testified in opposition to **S1351**. **Major Thornton** stated that ISP and ABC believes there is a potential for an event center to fit within the Idaho Code, they are not sure if this language would be enforceable. The language is broad and there are unintended consequences for when an event is over. ISP's policy is that we follow the rules and laws that the Legislature makes. Legislation should not be just be for this entity.

Chairman McKenzie stated the bill is before us, what is the will of the

committee.

MOTION: **Vice Chairman Jorgenson** moved to send **S1351** to the amending order and **Senator Stennett** seconded the motion.

Senator Kelly said this is a personal issue to me. Parents in the Treasure Valley have to deal with their teens requesting to participate at the Big Easy. They rely on us to provide for safety and that is not what she is hearing. This bill is not about protecting public safety and **Senator Kelly** stated that she is not comfortable with this, so she will oppose the motion.

SUBSTITUTE MOTION: **Senator Davis** made the motion to hold **S1351**. **Senator Kelly** seconded the motion. **Senator Little** said this is a high risk venture changing the rules for a restaurant permit, so he will support the substitute motion. **Senator Geddes** said we may be making a mistake to assume the only way the Big Easy can be successful is if alcohol is available. He shares the concerns, and the Legislature needs to take into account other aspects such as protecting the under age participants.

The substitute motion carried by **voice vote** to hold **S1351** in committee.

S1412 **Chairman McKenzie** said we will continue with testimony on **S1412**. **Phil Homer**, testified in opposition to **S1412**. **Mr. Homer** stated he represents the Idaho Association of School Administrators (IASA) and that IASA already makes a concerted effort for building energy efficient schools. The Association initially thought they could support this legislation, but as they gathered additional information their concerns grew.

1) It appears to the Association that an effort is currently made in the design process to utilize energy efficiency; 2) Another level of oversight may indeed slow the approval process, which could be detrimental in getting to the bidding phase; and 3) Although **S1412** is to be funded by an additional appropriation each year by a Bond Levy Equalization to cover that additional cost, in difficult economic times, that may not happen.

Senator Geddes said that he asked **Russ Westerberg** to do some homework on this. There is a major energy supplier who works with school districts to be more energy efficient. **Mr. Westerberg**, who represents Rocky Mountain Power, stated that they have a system in place for customers to save money and they show them how to do it. Customers can call an eight hundred number and speak to an energy efficient expert who refers them to a vendor for installation. The process is simple, and the goal is to save money.

Senator Stennett asked **Mr. Westerberg** what program is your company not providing that this bill sets out to do? **Mr. Westerberg** replied our program will not replace the design phase.

Neil Colwell from Avista Corporation said our company is known as the "friendly utility". **Mr. Colwell** stated this will replicate what we are already doing, and it will provide uniformity. Avista is involved in design implementation at no charge for this service. We fund and help pay the cost for energy efficiency to schools.

Chairman McKenzie said there is support for energy efficiency and that we still have a long way to go to improve on it. He requested a unanimous consent to continue with **S1412** on Wednesday and allow time for the sponsor to summarize. **Chairman McKenzie** stated this bill is essential for the state.

Senator Darrington said that he would prefer this were a resolution. It would be better than a bill, he would support a resolution, but not this bill.

MOTION:

Senator Stegner moved to hold the bill in committee. **Senator Darrington** seconded the motion and said the objective is admirable and the state needs to consider this. He is not comfortable with this bill.

SUBSTITUTE MOTION:

Senator Stennett made a motion to send **S1412** to the floor with a **do pass** recommendation. **Senator Kelly** seconded the motion.

Senator Stennett said a lot of work has gone into this. Utilities are an important role in the planning and funding of building schools. We need to get the power needs and consumption in check.

Senator Davis said he agrees, but his worry is that statutorily we are increasing the cost of construction and design plans, and we are already doing what is contemplated here today.

Senator Little said he agrees with the concept of the bill, but we are complicating the process for school districts.

Chairman McKenzie said there is an increased demand for power in the state. The cheapest energy is not what is being consumed. We can use nuclear, natural gas or we can continue to do nothing. If we don't take the next step, we are not going to improve the situation.

Senator Davis said what you are requesting in this bill is already being done. A resolution would be a better remedy, he would support a resolution.

The motion carried to hold **S1412** in committee.

ADJOURN:

There was no other business before the committee. **Chairman McKenzie** adjourned the meeting at 9:48 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 27, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly

MEMBERS ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

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

GUBERNATORIAL APPOINTMENT: **Chairman McKenzie** stated the first order of business today is the confirmation vote on **Tim Ridinger** to the Idaho Racing Commission.

MOTION: **Senator Geddes** moved to appoint **Mr. Ridinger** to the Commission. **Vice Chairman Jorgenson** seconded the motion. The motion carried by **voice vote**.

PENDING FEE RULE: **Roger Hales**, stated that he represents the Idaho Athletic Commission and he is here today on behalf of the Bureau of Occupational Licenses.

DOCKET NO. 03-0101-0701 **Mr. Hales** said the Commission regulates professional boxing, wrestling, and martial arts for the State of Idaho. Last year the law was updated for jurisdiction over martial arts. The rules were adopted in 1994 and have not been changed. The changes are for housekeeping and to make them consistent among all the sports. There is no opposition to the rules.

MOTION: **Senator Little** made the motion to adopt the rule. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

RS17769C6 **Senator Little** said that he worked with the Secretary of State (SOS) regarding this. On page 2 describes the staff of the constitutional officers and this is the Sunshine Law that affects lobby reporting. **Senator Little** stated on page 3, lines 38 and 39, the old language said "to influence legislation". The new language is close to what the Attorney General's opinion is. Lobbying is developing and maintaining a relationship, and it significantly broadens what lobbying is. A new section on page 4 is not substantially different, but written better. The SOS has to enforce this and some of the changes are moving the fifty dollar charge to seventy-five, and then one hundred. It will include all members of a household and puts it into the category of entertainment, travel, lodging and advertising. The consumer price index (CPI) is determined by SOS. The last part is

on page 6, which basically adds the executive branch and makes the language more workable as defined by SOS.

Ben Ysursa, the SOS, addressed the committee regarding **RS17769C6**. **Mr. Ysursa** said there was a great deal of work put into this to make it as clear as possible. What we are after is clarity and over the years there have been questions about lobbying. **Mr. Ysursa** stated that this is a good disclosure bill. Some changes needed to be fine tuned and we are expanding disclosure and clarifying it. The lobbyists will follow the rules if they know what they are.

MOTION: **Vice Chairman Jorgenson** moved to print **RS17769C6**. **Senator Kelly** seconded the motion and the motion carried by **voice vote**.

S1441 **Chairman McKenzie** said he is one of the sponsors so he will turn the gavel over to **Vice Chair Jorgenson**. **Chairman McKenzie** stated this is similar to the previous bill. There were three areas of concern that have been addressed. On page 2, section 5 regarding Fish & Games ability to regulate the taking of wildlife, was not intended to do that. The second concern was regarding cities and counties ability to regulate sport shooting ranges. They can still do that, and the third area was the authority of the governing bodies of higher education to regulate firearms on those campuses. The bill is not intended to expand or detract from the existing authority that they have.

Brian Judy, the Idaho liaison for the National Rifle Association (NRA) said he will give a brief summary of **S1441**. **Mr. Judy** stated **S1441** will strengthen and broaden the existing preemption statues in the state of Idaho. Political subdivisions are imposing restrictions that the NRA believes are a violation of the spirit of the preemption statutes. The NRA believes that standardizing firearms law is appropriate and important, so that everyone is treated equally, regardless of where they go in the state. The three concerns that were previously raised have been addressed. Section 5 clarifies the intent and allows the types of regulations that will continue. One new concern with the bill is that the language will cause law enforcement to not be able to regulate the firearms that officers use. It is not the case. There are two types of governmental relationships, traditional and proprietary. This bill will not impact those relationships.

Senator Stennett said the county he resides in has an ordinance to keep people on Silver Creek from shooting to close to homes. What affect will the preemption language have on that? **Mr. Judy** replied that it will not impact it. There is specific language that allows cities and counties to regulate discharge.

TESTIMONY: **Sharon Kiefer** from the Idaho Department of Fish and Game stated that the Department has not taken a position on **S1441**. The Department has reviewed this and by including the provision of section 5(a) their issues have been addressed. **Ms. Kiefer** said the Department appreciates the resolution offered in this bill.

Senator Little said he read 36-104, which is the code section of the powers and duties of Fish and Game. He asked **Ms. Kiefer** to point out

where in the code it addresses the ability for prohibiting use of firearms for hunting along the Boise River. **Ms. Kiefer** responded 36-104 defines under what circumstances, localities, and means that wildlife in the state can be taken. That section of code does not particularly articulate firearms regulation. **Senator Little** asked **Ms. Kiefer** if they have the power even though it isn't specified in the code? **Ms. Kiefer** replied that is their interpretation and the Commission will be reviewing it and they will make a recommendation to strengthen it.

Senator Stennett asked **Ms. Kiefer** if the local authority has the authority over setbacks? **Ms. Kiefer** stated her personal opinion is that she believes the county maintains the safety over discharge.

Michael Brown, representing the Idaho Sport Shooters Alliance, stated he is here in support of **S1441**. **Mr. Brown** said that current preemption firearms regulations is controlled by the state. Concealed weapon permits are valid within the state and his conclusion is that the legislature attempted to preempt firearm regulations under Article 1, section 11. They only apply to counties and cities, not to any other regulatory body. Some ordinances are in conflict with that as well.

Senator Kelly asked **Mr. Brown** to address the issue of ordinances for carrying a concealed weapon? **Mr. Brown** said under current preemption statutes they do not mention carry. There is another issue regarding open carry, and because of the wording of Article 1, section 11, the legislature may not have the power to regulate that.

Mr. Brown stated as to local governing districts, they haven't been given a delegation of police power. Some districts like the library board have restrictions on carrying into the building and no exemption for concealed weapon permit holders. There is no guidance for the legislature as to what a county can do for regulating discharge. It is an arbitrary standard. **Mr. Brown** provided several examples which are attached to the original minutes on file in the committee office. **Mr. Brown** said **S1441** is in no way a radical change in state law. It merely clarifies state policy and ensures that the good firearms laws that we have in Idaho are applied consistently statewide

Steve Rutherford, an attorney for the City of Boise testified in opposition to **S1441**. **Mr. Rutherford** stated his concern lies along the issues of cities and counties as employers. As employers we have the ability to control when the employees come to work that they do not carry firearms. The city is operating under total preemption, but the use of the word rules and the prohibition that follow in that language cause concern, that they will not be able to regulate what employees do at work. It is important to provide safety for our employees.

Vice Chairman Jorgenson asked **Mr. Rutherford** whether or not he opposes **S1441** or supports it? **Mr. Rutherford** replied he opposes it for the use of the word rule and regulation. Otherwise, the bill is fine and it clarifies the existing law. **Senator Kelly** said Boise code has a provision that prohibits the unlawful possession of firearms in a public building. She

asked **Mr. Rutherford** if he was familiar with that? **Mr. Rutherford** said he is. **Senator Kelly** asked if the provision has an exception for people who carry with a valid permit? **Mr. Rutherford** replied that is correct. **Senator Kelly** asked if the bill before us is enacted will it preempt the cities from enforcing the code provision, and how will it relate to open carry? **Mr. Rutherford** said this provision will not affect that.

Chairman McKenzie stated current preemption law is controlled by the state. He asked **Mr. Rutherford** if he has ever had a challenge from police or other employees of the county as to what type of weapon they carry or when? **Mr. Rutherford** responded our policies have not been challenged. As a city employee, firefighters cannot have a gun on city property. This specific issue has come up.

Nate Helm stated he is the Executive Director of Sportsmen for Fish and Wildlife Idaho (SFW-ID) and he is simply here today to express their support of **S1441**.

MOTION: **Senator Darrington** made the motion to send **S1441** to the floor with a do pass recommendation. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

RS18008 **Chairman McKenzie** resumed chairing the meeting. **Senator Coiner** presented **RS18008** to the committee. **Senator Coiner** stated that he worked with the Department of Administration (DOA) and this deals with health benefits for retirees. He asked the committee to print the RS and have it return to Commerce and Human Resources for a full hearing. **Chairman McKenzie** asked if that was a unanimous consent of the committee? **Senator Coiner** responded yes, but the committee secretary may not have received it.

MOTION: **Senator Little** moved to print **RS18008**. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

S1413 **Senator Heinrich** addressed the committee regarding **S1413**. **Senator Heinrich** stated that **S1413** will enhance the previous decision of this legislature which was given to an owner or operator of a food and conference lodging facility in a small rural town. It will provide the ability to obtain a liquor license subject to the approval of the local mayor and city council. **Senator Heinrich** said there are some parties here today to testify and he would like to relinquish his time for them.

TESTIMONY: **Ron Lundquist**, the Marketing Director for The Ashley Inn testified in support of **S1413**. The Inn has been in a catch twenty-two situation since they opened. A four star unit was built, but he can't achieve a four star rating without the matching food and beverage out front. In order to provide that service they need an avenue for the operator to achieve a liquor license. In a town of less than fifteen hundred they are authorized one quota license under the statute. The Inn loses money for catering because they have to bring someone in with the ability to serve liquor. The state statute in the quota system has left the Inn without an avenue to achieve the next step they need in their business. **Mr. Lundquist** said he understands the concern regarding speciality licenses and the statute

overall, but in a rural community they need support to achieve this liquor license.

Senator Darrington said that he represents communities of less than fifteen hundred people. A mini convention center was built where they invested a lot of money. He asked **Mr. Lundquist** what will he say to them? **Mr. Lundquist** responded that is a tough question, but as we approach this we understand there has to be some constraining criteria. The substantial investment that is reflected in this bill shows there is an effort in the community for economic development. This will be a resolution for us without throwing the door wide open to other bar operations who are outside the temperance mandate that this statute brings to Idaho. **Senator Darrington** said in my community they spent four or five hundred thousand dollars and they cannot afford a liquor license or get one. This will not help them. **Mr. Rutherford** said that he wished he had an answer for **Senator Darrington**.

John Blayz, the Economic Development Director for Boise and Valley County said that he has been in rural Idaho under the Legislatures funding for the last six years. Currently, he is not funded because the Department of Commerce funded four other economic development offices. **Mr. Blayz** stated he started his career in a vault in the Capitol Building twenty one years ago, hired by **Jim Hawkins** and **Governor Andrus** to do rural economic development. He has been in the field and has created about two thousand sixty jobs with eighty six companies in Caldwell. In rural Idaho he represents Cascade, McCall, Donnelly, and also Garden Valley, Crouch and Lowman. The last six years he has helped nineteen companies create five hundred two jobs, nine and one half million dollars in payroll, and seventeen million in capital investment. Several years ago they helped the Ashley Inn when the community of Cascade applied for a three hundred thousand dollar block grant, because they didn't have sewer, water and infrastructure to help them build the hotel. To get the financing **Mr. Blayz** said he went to the U.S. Department of Agriculture to build the Inn and they were able to secure a loan guarantee. The months of June through August is when they can expect a good income. Rural Idaho needs this to stimulate the economy.

Katrin Thompson testified in support of **S1413**. **Ms. Thompson** said she is one of the owners of the Ashley Inn and she is concerned about rural Idaho. She is a member of the Board of Idaho Rural Partnership. To assist rural Idaho they built the Ashley Inn which is a food, lodging and conference facility in a small town rather than going to Sun Valley or McCall. The Inn has created thirty-five jobs and it helped change the community. In order to attract small conferences they need a liquor license to make it economically in a small community. **Ms. Thompson** said that she and her husband **Ashley** have used all their resources just to keep the Inn alive. She asked the committee to pass this and change whatever is needed not just for the Ashley Inn but for all of rural Idaho.

Senator Davis stated he wants to understand the technical components of the bill. The statute is subject to approval by the mayor and city council, and they can issue a license if the facility is sixty thousand square

feet, fifteen million taxable value, and the population is now reduced from five thousand to fifteen hundred. **Senator Davis** asked **Senator Heinrich** if that is correct. **Senator Heinrich** responded that is correct. **Senator Davis** asked why isn't someone representing the cities here today with a population of fifteen hundred to five thousand, who are troubled with this legislation? **Senator Heinrich** responded these are figures that were recommended to utilize this. His personal opinion would be to eliminate that and the task force would make some type of recommendation, and allow liquor licenses in these small communities. **Senator Davis** asked is the population being changed in order for small communities to qualify? **Senator Heinrich** replied it has no bearing whatsoever, it is just a recommendation, these are arbitrary figures.

Senator Stennett said **Senator Davis** has a point. My community would be eliminated from the opportunity to do this, because we have over fifteen hundred people. **Senator Heinrich** responded you are correct. In addition, he has been encouraged to go forward as an impetus for the task force to come forth with a fix for rural Idaho. This is a non-transferable license and it is for this facility only.

Senator Little stated in spite of the fact they built their hotel where he used to raise horses, Cascade only has one thousand people but they serve a significant part of Valley County. This is common in these small resort communities where there is substantial infrastructure and current law is predicated on the population. A resort community by its very nature is small and they are discriminated against in current allocation of liquor licenses. This needs to be addressed from a holistic thirty thousand foot view.

MOTION: **Senator Little** moved to send **S1413** to the floor with a **do pass** recommendation. **Senator Stegner** seconded the motion.

SUBSTITUTE MOTION: **Senator Stennett** made the substitute motion to send **S1413** to the amending order. **Senator Stennett** said this is the only way you will keep me on board with this and keep the level at five thousand. My community fought long and hard for this. They have the same opportunities as Cascade and he hopes that the committee recognizes that this is a friendly amendment. **Senator Davis** seconded the motion.

Senator Darrington said the Sun Valley bill got me in trouble with his constituents for the aforementioned reasons. If the amendment is for three hundred thousand dollars instead of five million, and make the square footage five thousand instead of fifty thousand, this Legislature will not accept the proliferation of liquor licenses that will occur. **Senator Darrington** said he opposes the motions.

Senator Stegner stated although he seconded the original motion he is going to vote for the substitute motion to amend the bill.

The substitute motion to send **S1413** to the amending order carried by **voice vote**.

S1435

Senator Bastian presented **S1435** to the committee. **Senator Bastian** stated he got involved with this legislation because he is on the Information Technology Resource Management Council. The purpose of the Council is to suggest standards, efficiencies, savings, and improve service for information technology throughout the state of Idaho. This bill will repeal *Idaho Code Section 58-330*, and replace it with a new code section, *Chapter 57, Title 67 Idaho Code* and do the following: transfer the responsibility of integrated property record system to the Department of Administration; provide definitions; provide duties and powers of the director regarding the integrated property record system; provide duties of state agencies with regard to providing information to Department of Administration and a date for such information to be contributed; and provide for the responsibility for data quality and documentation. **Senator Bastian** said they are doing this to create efficiency, savings and improved services. Currently the state's real property is managed by separate agencies, which is maintained and compiled differently.

Gail Ewart, from the Department of Administration (DOA) stated the original legislation placed the responsibility with the Idaho Department of Lands (IDL). As things have evolved it became evident that a better fit would be with DOA. There are two divisions in DOA, Public Works and Risk Management. There are three benefits for doing this, 1) the system will create a one stop shop; 2) it will permit cross matching of records; and 3) enhance each agency to meet their individual mission. The Department of Transportation is concerned with the volume of property they have to contribute to the system. In order to meet the deadline they have an agreement with them and DOA is working on the language for it. **Ms. Ewart** asked the committee to send this to the amending order.

Kathy Opp, Deputy Director of IDL, said that IDL supports the transfer of the integrated property records to DOA. The primary mission of IDL is to manage 2.4 million acres on endowment land. After the passage of *Idaho Code 58-330*, there were requests for services and information that IDL does not have the scope and expertise for. To address the emerging issues IDL began discussions with DOA. The past two years they have worked cooperatively under a memorandum of agreement to better manage the needs of the system. The official integrated property record system application is currently housed on DOA's server, and this agreement has allowed IDL to enhance its ability to focus on its core management. IDL foresees no issue with compliance and they will continue to supply base layer information related to endowment land, leases, and property records. The management of the system is a better fit with DOA.

Senator Little said the fiscal impact seems dubious. He asked **Ms. Opp** if this will cover the cost because you are already doing this under a memorandum and basically moving money around? **Ms. Opp** responded when this was enacted the agency received funding out of the general fund and two full time employee (FTE) positions. In the year subsequent to that, the funding for integrated property records had to be reverted. What is left is one full time equivalent with fifty thousand dollars in base funding. Fifty thousand for one FTE isn't enough to keep the program

running efficiently. IDL provided a highly skilled person in this field, and that is the additional cost between the base funding that is left and for the FTE to remain on staff and focus solely on integrated property records. The server and license were transferred to DOA. **Senator Little** said then are you saying that most of this has happened and this is a wrap up of the statutory authorization? **Ms. Opp** said that is correct.

Senator Stennett asked if there is someone from Fish & Game or the Department of Transportation that can speak to this. **Ms. Opp** said the memorandums of agreement they have with Parks & Recreation and Fish & Game to support them will not go away.

Kevin Iverson, Chief Technology Officer of DOA stated they have been coordinating with the agencies this system will impact. The only agency that we need to work on is Idaho Transportation Department (ITD), and it is primarily due to the volume of records they have and the lack of easy access to their data.

Senator Little asked what are the amendments that we are being asked to do? **Senator Heinrich** responded that he was approached by **Kevin Iverson** this morning. **Mr. Iverson** indicated there was an issue with ITD and that they could not possibly meet the January 15, 2000 deadline, on page 2, 67-5781. The amendment is simply just that particular date that will need to be changed, and it should be relatively simple.

Senator Davis said he isn't sure where this belongs. But he believes the Governor has confidence that the departments know and they decided it fits best at the DOA. **Senator Davis** asked **Senator Heinrich** is that what we are doing? **Senator Heinrich** answered the Governor asked us to work on consolidating information technology and provide greater efficiencies, and this is a step in that direction. **Mr. Iverson** said this has been discussed with **Mike Gwartney** as well as the Governor's office. But you are essentially right and this makes sense. **Senator Davis** said years ago it was decided that IDL was the best, now it is DOA.

Senator Kelly said she has more than a casual interest in Geographic Information Systems (GIS). She wants to understand how this will work. The agencies that have GIS needs, are also managing permits and licensing and they need the ability to respond quickly. **Senator Kelly** asked how will this work? **Mr. Iverson** replied the intent is that this system as well as with other GIS initiatives is not to consolidate and centralize information. The challenge in the GIS community is the lack of integration of that information. This is a framework model and the agencies will still be the stewards of the information, but DOA will serve the integration capability, bringing the information through a central port.

Senator Little said that he did some research on this and former **Senator Bunderson** started the ball rolling several years ago. One of the issues is that IDL has the constitutional obligation to the endowment to manage 2.3 million acres, which goes beyond their job description. This is the right thing to do.

MOTION: **Senator Little** moved to send **S1435** to the amending order. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

**TEMPORARY
RULE:
DOCKET NO.
11-0403-0801**

John Chatburn, a member of the Idaho State Racing Commission presented the rules governing the licensing and fees of the Commission. **Mr. Chatburn** said this is a new chapter and a fee rule. When he was appointed to the Commission he wanted to know the rule for individuals who participated in racing and the fees for licensing. Statutorily there is authority to do that, however, a rule had never been promulgated. That is what is before you today. It contains definitions, some qualifications, and a fee schedule. No one under the age of sixteen can be licensed. Typically, those aged sixteen to eighteen are exercise riders or apprentice jockeys.

Senator Davis said on page 6, in the definition section it notes "jocks room custodian". He asked **Mr. Chatburn** if "jocks" is supposed to be possessive, or plural? **Mr. Chatburn** replied it is plural. The Commission will have their first meeting and next year you will see additional rules from the Commission. There is a lot of jargon in here as well as the existing rules and they will attempt to reorganize and update all rules over the course of the summer.

Mr. Chatburn stated that the fee schedule in this rule has increased some of the fees. During 2007 there was a deficit of twenty three thousand dollars. The new fees will generate an increase of about forty one thousand dollars, which will cover the deficit.

Senator Davis said on page 7 there is a fee for a stable name license fee. **Senator Davis** asked if the license is filed with the Secretary of State (SOS), the Commission, or both? **Mr. Chatburn** replied he doesn't know, but he believes if they are using that stable name to conduct business outside of just racing, they are required to register with the SOS as well as under an assumed business name. If not, they are just registering the name with the Commission. **Senator Davis** said he believes if they have a stable name they would file it with the SOS, and the definition of the name suggests that the Commission would also want to have control over it. **Mr. Chatburn** said this has been the historical practice without having a rule. This is the first attempt for laying out a rule for what license categories are required to be licensed and what the fees associated with them are. A rule review workshop is planned to get the rules of the Commission up to speed with Idaho statute, and with current practices within the racing industry.

MOTION: **Senator Little** moved to approve the rules and **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

ADJOURN: There was no other business before the committee. **Chairman McKenzie** adjourned the meeting at 9:47 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 29, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly

MEMBERS ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

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

RS18005 **Senator Stennett** presented **RS18005** to the committee. **Senator Stennett** said this RS proposes to amend *Idaho code 23-903*, to permit the liquor licenses of ski resorts to be applied similar to the existing liquor licenses of golf course resorts. This will permit the sale of liquor in a resort located within the city limits.

MOTION: **Vice Chairman Jorgenson** moved to print **RS18005** and **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

H422 **Chairman McKenzie** said he will turn the gavel over to **Vice Chairman Jorgenson** and introduce this bill. It came out of the Interim Energy Committee. The co-chair and **Senator Kelly** are here to speak as well.

Senator Kelly stated a similar bill was introduced last session in the House. This bill will require all major state buildings to be designed and constructed and certified to a standard that achieves energy savings at least thirty percent greater than the current state legislated energy code. This requirement applies if a project receives funding from the state general fund or the state permanent building account, or if it is financed through the Idaho State Building Authority. Major facility projects are defined as projects that are larger than five thousand square feet. This applies to buildings that are constructed by or for occupancy by a state agency. State agencies include departments, divisions, bureaus, commissions and boards, including a legislative or judicial branch and public post-secondary educational institutions.

Senator Kelly said full commissioning shall be considered, it does not require it. An exception is provided if thirty percent energy savings is determined not to be fiscally prudent and/or practical by the Permanent

Building Fund Advisory Council. There is a requirement for the Idaho Division of Public Works and state agencies to monitor, document and annually report to the Council the cost and the savings of construction and operating state buildings using energy efficient methods, and it requires the Council report the consolidated information to the Governor and Legislature. The Division of Public Works estimates that based on the known building projects, a savings over the next five years is at least one million dollars, by implementing this statute.

Senator Davis said you mentioned a discretionary component of this. In 39-2904 is the non-discretionary language, and at the end it says full commissioning shall be considered on all major facility projects. **Senator Davis** asked **Senator Kelly** to explain that language. **Senator Kelly** said subsection 1, lines 29 through 35 sets up a mandatory target. On lines 40 through 44, applies to major constructed facilities. Full commissioning shall be considered was very deliberate to encourage agencies to use this. **Senator Davis** said he understands the relationship between subpart 1 and subpart 3. **Senator Davis** asked **Senator Kelly** to explain conditions phase as defined in the building code? **Senator Kelly** replied conditions applies to heating and air conditioning. **Senator Davis** asked if this will apply to any pending or current project? **Senator Kelly** said the language on page 2, line 39 prevents that scenario. **Senator Davis** asked how is this bill different from the commissioning bill previously considered by this committee that was held? **Senator Kelly** responded this applies to state projects and it does not have the funding complications that the previous bill had. The language has been carefully crafted and because we are requiring the agencies to monitor and report back how this is working. **Senator Davis** asked **Senator Kelly** if the Idaho State Building Authority has an opinion on this bill and do they support it? **Senator Kelly** answered that she isn't sure. **Senator Davis** asked **Senator Kelly** if there is a prohibition that exists that precludes the Idaho State Building Authority to do this commissioning? **Senator Kelly** replied the Committee worked with the Division of Building Safety on this and they did not encounter any argument. **Senator Davis** said he wants to make sure that the third party commissioning does not add a cost to the construction of the project, and that the utility companies would provide this to the state of Idaho anyway. He asked **Senator Kelly** to speak to that. **Senator Kelly** said she would expect that the utilities would do that at no cost. Any costs up front will be quickly recouped in energy savings. **Senator Davis** said he agrees with the desire for energy efficiency, but will the Idaho Building Authority suggest that a utility company is not a true third party commissioning vehicle? He asked **Senator Kelly** to provide him some comfort in the language of subpart 1. **Senator Kelly** stated she does not see that scenario in the language because of the shall be considered language to the commissioning. The language does not say shall be used or must be implemented.

Senator Darrington said the Department of Public Works has a different concern regarding the third party commissioning. He is on the advisory council, and they are not in opposition to this. The department says there is a cost involved to commissioning that is about 1.5% of the project. He asked **Senator Kelly** to respond to that. **Senator Kelly** replied that the

energy committee heard of that cost and it depends on who you are talking to. The cost savings will be recouped within the first few years of operation. **Senator Darrington** said that he would vote for this if it were a resolution because agencies are already doing most of what is in this bill. He asked why isn't this a resolution instead of a statute? **Senator Kelly** said that was never suggested or talked about.

Senator Little said after last week's testimony he spoke with some of those who were listed as building commissioners, and they were surprised to be on the list. He asked **Senator Kelly** what is the criteria for them to be considered as a commissioner? **Senator Kelly** responded she is not qualified to answer that question. **Senator Little** said 1.5% of a twenty or thirty million dollar project that he would expect some sort of standard, or a licensing bill because we are mandating a service. **Senator Kelly** said this is not mandating full commissioning, it is a consideration for it.

Senator Stegner said the definition of state agency is not controversial to him. He asked **Senator Kelly** is there any intention for this to apply to county buildings? **Senator Kelly** said the projects that fall in the scope of this bill are either a state agency definition which does not include a public subdivision. It also qualifies by the source of the funding for a facility. If state funds are not involved it would not apply. **Senator Stegner** commented that the statement of purpose doesn't really clarify what council to report to. He said that he assumes it would be the Permanent Advisory Council, but it does not state that. **Senator Kelly** said so noted. **Senator Kelly** added in the handout she provided there is a letter from **Dr. Hardy**, from the University of Idaho in support of **H422**.

Representative Eskridge addressed the committee and said that he would like to emphasize that this legislation has a unanimous recommendation from the Interim Committee on Energy Environment and Technology. This bill will require all major state buildings and renovations of five thousand square feet or more to be at least thirty percent more efficient, than the current state energy code. This requirement applies if the project receives funding from the state general fund or the state permanent building account, or if it is financed through the Idaho State Building Authority. The construction is by or for the occupancy of a state agency, division, bureau, commission, division or board, including those in the legislative or judicial branch. **Representative Eskridge** said it requires that full building commissioning is to be considered. It is up to the building advisory council to make the decision. What this bill will not do is specify any green building standard such as Leadership in Energy and Environmental Design (LEED) or Green Globes.

By using integrated design a thirty percent additional savings can be achieved at very little or no cost. Sometimes it is just lighting or the window placement, thermostats and how and when they operate, are measures that do not cost much but achieve energy savings. This will not apply to projects designed and constructed by school districts, charter schools or local government, and not to projects already in schematic design phase. The Capitol is not included in this requirement. This is

good policy because state facilities consume significant amounts of electricity. **Representative Eskridge** said our taxpayers pay a lot for the operation of state government and part of that obligation is funding building operations and maintenance. Reducing that leaves money available for other activities. He visited with **Dr. Hardy** before this bill was before the House. The facility at Hagerman, a fish hatchery, was constructed last year and **Dr. Hardy** requested the building to be designed to be energy efficient. Propane was installed for heating which he questioned, and the cost for heating the facility is almost fifty thousand dollars a year. **Dr. Hardy** commissioned a study to look at the design and heating. The installation of a new heating system would cost forty-seven thousand dollars, and the projected annual savings per year is twenty thousand dollars. The building was built with the intent to be an energy efficient building. As an observation, in today's technology sometimes things are missed. In this case if integrated design and commissioning had been used, it could have saved a lot of money. **Representative Eskridge** stated this is a good bill and it leaves all the authority with the Permanent Building Advisory Committee, but it gives them the option to do some things that will ultimately save money for the taxpayers.

Senator Darrington said he is very aware of the Hagerman building and Public Works decision and they are trying to figure out the problems. This bill would not have required commissioning to be built. **Representative Eskridge** said that he is not sure that he could agree with that. If they used integrated design it would have made a difference by using a different heating system, and maybe the problem could have been avoided. **Senator Darrington** stated that commissioning is not required, but suggested. Commissioning is happening on the Capitol building. He asked how do you answer the question that I raised with Public Works with regard to the changes in standard, and how will the thirty percent energy efficiency be addressed? Public Works is already doing much of what this bill calls for in major projects. **Representative Eskridge** said that he believes that has been covered. The whole basis of this is the cost effectiveness, and the responsibility to the Permanent Building Fund Advisory Council. This process will protect us from doing something that is cost prohibitive, and for some reason if the agency doesn't want to do this they have the ability to opt out. **Senator Darrington** asked what will Public Works be required to do that they aren't already doing?

Representative Eskridge responded that he

hopes this bill will provide Public Works and those responsible for building construction and design and make an effort to be more energy efficient.

Senator Geddes said that he visited the Hagerman facility and he knows that **Dr. Hardy** and his staff contributed to the design. In **Mr. Hardy's** letter he stated there were meetings prior to construction to include systems that would address the abundant constant temperature spring water use. Despite his requests, the building was designed to use propane, and he is not sure what more they could have done. It sounds like they had input and maybe they are second guessing that. **Senator Geddes** stated his concern is two bills have been before this committee regarding increasing efficiency, which no one can discount the benefits of

improving. Exceeding code by thirty percent is his biggest concern. **Senator Geddes** asked **Representative Eskridge** if the Committee looked at the current code to see if it may be outdated?

Representative Eskridge replied the code is a minimum code, and the current code was adopted in 2005. A lot of technology has evolved since then and it is possible to achieve that thirty percent with little or no cost involved. The code is changing, and if the thirty percent is not achievable than it shouldn't be done.

Senator Little said he is struggling with how this works. The Permanent Building Fund Advisory Council makes the determination if this is impractical, how will the process work? **Representative Eskridge** responded that the intent of this bill is not to second guess. It is to look at the design and performance of a building and possibility of energy savings. The Council would probably use the energy code as a basis for part of the decision, this bill will suggest they look for possibility of additional energy savings.

Senator Stegner said that he is sensitive to what **Representative Eskridge** is saying, but that is not exactly how he is reading the bill. The language shall be designed, constructed and certified to be at least thirty percent, that is not just taking a look at it. He asked **Representative Eskridge** how did the Committee arrive at the thirty percent number? **Representative Eskridge** replied that figure is from the testimony they had and that it is doable under the current energy code, and achievable at very little cost. **Senator Stegner** asked **Representative Eskridge** what happens if the code is changed in a few years because we want more efficiencies built into the entire system? **Representative Eskridge** said it will be changed only if it is cost effective. If it can't be done to save money than it will not be done.

TESTIMONY:

Tim Mason from the Division of Public Works said he did not sign up to testify, but that he could speak to a few concerns that this might pose.

Mr. Mason stated they currently do things to achieve energy savings when they remodel a building. For new construction they are taking steps for more energy efficiency. Integrated design is not a new concept and it is generally done that way now. Commissioning is something they look at on most projects of considerable size. There is a cost to it of about 1.5% of the total project cost, so it has to be considered. **Mr. Mason** said he has a concern for the mandated requirement to achieve thirty percent energy efficiency. Commissioning is not designing a building, it is ensuring that the building conforms to the design. The Hagerman building was a cost driven decision, which frequently happens. Public Works supports increased energy efficiency and support the notion of how it happens. The concern is if it is in statute, that thirty percent may not be achievable.

Senator Stennett stated he wants to make sure he captures what was said about the Hagerman building. He asked **Mr. Mason** if the cost effectiveness was looked at for the heating system? **Mr. Mason** said this happened before him, and the project manager left before the final design. The design meetings included the users and the final design was a collaborative agreement between the parties. **Senator Stennett** asked

was the decision based on the number of years? **Mr. Mason** said that he cannot answer that question.

Chairman McKenzie said what he understands from **Mr. Mason's** testimony is if a facility was already hitting a certain percentage for energy efficiency above code, and it would be cost prohibitive to go an additional percentage, that he had concerns. If it is not fiscally prudent or impractical for the use of the building it would not have to be done. He asked **Mr. Mason** if he reads that the same way. **Mr. Mason** replied that he does, but the concern is at the beginning of the project that they have to direct by statute to achieve thirty percent energy efficiency. If it isn't achievable they might have to incorporate into the design a way to get past that threshold. **Chairman McKenzie** asked **Mr. Mason** how will that change the design? There isn't a state policy now for energy efficient buildings. **Mr. Mason** responded that is true there isn't a code, this does allow for a way out, and maybe it is an unnecessary step to take to go to the Council. **Chairman McKenzie** asked **Mr. Mason** between the Division of Public Works and the Legislature, who should set policy for energy efficiency of buildings? **Mr. Mason** answered policy is different from statutory requirement. **Chairman McKenzie** stated every statute that is passed has a policy including the current building code that was adopted.

Senator Little said money is budgeted for a building, if this goes into effect will it cost 1.5% more to build. **Senator Little** asked **Mr. Mason** if there are buildings in the process that won't be built because of this bill? This will add to the up front cost. **Mr. Mason** replied there are projects in every phase, and wherever the line is drawn some will be affected. If commissioning is necessary, the money would have to come from some source. They will have to request more money to cover that cost.

Chairman McKenzie stated that last answer illustrates why this doesn't happen across the board. When he built his house it was cost effective to purchase appliances that are not efficient, and he is paying for it now. It is more money up front to get more efficiency, but the cost is recouped quickly. This bill will set a target of energy efficiency, and our job is to set policy for energy efficiency standards. It will save money for the taxpayers in the long term. For Idaho homeowners and consumers energy costs will only increase and natural gas will have to supplement the energy needs. Creating efficiencies is important to keep energy costs down and it will pay off for Idahoans.

MOTION:

Chairman McKenzie made the motion to send **H422** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion.

Senator Kelly said the Interim Energy Committee looked at this closely to develop what is achievable for energy efficiency.

Senator Darrington said my sense is that this is already taking place on projects as part of the presentation to the Council to approve the project. He would be happier if this was a resolution.

Senator Stennett stated we need to strive to achieve demand side management and he encouraged the committee to endorse this bill.

Vice Chairman Jorgenson requested a roll call vote on **H422**.

Senator Darrington - Nay
Senator Geddes - Nay
Senator Davis - Aye
Senator Stegner - Nay
Senator Little - Nay
Senator Stennett - Aye
Senator Kelly - Aye
Chairman McKenzie - Aye
Vice Chairman Jorgenson - Nay
The motion **failed**.

H338

Chairman McKenzie introduced **David Dahle** from the Military Division. **Lieutenant Colonel Dahle** stated the purpose of this bill is to allow the Military Division to promulgate rules. In the hierarchy of law there are priorities that exist within the law starting with the Constitution, code, case law and rulemaking. Many agencies within the state engage in rulemaking which is a process overseen by the Legislature. Based on recommendations from many sources, the Military Division will benefit from having the authority to engage in rulemaking. The costs would come from the Military Division and any rules that would be promulgated under this policy would be subject to legislative oversight. The Military Division through the Adjutant General is entitled to make and operate its own employment system. Currently, the Adjutant General develops hand written policies and they are what control the military. Formal rulemaking will hold the Military Division to a much higher standard, and provide greater guarantees to the public and to the employees about how the division does business.

MOTION:

Vice Chairman Jorgenson moved to send **H338** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion.

Chairman McKenzie asked **Lieutenant Colonel Dahle** if the informal policies that are in place now go through the rulemaking process and reviewed by the Legislature to implement them? **Lieutenant Colonel Dahle** replied the Division is not sure what rules and policies will advance to rulemaking. The Military Division is already highly regulated by rules from the federal government. Everything they do is regulated and they perceive that this level of rulemaking will apply mainly to state based policies. The motion carried by **voice vote**.

H339

Lieutenant Colonel Dahle said **H339** is basically a house keeping bill. Parts of Title 46 are over eighty years old and some newer provisions are outdated because of legal or societal changes. This proposal seeks to revise or delete old or redundant code provisions affecting the Military Division. **Lieutenant Colonel Dahle** provided the committee with a memorandum outlining all the proposed deletions to Title 46, Idaho Code.

MOTION:

Vice Chairman Jorgenson made the motion to send **H339** to the floor

with a **do pass** recommendation. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

H371

Lieutenant Colonel Dahle stated **H371** has one simple objective. When the State Interoperability Executive Council (SIEC) was created it was a function supported underneath the Bureau of Homeland Security (BHS), which is a subagency within the Military Division. BHS is not equipped or staffed to provide administrative support to SIEC. This bill proposes to move SIEC for administrative oversight purposes out from under the BHS to the Military Division.

Vice Chairman Jorgenson asked **Lieutenant Colonel Dahle** if there is any opposition from the BHS to do this? **Lieutenant Colonel Dahle** replied the proposal came from the BHS.

MOTION:

Vice Chairman Jorgenson moved to send **H371** to the floor with a **do pass** recommendation. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

**MINUTES
APPROVAL:**

Chairman McKenzie said there are committee minutes before us for approval.

MOTION:

Senator Darrington moved to approve the minutes of February 13, and **Senator Little** seconded the motion. The motion carried by **voice vote**.

Senator Stennett moved to approve the minutes of February 8. **Senator Little** seconded the motion. The motion carried by **voice vote**.

Senator Kelly moved to approve the minutes of February 4. **Senator Little** seconded the motion. The motion carried by **voice vote**.

ADJOURN:

There was no other business before the committee. **Chairman McKenzie** adjourned the meeting at 9:45 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

- DATE:** March 3, 2008
- TIME:** 8:00 a.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENE:** **Chairman McKenzie** called the meeting to order at 8:06 a.m.
- H422** **Chairman McKenzie** stated that **H422** is on the agenda. This bill was discussed at the last meeting and a motion to send it to the floor failed. The reason it is on the agenda today is that committee members who had voted against that motion would have considered a motion to send it to the amending order. At that suggestion, it was added to today's agenda. **Senator Kelly** will speak to the committee regarding the discussions and the possible language for the amendment.
- Senator Kelly** said on Friday she met with **Mr. Mason** from the Division of Public Works and talked through this proposed legislation. Language has been suggested for a targeted number with more flexibility in the system. Also changing the reporting requirement will be more workable for the Division of Public Works and the Permanent Building Advisory Council, so that the report will be annually and provide the ability to track how this is working. **Senator Kelly** stated if this does go to the amending order she believes that the Legislature will be able to work through the language.
- Senator Little** asked **Chairman McKenzie** what was the original motion? **Chairman McKenzie** replied the motion was to send it to the floor. **Senator Little** asked if the bill is still alive? **Chairman McKenzie** said yes it is.
- MOTION:** **Senator Little** moved to send **H422** to the amending order and **Senator Geddes** seconded the motion.
- Senator Darrington** said from what he knows about the amendments and after discussion with **Mr. Mason** and **Senator Kelly**, he believes the amendments will accomplish some of the objections that he had. He

would still rather the bill be a resolution, but he will support the motion.

The motion carried by **voice vote**.

RS17948C1

Senator Corder addressed the committee regarding **RS17948C1** and said this RS comes to you by way of unanimous consent from the Transportation Committee. Should the committee print this, it will be returned to the Transportation Committee for a full hearing. Change one has to do with the effective date of July 1. Initially the date was to put into compliance and agreement with another piece of legislation on the other side of the rotunda waiting for the House to decide how to proceed. This is a fee increase for large and medium sized trucks. The bills were intended to go together and they fit best together.

Senator Corder stated initially this was to be a fee increase for automobiles based on the theory that Idaho's registration fees are well below other states. He was challenged by a Senator on State Affairs regarding trucks as well. **Senator Corder** said he looked at the system for truck registrations. Sometimes it is a few weeks before title is received. Temporary permits are issued for five days at a time. The permit is then posted in the windshield of the vehicle with the expiration date on one side. Some drive with an expired permit for weeks or months. This is done to circumvent registration, so the easiest thing would be to double the registration fees. This should encourage people to register their vehicles and they will receive a credit back for doing this within thirty days. That is the intent of this legislation. Should the other legislation pass they will receive a reduced registration fee, but it will add a mileage assessment as well.

Senator Darrington asked if we are doing this for the Transportation Committee? **Chairman McKenzie** said it came from a unanimous consent request. **Senator Stennett** asked did the Transportation Committee go through the process to send this RS to us? **Senator Corder** said yes, it comes by way of a unanimous consent request.

MOTION:

Senator Stennett made the motion to print **RS17948C1**. **Vice Chairman Jorgenson** seconded the motion.

Chairman McKenzie said Article 3, Section 14, the origination clause, states bills for raising revenue shall originate in the House of Representatives. He suggested that **Senator Corder** check to make sure that the fee increase will not violate that. **Senator Corder** stated that has been done.

The motion carried by **voice vote**.

RS18004C1

Vice Chairman Jorgenson presented **RS18004C1** to the committee. **Vice Chairman Jorgenson** stated this is a video franchise bill and the purpose of this legislation is to increase the opportunity for competition for cable and video service within Idaho. It will increase the opportunity for provider choice for video service customers. This legislation establishes a streamline statewide process that will enable all new providers of video service to receive a certificate of franchise authority from the Secretary of

State. It provides for equitable treatment between incumbent cable service providers and new video service providers. Additionally, it preserves the right of local government to receive franchise revenues from the incumbent as well as new video service providers on an equal basis.

Vice Chairman Jorgenson said there are eighteen other states that have this enhanced statewide video franchise agreements. North Idaho has not had the ability to watch some of the most football games in history because of the lack of competitiveness. This bill will provide for that. The Boise State versus Oklahoma game was not available because of the conflicts with television providers. It wasn't until the Friday before the last super bowl that there was an agreement. **Vice Chairman Jorgenson** said this is an important bill that will bring equality to the video business.

MOTION:

Senator Little moved to print **RS18004C1**. **Vice Chairman Jorgenson** seconded the motion. The motion carried by **voice vote**.

H447a

Teresa Baker stated she is a member of the Idaho Emergency Communications Commission (IECC), and a Deputy Vice Commissioner in Ada County. **Mayor Nancolas** gave a report to the committee earlier this session on IECC and provided a preview of the bill before you. **Ms. Baker** said this bill will provide a fee increase to help the centers across Idaho with the greatest need make the critical improvements required to provide Enhanced 9-1-1 service in their area. In 2004 the Legislature established the IECC to evaluate and assist emergency communications centers around the state. IECC understand that citizens expect the same level of service throughout the state regardless of how they are contacting 9-1-1 centers throughout Idaho, whether they are calling on a landline or wireless phone and whether or not they are in an urban or rural setting.

Ms. Baker provided a map to the committee of Idaho indicating the status of 9-1-1 services across the state. In 1988 the Idaho Emergency Communications Act was enacted to allow counties to go to the voters and form consolidated emergency communication systems. By doing so, they were able to collect up to one dollar on telephone fees per month and each county would set their fee. This provided basic 9-1-1 at that time. The red counties on the map indicate Basic, yellow is for Enhanced, and green is Phase II 9-1-1. The Enhanced 9-1-1 provides the dispatcher with the location and number the caller is calling from, which is indicated by the yellow and green counties. The yellow or enhanced service is for landline phones. Green counties are wireless Phase II which tells the dispatcher the location and telephone number.

Ms. Baker stated this bill will attempt to collect twenty-five cents from all of the providers or subscribers in the state, to assist the counties in the state who are still in the red basic 9-1-1 up to the enhanced 9-1-1. By year 2012, the IECC should have about four million dollars a year to fund the system. It will take about eight million dollars a year to get all counties up to the green level throughout the state. New equipment, fiber and technological advancement will go into meeting those needs.

Senator Davis said in subpart 3 line 42 of page 1, it seems to suggest that 9-1-1 is financed by a vote, in full or in part by fees not greater than

one dollar. Section 2 will add twenty-five cents to that, but it doesn't appear that the voters are being asked to do this. **Senator Davis** asked **Ms. Baker** to explain the relationship between 48-03 and 48-04, and why aren't the voters being asked to vote on this? **Ms. Baker** said the voters were asked for the one dollar fee. We believe it is within the Legislature's prerogative to increase the fee without going back to the voters. It is an issue but the expense to do this is cost prohibitive. That is why IECC is asking the Legislature to go beyond what the voters have approved. **Senator Davis** said the bill states that the amount shall be no greater than one dollar. He wants to support the concept and help IECC get to Phase II, but statutorily and by ballot it is warranted that it would be no greater than one dollar. He asked **Ms. Baker** to provide him comfort regarding this. **Ms. Baker** said arguably this is not increasing the fees to the county, and she understands what **Senator Davis** is saying. Maybe that provision should have been changed, but in all actuality this is an additional twenty-five cents fee, but it is for a new purpose.

Senator Kelly asked **Ms. Baker** if everyone is contributing one dollar? **Ms. Baker** said when this went to the voters, they all stated not to exceed one dollar. It is up to the Boards of County Commissioners who control the funds. They set the fee to meet their requirements. Last year Ada County was at seventy-five cents, and they raised it to one dollar. The only county that is not at one dollar is Bonneville County, and their commissioner lowered their fee to fifty cents. Four counties have not put this on their ballot and in order to obtain grant money, they will have to enact this and collect the full amount. **Senator Kelly** asked **Ms. Baker** why should the voters in her district pay the additional twenty-five cents if they will not reap the benefit of this? **Ms. Baker** replied this fee will allow for the rural counties to have first responders especially in remote recreational areas. Additionally, if you are traveling in the state you may not have service, because you are used to being in a more urban area. **Senator Kelly** asked how did Ada County pay for this in the first place? **Ms. Baker** responded it all stems from population and the more you have the more you are able to fund.

Senator Stegner said he agrees with **Senator Davis**. The statute is referenced numerous times not to exceed one dollar. On page 2, lines 50 and 47 start off with repeating that phrase. Some counties may be contributing less than that now, but the fact of the matter is we are going to charge more money. It is not very intellectually honest of the Legislature to say we are going to let you vote on it, but now we are charging you more and you don't get to vote on it. This gives the impression to the public that we don't care what we did in the past.

Senator Davis said he believes there is a solution to this by creating a definition to this. The definition of not greater than one dollar shall mean such amount that subsequently may be determined.

Chairman McKenzie turned the gavel over to the co-chair at this time.

Senator Davis asked **Ms. Baker** if there is a county that has not voted to impose the one dollar, is the intent of this language that you will still be

able to charge the additional twenty-five cents? **Ms. Baker** replied that the intent is that the county has to be collecting one dollar in order to assess the additional twenty-five cents. The counties are in support of this and most will probably have this on their ballot to collect the dollar. Clark County has been collecting the fee and they contribute about eighteen hundred dollars a month. The fees for their service is over twenty five hundred dollars, so you can see the shortfall of some of these counties. Even though they collect the full dollar, it doesn't amount to much. The counties that are not collecting the fee is because the population is just so low. **Senator Davis** said if the additional twenty-five cents will not apply to all counties, or all lines that provide this service, that being the case, he does have problems with the way this bill is written. Conceptually he doesn't struggle with the concept.

MOTION:

Senator Davis moved to send **H447a** to the amending order. **Senator Stegner** seconded the motion.

Senator Little said that he is still a little confused, didn't we have voice over protocol last year to generate more money to this fund. **Ms. Baker** responded yes, but it wasn't to add more money to the fund, it was to recover the money that was being lost when customers switched from landline phones to voice phones. **Senator Little** asked **Ms. Baker**, how much additional revenue did that generate? **Ms. Baker** said she does not know, but it isn't a substantial amount. **Senator Little** said he assumes there isn't a lot of voice over protocol in Clark County, most would be in the urban areas. He would like to know what was generated when the change was made. **Senator Little** said on line 51 it states that the county treasurer shall retain the full amount of the fee, but the new language states the state treasurer shall invest the monies. **Senator Little** asked **Ms. Baker** who has the money? **Ms. Baker** said the counties will still receive the one dollar fee from the cell phone provider. The provider keeps one percent, so the county really gets ninety-nine cents. Since 2004 one percent of that was given to the IECC, so the counties have been sending that to IECC for four years. **Senator Little** said then only one percent goes to IECC. **Ms. Baker** said yes. **Senator Little** asked how much is in that green fund right now? **Ms. Baker** stated there is about two hundred thousand dollars right now. **Senator Little** said your annual budget is one hundred twenty nine dollars and you have two hundred thousand in the bank. **Ms. Baker** said IECC has not spent any of the money, and until the past year IECC did not have a full time employee. All the organizations have been working on a volunteer basis. Ada County pays for her salary, so they have not incurred any costs. **Senator Little** asked **Ms. Baker** how many counties have not implemented anything? **Ms. Baker** replied there are four counties that do not collect the fee.

Senator Kelly asked **Ms. Baker** what was the amendment in the House? **Ms. Baker** said it added the six year sunset clause. **Senator Stegner** said he doesn't have a copy of the engrossed bill but it is on line 48 and 49 of the original bill. The term shall not exceed one dollar, from July 1, 2008 through June 30, 2014, so it has an effective date of six years. **Senator Kelly** asked what is the rationale behind this? **Ms. Baker** replied

because of technology changing this is to try and keep up with it.

Senator Kelly asked **Ms. Baker** if this is a one time cost, or will it be on going? **Ms. Baker** said the biggest cost is the purchase of the system and the equipment. Through the grant process it will fund some of the counties to get there.

Senator Davis asked **Ms. Baker** if the counties decide they don't want to be taxed for this service, will the state provide the 9-1-1 service? **Ms. Baker** said she does not believe the counties will stop collecting the fee. **Senator Davis** said he understands there are at least one or more counties that do not collect the one dollar fee. If this bill is passed will those counties be charging twenty-five cents? **Ms. Baker** said yes they will be, but not until they enact the one dollar fee. **Senator Davis** said it seems to him if someone travels to a county and the state provides the emergency service, why would the county agree to pay this? **Ms. Baker** said there isn't enough money, and the state is not going to fund a county if they aren't chipping in for this service. The counties will have to help themselves and provide matching funds, so she does not foresee that a county will stop funding this in any way they can and leave it up to the state. **Senator Davis** said **Ms. Baker** is probably right, but the county may not opt in if they are receiving all the benefits without having to pay the one dollar. They might not object to paying the twenty-five cents, but why should they do it if the state of Idaho will do it. If the original purpose was to get citizen buy in, do you really need the language in subpart 3 with the voting requirement. This appears to not provide an incentive for the counties that have not voted for the process, to engage in the process. **Ms. Baker** said in order to be able to apply for a grant from this new money, a county has to be collecting the one dollar fee. IECC has promulgated rules for this, there is no option to opt out.

Senator Kelly asked **Ms. Baker** is there a difference between enacting and collecting? **Ms. Baker** responded enacting means going to the voters and asking for the one dollar fee to be collected. Then it will be collected in the other four counties. The other forty counties have been collecting funds. **Senator Kelly** said it sounds like four counties are not collecting the current fee and that there isn't an incentive for them to collect it. **Ms. Baker** replied this is the incentive. The counties want to move to the next phase, that is not the issue. They want the service they just can't afford to provide it. This twenty-five cents will go into a fund that is for the counties who are still in the red to get them up to the green level. The yellow counties will be included as we move forward. The fee is the incentive to collect the one dollar fee.

Senator Little said the one hundred fifty five thousand on the spreadsheet is more than one percent. **Senator Little** asked **Ms. Baker** if they are collecting one hundred times that number? **Ms. Baker** answered that one percent is to show what IECC has to work with right now. Ninety eight percent is being collected statewide, and the money doesn't just fund 9-1-1. It goes for radios and all the other equipment that it takes to run the dispatch center. **Senator Little** asked **Ms. Baker** if there is actually 4.2 million dollars being collected in Ada County? **Ms. Baker** said yes, and Ada County is contributing forty-two thousand dollars

towards the overhead.

Sheriff Gary Raney, who represents the Idaho Sheriff's Association, stated this is a redistribution of emergency communication wealth so to speak. The counties that are in the yellow or green area have the ability to call 9-1-1, and the dispatcher is able to send someone to possibly prevent a tragic incident because of Enhanced 9-1-1. The red counties want to enact 9-1-1, but they simply do not have the money. **Sheriff Raney** said so collecting the one dollar is important. When he first heard about this he wondered if funds were going to be just handed out, because most of the money comes from Ada County. How will the other counties step up with their share, was the twenty-five cents going to help them to get where they couldn't otherwise get, and how will we know it would happen. **Sheriff Raney** stated he believes to the best of his knowledge that this will help make that happen, and even the counties that are not assessing the fee, will not prevail in this granting process unless they do. Ada County receives 4.2 million dollars a year and through that all 9-1-1 services have been established, and radio and data services. If counties do not have the simple technology of 9-1-1, there will be the have and have nots of safety in Idaho.

Senator Kelly asked **Sheriff Raney** if what he is saying is that we will be trusting the board to grant this only on an equitable basis, and is there a possibility to ensure that by statute? **Sheriff Raney** responded as an Ada County Sheriff, he would support that the counties should be collecting the one dollar before they receive any benefit from the twenty-five cents. That is his personal opinion. **Senator Kelly** said she understands the rules, but she is concerned about the inequity to Ada County.

Senator Davis said as a minority point of view, this will get lost in my county. **Senator Little** stated that Bogus Basin is in Boise County and not a lot of people from Idaho City drive to Bogus Basin. Boise and Valley County are not flat, so service is vital. **Vice Chairman Jorgenson** said he needs to catch up with this, he is not sure if this is questioning or debate among the committee. **Senator Kelly** said she recognizes the recreation angle. **Senator Darrington** said there is a motion before the committee to send this to the amending order. That is the only motion.

Senator Davis said in support of the motion it seems that the bill either needs to be amended for the buck and a quarter, or the twenty-five cents will apply to all users regardless of vote. Otherwise, he believes it is disingenuous to go in the other direction that is currently proposed.

Senator Little stated the problem that he sees given the limitation of the amending order, is in order to share in anything from the state you have to be at one dollar and a twenty-five cents. He believes the intent was for the other four counties to contribute.

Vice Chairman Jorgenson said we have a motion and a second to send this to the amending order, is there a revised motion? The motion carried to send **H447a** to the amending order by **voice vote**.

Senator Davis said as the maker of the motion, the intent is to send this to the amending order, but he is not the floor sponsor.

H350

Roger Hales, said he represents the Bureau of Occupational Licenses and boards and commissions that it serves. Prior to October, the Board or Registration of Professional Geologists and the Certified Shorthand Reporter's Board were sharing an administrator. That one individual provided all the support to each of them. The employee left that position and so the two boards requested the Bureau to provide services. The Bureau agreed to provide services, and this bill will formalize that arrangement, and a number of the law changes will allow the Board to utilize the efficiencies of the Bureau. That will include renewal and expiration monies that will go into the Bureau's fund. On page 2, line 19 establishes that the money will go into the Bureau fund.

Senator Davis said on page 2, line 44 states a party cannot register unless they are a resident of the United States to be licensed. He asked for examples of professionals who may live in a foreign country, who are licensed to do business in this state, but are not residents. **Mr. Hales** said this profession is for licensed individuals only not legal entities. Last year there was legislation passed that essentially stated in order to get a license in the state, you must be a resident. **Senator Davis** said if he is an attorney and lives in Spokane, he can practice law in the state of Idaho. A doctor can practice medicine in the state of Idaho and live in Utah. He isn't sure what law **Mr. Hales** is referring to but he is troubled by that language. **Mr. Hales** replied that talks about being a lawful resident of the United States, not any individual state. In regards to professionals who hold a license and reside in another state, this law will require that the individual be a resident of the United States. **Mr. Hales** said he is happy to pull that piece of legislation that passed last year.

Senator Stegner asked **Mr. Hales** how many licensed geologists are there in the state? **Mr. Hales** replied there are approximately six hundred thirty. **Senator Stegner** asked if the fees are paid by the individuals and is the Bureau financially sound? **Mr. Hales** said there is approximately forty thousand dollars in the fund. The geologists will save about one third of their budget utilizing the Bureau's services. **Senator Stegner** asked if this will require them to modify rules to do this? **Mr. Hales** said the rules will be reviewed and next year the proposed rule changes will be made to deal with any inconsistencies.

Senator Kelly said the language on page 2, line 43 through 45 relates to residency. Good moral character is conjunctive with that language, what is the intent of that? **Mr. Hales** responded the intent was to require both, that the participant be a U.S. resident and be of good moral character. **Senator Kelly** said the way that language is worded is very awkward. **Mr. Hales** said he recognizes that.

Senator Davis said he believes the former bill spoke about those individuals who were not U.S. citizens. This bill is limiting it to lawful residents of the United States. This language is prohibiting U.S. citizens who live in another country from participating as a geologist. **Mr. Hales**

said that certainly wasn't the intent, but he does understand his point. It was meant to include U.S. citizens to be licensed. The language that **Senator Kelly** referred to could have been structured differently.

MOTION: **Senator Davis** moved to send **H350** to the amending order. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

H354 **Ted Roper** from the Department of Administration said he was here before the committee on February 15, and requested an amendment to *Idaho Code Section 72-334*. This will repeal the sunset clause that allows the Industrial Special Indemnity Fund (ISIF) sixty days grace period before they can initiate formal litigation against the ISIF.

Mr. Roper said the committee had two questions that needed to be answered. One was why are we amending the session law. The session law is the only location that has the sunset language, and it is reflected in Title 72-334. There is no language in the section that indicates that it will sunset. In 1997 the session law was amended in 1999, and then again in 2004, to extend the sunset clause. This will extend the sunset provision by four years. The second question was why was the sunset provision initiated. There is no documentation to explain why or by whom this was done. It is believed that the sunset clause was originally requested by the Legislature. The intent is to respect the Legislature's original intent and ask for an extension of the sunset clause, instead of repealing it.

MOTION: **Senator Little** made the motion to send **H354** to the consent calendar. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

S1434 **Jeff Youtz**, Director of the Legislative Services Office (LSO) presented **S1434** to the committee. **Mr. Youtz** said this bill comes from the Legislative Council and they are in the process of updating a lot of the statutes that deal with the Idaho Legislature. Almost all of those will be worked on over the summer and presented next year except for one. This is a small change to Administrative Rules. The rules coordinator at the Department of Administration and LSO receive proposed rules at the same time. Some corrections or small changes are made before they are published in the bulletin. LSO sends out their analysis to committees in the original version, so in some instances there are differing versions. This bill will allow the rules coordinator to make clerical or typographical changes that do not change the meaning of the rule prior to submitting to LSO.

MOTION: **Senator Little** moved to send **S1434** to the consent calendar. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

ADJOURN: **Vice Chairman Jorgenson** adjourned the meeting at 9:25 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 5, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Vice Chairman Jorgenson, Senators Darrington, Davis, Stegner, Little, Stennett, and Kelly

MEMBERS ABSENT/ EXCUSED: Chairman McKenzie and Senator Geddes

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENE: **Vice Chairman Jorgenson** called the meeting to order at 8:07 a.m. and requested a roll call.

S1446 **Ben Ysursa**, the Secretary of State (SOS) presented **S1446** to the committee. **Mr. Ysursa** said the bill before you today will clarify the lobbying law. **Senators Little** and **Kelly** helped to craft this legislation, and this is a move in the right direction. It will clarify matters in the lobbying law to provide for disclosure. The lobbying community will follow the rules when they know exactly what they are.

Mr. Ysursa stated section 1 of the bill, page 2 lines 50 through 52 clarifies the definition of executive official. It is not only an elected official but it is a policy making member of the staff. The Governor has executive orders pertaining to their staff and this will codify it and policy making members of constitutional officers will be covered. Page 3, lines 38 through 40 deal with codifying the Attorney General's opinion to expand the definition of lobbying. The definition of lobbying is to develop or to maintain relationships for goodwill or entertain members of the Legislature or executive officials. It was never in code before, but that is what lobbying is, maintaining relationships. Section 2 will repeal an older reporting section, and it was replaced immediately below in *Section 67-6619 Idaho Code*. In section 3, line 51 will change a monthly report from ten to fifteen days. It will give the lobbyists more time to assemble records and file on a monthly report basis.

The key or major changes are on page 5, lines 14 through 22. It addresses the itemization threshold which was fifty dollars in 1974, seventy five dollars for two years, one hundred dollars for two years, and then the Consumer Price Index (CPI). On lines 19 through 22 will include members of the household in required disclosures. The gift statute is in Section 4. It needed to be modified and fine tuned so there isn't any

question that a lobbying expenditure over fifty dollars was a violation of gift statute in 18-1356. This makes it clear that disclosure of lobbying activities and the exception would not apply to any of the activities in Sections 1 through 4 of 18-1356. Overall this is a good bill, and Section 18-1352 is not touched. It is the statute on bribery and corrupt influence in the state of Idaho.

Senator Kelly asked **Mr. Ysursa** to explain how the CPI language will be implemented? **Mr. Ysursa** replied it is set through January 2011, and it would be a two year period for one hundred dollars. After that Section(e) of the bill on page 5 will take place. For the year 2013, it would be announced to the lobbying community what the new figure would be, without the necessity of coming back to the Legislature. The next four years it is seventy five dollars, one hundred for two years, and then it will be adjusted after that. **Senator Kelly** said she is uncomfortable with the lack of certainty it creates and what is codified. She understands that it will be the responsibility of the SOS to make sure that the lobbyists will be informed. **Senator Kelly** asked **Mr. Ysursa** if expenditures will also include gifts? **Mr. Ysursa** said the expenditures will include, as codified on page 3, line 15. **Senator Kelly** asked how will this work if something is seventy five dollars? **Mr. Ysursa** answered that it will work the same as before with fifty dollars, then it will be moved to seventy five, and that is the itemization threshold. Any expenditure is reported in a category as an amount, if it is over the amount, than it is itemized. Nothing goes unreported, it is whether or not there is a threshold for itemization. **Senator Kelly** asked if it is under the threshold, is it reported? **Mr. Ysursa** said if it is under the itemization it would be a total. There is no legal requirement to, just like now.

Senator Little said the CPI is adjusted biannually, so as he understands this it will be seventy five dollars in 2008 through 2010. In 2011 it will be one hundred and then in 2012 this will start. He asked **Mr. Ysursa** if that was his interpretation. **Mr. Ysursa** replied it will be one hundred dollars per person on and after January 1, 2011 and 2012. At the end of 2012 the CPI would be done and everyone would be advised.

Skip Smyser said he is here today because he has the honor of being the President of the Legislative Advisor's Association. **S1446** is a subject that has come under increasing scrutiny over the last several months and years. He met with **Senators Kelly** and **Little**, and **Mr. Ysursa** over the summer on various aspects of how to deal with the many concerns that have risen. This bill is a genuine effort to add clarity and transparency to the process. **Mr. Smyser** said clarifying what is covered and who is covered is a substantial improvement over the existing law. Many questions have been brought up about taking a legislative group to a factory, whether or not you had pending legislation, and should it be a covered item. Anything of this nature will be covered, it will add to the transparency, and it is a beneficial change in the law. Clarification under the gift statute takes out the conflicts that exist with current code. The lobbyist community supports this legislation, it makes good common sense and something he believes will be of benefit for everyone.

- MOTION:** **Senator Little** made the motion to send **S1446** to the floor with a **do pass** recommendation. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.
- RS18025** **Senator Stennett** stated that he had a discussion earlier today with **Senator Little** and **Mr. Ysursa**. This bill will codify the current practice and policy of the Department of Lands and the State Land Board regarding navigable waters. When old river beds are left high and dry the adjacent land owners are often interested in acquiring title to it. Under the equal footing doctrine the land below the high watermark on a navigable river belongs to the state. To get title to that land the land owners often go to court and file a quiet title action. In order to save money and legal expenses the state has been willing to issue a disclaimer of interest in exchange for up to twenty-five feet. This has been the policy for a public easement for over twenty years. Last summer the Board voted on a 3 to 2 vote to make it an official policy. This bill will codify the policy as it exists today, it is permissive, and the Department can go out and negotiate with land owners for a twenty-five foot easement. **Senator Stennett** asked the committee to print **RS18025**.
- MOTION:** **Senator Davis** moved to print **RS18025** and **Senator Kelly** seconded the motion. The motion carried by **voice vote**.
- S1432** **David Fulkerson** from the Division of Financial Management presented **S1432** to the committee. **Mr. Fulkerson** stated that **S1432** will amend code section 31-2219 which is the code for compensation for services to the state by the county sheriff. It is for the transfer of state inmates who are being prosecuted. This proposes to amend the code for the Board of Examiners to audit and approve the claims for payment, and then send it to the Department of Corrections for payment. The Department will ask for an appropriation in the Department of Corrections annual budget to cover this.
- MOTION:** **Senator Davis** made the motion to send **S1432** to the floor with a recommendation that it **do pass**. **Senator Stennett** seconded the motion. The motion carried by **voice vote**, and **Senator Davis** asked for unanimous consent to place **S1432** on the consent calendar. There was no objection.
- S1448** **Roy Eiguren** addressed the committee regarding **S1448**. **Mr. Eiguren** stated he is here on behalf of the Idaho Council on Industry and the Environment (ICIE). Last year the association presented to the Resources and Health and Welfare Committees background on the legislative process involving review and rejection of administrative rules. At that time several members, and in particular **Senator Little**, suggested developing legislation which is before you today. **Mr. Eiguren** said he would like to point out the three changes being made to the Administrative Procedures Act (APA), and explain why. On page 1, line 42 there is a new definition. That definition is from the APA and has been adopted by the national conference of commissioners under state law. They believe it is important to bring into code the most recent definition of guidance document, it is more clear and precise as to what a guidance document should do. On page 5, lines 29 through 40 is existing code and in it is the

existing definition of agency guidance. Currently, it is not a defined term. They deleted agency guidance from that section and placed it in the definition section. That definition is now on page 2, lines 1 through 9.

Mr. Eiguren said the second change is on page 2, lines 40 through 49. This is in response to a Supreme Court case. In that particular case the court found that the existing statutory definition of what constitutes an agency rule is too limited. The court defined six additional characteristics of what constitutes an administrative rule and identified them in great particularity. This amendment to the APA is to include those specific definitions that were handed down by the Supreme Court. Those who work with agencies need a broader definition of what constitutes an agency rule. One slight change from the specific definition is on lines 43 through 45 where it states “operates only in future cases except when”, and then there are two exceptions to the rules to apply retroactively, where the rule is a temporary rule.

The third change **Mr. Eiguren** stated, relates to the decision in the case of *Mead v. Arnell* Idaho Supreme Court (1990). This case defines what the Legislature may or may not do relative to review and modification of rules. The bottom line of that case is that the Legislature has the constitutional authority to invest in the executive branch the ability to promulgate rules. The Legislature further has the authority to veto or reject such rules that fail to conform with legislative intent. The court indicated that its ruling related only to the issue of so called legislative veto of administrative rules. That case did not explain the issue of whether or not the Legislature had the ability to amend or modify rules, and potentially it could rule differently in the case of a legislative amendment to a rule. That could violate the constitutional requirement that any change in law be presented to the Governor for his review. They followed the decision in the *Mead v. Arnell* case, and the existing APA provisions that would provide for a legislative amendment for modification were stricken.

Senator Stegner asked **Mr. Eiguren** on page 5, line 50 where the elimination of amending and modifying terminology is done in numerous places, is this a clarification of legislative authority? **Mr. Eiguren** said the intent is reject, in whole or in part, as opposed to amending or modifying.

Senator Darrington stated he understands in whole or in part, we pass rules all the time and do neither. Small portions in rules are rejected or sections. Deleting amending or modifying makes it consistent with *Mead v. Arnell*. This will prevent the Legislature from being tempted by a resolution to amend rules. **Mr. Eiguren** replied that is correct and that was the logic behind that, and it will conform with existing practice that has been in place for some time.

Senator Kelly asked **Mr. Eiguren** what is a guidance document? On page 2, lines 48 and 49 this language says it is a rule if it expresses agency policy, is this an interpretation of law and general policy? **Senator Kelly** said it seems to her that because of the broad definition of rule that very little would qualify now as a guidance document. **Mr. Eiguren**

responded the intent is to have more rules promulgated as opposed to action by agencies being done through guidance. That has been a major issue for some things. If it is going to be an interpretation of law or general policy, it will be within the definition of a rule. Page 2, lines 1 and 2, clarify the definition for the agency's discretion. **Senator Kelly** said that discretionary language is not in the rules language. If the intent is to have more rulemaking, the fiscal impact does not reflect that. **Mr. Eiguren** stated he did not prepare the fiscal impact. He did have a discussion with Legislative Services Office (LSO) relative to whether or not it would occur. This should not require significant additional work by the agencies, that is why there is no fiscal impact. **Senator Kelly** asked were the agencies consulted? **Mr. Eiguren** said he does not know, but he had discussions with DEQ and they had no objections. **Senator Kelly** asked are these changes intended to affect all executive branches? **Mr. Eiguren** replied that is correct.

Senator Davis asked **Mr. Eiguren** will departments or agencies shift in the opposite direction of what this bill is proposing to do? He requested **Mr. Eiguren** to speak to that. **Mr. Eiguren** replied that he does not know, but he presumes that they won't go in that direction. **Mr. Eiguren** said if the committee has concerns he is amenable to holding this bill for a time certain to provide additional information.

Senator Little asked **Mr. Eiguren** if all of the items on page 2, under (b) have to apply? **Mr. Eiguren** responded that is correct. **Senator Little** asked if it is new language? **Mr. Eiguren** said it is not new language, it was lifted from the existing section. The first sentence of guidance, which came from the new model APA, and portions of the existing agency guidance was added. **Senator Little** said on the bottom of page 2, can an agency say this is for a narrow area and they will not write a rule because it does not have wide coverage? He understands the intent of this legislation, and if there is less guidance and more rules, the agencies may not go through the process. **Mr. Eiguren** said the Supreme Court case has been in effect for the past five years. As a practical matter, what is being codified here is already a law in the state. All six of the characteristics have to be met to qualify for a rule. When an agency promulgates a rule, they have to go through these definitions of what constitutes a rule. The existing statutory definition of a rule is simply too narrow and not workable. **Senator Little** asked **Mr. Eiguren** if this proposed language is generally accepted everywhere? **Mr. Eiguren** said those six characteristics are not listed in the 2007 model APA language. On a broad basis throughout the fifty states, the six characteristics of an administrative rule are the ones that are proposed here. **Senator Little** said agencies may be reluctant to do rulemaking and maybe this is giving them a bigger out.

MOTION:

Senator Stegner moved to send **S1448** to the floor with a **do pass** recommendation. **Senator Darrington** seconded the motion.

Senator Kelly said she is uncomfortable with the language, but more than that, the policy intent of this. As a legislative body a lot of responsibilities have been codified for the executive branch. Some of

them are hard and fast, and rulemaking is a legal process where rules are established as legal and binding. Some agencies need more discretion and this may force them to go through the process of rulemaking. All the agencies will have to implement this and she is concerned with that.

Senator Darrington said during the time of *Mead v. Arnell* there was a concern about rejecting rules and that the agencies would operate more by policy, rather than going through the APA. This legislation expressly addresses that and it will be clarified what the policy is for rulemaking.

Senator Stegner stated he does not share the concerns at all. This is a very straight forward piece of legislation and there is no attempt to expand or shrink the Legislative authority for rulemaking. It streamlines codes and temporary rules in a common process to be easier, and understood by the public and the agencies.

Senator Davis said he disagrees with **Senator Stegner**. The effect of this is a statutory reversal of *Mead v. Arnell* and it goes too far. There are too many changes to the APA under the guise of streamlining and it could very well undermine the benefits that we have today at the Legislature. However, **Senator Davis** stated he agrees with the representations and the arguments being made, that we need to make sure that the guidance documents clearly do not have the force and effect of law. His fear is if the guidance documents are to be created, implemented and followed, they may not have the force and effect of law. It may become the in-house policy of those agencies, and they may be the victims of guidance documents without financial resources. **Senator Davis** said he will vote for this with trepidation, knowing the sponsors agree that they do not want this commonly used.

Senator Darrington said he certainly does not view this as further infringement upon the separation of powers, this is an essential clarification.

Senator Stennett stated he respectfully disagrees with other members of the committee. The reason he likes the bill is because amend or modify has been taken out, and that is an important part of this legislation. The guidance document language is an indication for a lawsuit. Taking out the language on page 3 should make it okay.

Senator Stennett requested a roll call vote.

Senator Darrington - Aye

Senator Geddes - Absent

Senator Davis - Aye

Senator Stegner - Aye

Senator Little - Aye

Senator Stennett - Nay

Senator Kelly - Nay

Vice Chairman Jorgenson - Aye

Chairman McKenzie - Absent

The motion **passed**.

ADJOURN: There was no other business before **the committee**. **Vice Chairman Jorgenson** adjourned the meeting at 9:03 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 7, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly

MEMBERS ABSENT/ EXCUSED: None.

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENE: **Chairman McKenzie** called the meeting to order at 8:03 a.m. The first item on the agenda is the gubernatorial appointment interview. The Committee will do that telephonically, until they call in we will proceed with **RS17949C2**.

RS17949C2 **Chairman McKenzie** said **Senator McKague** is here to present **RS17949C2** to us. **Senator McKague** stated this is a redo of the Memorial.

GUBERNATORIAL APPOINTMENT: **Leslie Goddard** from the Idaho Commission on Human Rights placed the conference call for **Vernon Baker** regarding his appointment. **Mr. Baker** made his confirmation appointment by teleconference. **Chairman McKenzie** welcomed him to the committee and advised **Mr. Baker** that this is his confirmation hearing. He asked **Mr. Baker** to tell the committee about his role on the Commission. **Mr. Baker** asked what would the committee like to know. **Chairman McKenzie** said tell the committee about yourself, who you are, what you have done in life, and what do you see your role as on the Commission. **Mr. Baker** said he has been on the Commission for many years, and he is not clear why all of this has come about. **Chairman McKenzie** asked **Mr. Baker** if he understands that as a member of the Commission he will serve for a fixed period of time and that when he is reappointed he must go through the confirmation process. That is why we are doing this. He asked **Mr. Baker** what his role is on the Commission as a member? **Mr. Baker** stated he is a correspondent concerning some cases and he makes decisions on his own. That is what he has been doing for the time he has served on the Board. **Chairman McKenzie** asked **Mr. Baker** if he is able to fulfill your duties on the Commission? Are you able to travel and attend meetings and functions? **Mr. Baker** replied he has been doing that since he has been on the Commission.

Senator Geddes stated it was good to have **Mr. Baker** before the committee by telephone. He said he would like to personally thank **Mr. Baker** for his many years of service. **Mr. Baker** has served our state and our country in a valiant and noble way in the past. **Senator Geddes** said he is happy and pleased that **Mr. Baker** is willing and able to continue his service on the Human Rights Commission. **Mr. Baker** thanked **Senator Geddes** and said he will continue to do what he can.

Chairman McKenzie thanked **Mr. Baker** and **Leslie Goddard** for setting this up. He advised **Mr. Baker** that the committee would vote on his confirmation at the next meeting.

Senator McKague continued her presentation on the Memorial. **Senator McKague** stated this is a message to congress to honor their oath of office and support and defend the constitution of the United States by securing our national borders, and stop the illegal immigration, and implement a guest worker program that requires guest workers to apply for work visas to establish compliance and enforcement standards. **Senator McKague** asked for the support of the committee and to print **RS17949C2**.

MOTION: **Senator Davis** moved to print **RS17949C2** and **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

RS18073 **Senator Pearce** presented **RS18073** to the committee. **Senator Pearce** stated this is a simple piece of legislation that deals with initiatives. When legislation is introduced it requires a fiscal impact on it. For an initiative, there is no fiscal impact required. This will require that fiscal impact is placed on initiatives. Additionally, it requires an effective date to automatically be April 15.

MOTION: **Vice Chairman Jorgenson** made the motion to print **RS18073**. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

RS18014 **Dan Chadwick**, Executive Director of the Idaho Association of Counties, presented **RS18014**. **Mr. Chadwick** stated this is a constitutional amendment relating to municipal debt. In 2006 the Idaho Supreme Court issued a ruling in *City of Boise v. Frazier*, which restricted the ability of local governments to incur debt. The issue was related to ordinary and necessary expenses and the issue of short term debt. The parking structure at the airport is paid for by user fees and the court stated it must go to a vote by the people, with a two thirds majority to approve the debt. It raised the question of on going practices of local government incurring debt for short term items, not using non-appropriation clauses, like basic equipment, cars, copiers etc. The situation now is financial institutions will not underwrite that kind of debt, and the Bond Council is not willing to provide qualified opinions either. That is why it is necessary to go to the constitution to fix this and modernize the provision.

Mr. Chadwick said on page 2 of the proposed amendment, line 9 it references revenue generating facilities which are solid waste facilities, or storm water collection facilities. They are non-voluntary fees that may be paid and a two third vote is needed. There may be fees that will pay for

these types of facilities, or they could be secured by rent. On line 21, the language addresses revenue generating facilities that are like the airport garage. They are paid solely by the fees and it is a voluntary type of usage. A majority vote is required to approve the debt. For some situations it is not appropriate to require a vote and the language on line 30 relates to that. This applies to health care operations for hospitals, and facility equipment related to the health care field. This issue has been addressed in the past and we are dealing with the costs for this. No vote is required in this circumstance. The other exceptions on lines 32 through 42, are for five year contracts or less for the purchase of operational equipment. The rates and fees collected for power production, like Idaho Falls for example, are long term contracts. Short term debt is the non-appropriation clause, which is the language at the end of the bill. It applies to any local governmental entity like cities and schools, and it is subject to an annual approval by a board of commissioners. **Mr. Chadwick** asked the committee to print the RS.

Senator Kelly said this is a resolution. She asked **Chairman McKenzie** how are we proceeding here? **Senator Davis** replied this will be treated like a bill. **Chairman McKenzie** stated there was a signed petition by Majority Leadership to waive the requirements in Joint Rule 20.

MOTION: **Vice Chairman Jorgenson** moved to print **RS18014**. **Senator Stegner** seconded the motion and the motion carried by **voice vote**.

RS18006 **Steven Millard**, President of the Idaho Hospital Association presented **RS18006**. **Mr. Millard** stated this is also a constitutional amendment regarding the same issue. The Frazier decision impacted all of the hospitals. They used to be able to finance debt over one hundred thousand dollars without going to a vote, as long as they did it through the Idaho Health Facilities Authority, which they did for thirty years. That ability was taken away and now they must get a vote even for an x-ray machine. It will cost more to take the vote than to buy the equipment. **Mr. Millard** said this will give public hospitals the ability to do this like before, and create a fix specifically for hospitals.

Some members of leadership on both sides of the Legislature advised the Association that they needed to wait for the task force, that was appointed to come up with recommendations. Additionally, in order to do something the Legislature suggested a broader fix to apply to all public entities, and not just to hospitals. **Mr. Millard** stated the task force did not meet, so the Association met with the counties and cities to create the broader fix which is in the RS that was just printed. This will provide the fix for hospitals if the other RS does not go forward. **Mr. Millard** said the Association would like to have this printed in the event the other bill does not make it through the process.

Senator Stennett asked **Chairman McKenzie** if this was signed off by the Majority Leadership? **Chairman McKenzie** responded that both of the RS's were.

MOTION: **Senator Stegner** moved to print **RS18006**. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

RS18048

Liza Carberry who represents the Idaho Bond Bank Authority presented **RS18048** to the committee. **Ms. Carberry** stated that she is the Executive Director. The Idaho Bond Bank Authority was created by the Legislature to provide Idaho communities with an attractive mechanism for financing local infrastructure. This assists municipalities to get reduced interest rates, lower the cost of issuance, and a reduced effort at the local level. **Ms. Carberry** said the Authority provides a perpetual source of financing for local government infrastructure. This is a constitutional amendment which was approved by the voters in 2000. Enacting legislation was approved by the Legislature in 2002. The Bond Bank Authority is an instrument of the state. They are authorized to issue bonds in order to purchase municipal bonds and pay costs associated with the Idaho Bond Bank issues. The issues are secured by a pledge from the underlined borrowers, debt reservist fund, the intercept of certain revenues held by the state on behalf of local government, and the state sales tax revenues.

Ms. Carberry said to date the Bond Bank has done four issues totaling fifty million one hundred ten thousand. Issues have been made to the city of Caldwell, Sand Point, Teton County, Jerome, Ketchum, Orofino, Cascade, Eagle, Blackfoot, Coeur d'Alene, Driggs, Gooding, McCall, Parma, Pocatello and one outstanding issue with three new ones who want to participate.

Vice Chairman Jorgenson asked **Ms. Carberry** if any of the cities she just mentioned are in default of making payments? **Ms. Carberry** replied no, they are participating in bond issues through the Idaho Bond Bank. **Vice Chairman Jorgenson** asked if there are any instances of cities defaulting? **Ms. Carberry** said no one has defaulted. **Vice Chairman Jorgenson** asked if this proposed bill is anticipatory? **Ms. Carberry** responded it isn't and she will explain that in a minute.

Ms. Carberry stated she visited this week with Eagle Water and Sewer District, and the meeting was postponed because of the current market conditions. Municipal bond rates are currently higher than she remembers, and they are higher than the government securities in a triple A range. The Authority offered some options to the District of either waiting if they didn't need the money right away, then they could make an issue through the Bond Bank; or, to go ahead on a stand alone basis if the money was needed now. The District decided to wait because the concept of issuing bonds through the Authority, took away any kind of impropriety. This mirrors another program with the investment pool which started with ninety million in the early eighties. Now it is over two billion with a triple A investment bond that the state manages.

The intent of this legislation is to clarify that sales tax, liquor tax or other revenues which are distributed to municipalities throughout the state are subject to intercept, by the state treasurer if those municipalities fail to make payment on loans to such municipalities from the Idaho Bond Bank Authority, in order that the Authority's bonds may be paid, and such state intercept operates by force of law and not by consent of the municipality.

Senator Davis said he serves as a member of the Bond Bank Authority. The Authority was first created because the state has sales tax revenue that can be combined with other revenue and intercepted if there is a default. This way the state can effectively loan money and if there is a default the state can recover it. With the language that is currently in code, some entities who apply for an issuance, the Authority has no revenue right to intercept any revenue. These entities are eligible to participate and the Authority cannot refuse them. This will help shore it up a bit if there is a default, and the state will have a way to recoup the loss.

Vice Chairman Jorgenson asked **Senator Davis** if this is a matter of just collateralizing a loan with revenues? **Senator Davis** replied no, in some regards the collateralization is there. There are certain constitutional limitations that exist today as to what revenue can actually be pledged to satisfy the indebtedness. **Vice Chairman Jorgenson** said that he is not opposing this bill, he is just trying to put it into simple terminology. Would this mean placing a lien? **Senator Davis** said this is really saying that the entity has a right to certain state funds, and the right to receive it is conditional on not being in default to the Bond Bank Authority.

MOTION:

Vice Chairman Jorgenson made the motion to print **RS18048**. **Senator Davis** seconded the motion.

Senator Little said this is repealing 67-8728 and it states shall not apply to municipal bonds. He asked **Ms. Carberry** if repealing this means it will apply to the intercept? **Ms. Carberry** answered yes.

Senator Stennett asked **Senator Davis** if there will be a limit on the amount of bonding to a local municipality based on their liquor and sales tax receipts? **Senator Davis** replied there is no statutory limitation. Most issues are relatively small. The Authority did have one large request which was the sum of all that had been issued up to that date. From a pragmatic point of view, this question will probably have to be addressed. It is a maturing lending institution and some policies need to be firmly established. **Senator Stennett** asked is that in the authority of the board who oversees the issuance of bonds? **Senator Davis** replied he believes that the Bond Bank Authority looks at that together with other business decisions. **Senator Stennett** asked if a city has a local sales tax, will the Bond Bank Authority have the right to it? **Senator Davis** said he would like to defer that question to **Rick Skinner**.

Rick Skinner, an attorney for the Authority responded no, the intercept only applies to state sales tax distribution. Any funds that flow through that could be intercepted. **Senator Stennett** asked **Mr. Skinner** if the Bond Bank would have the authority to turn away a request from a city that receives an amount of money, that could be intercepted, available to intercept in order to meet the obligation? **Mr. Skinner** replied that the intercept is not the money that is directly pledged to repay the municipal bonds. That is why the Authority prepared this legislation. State sales tax and the liquor tax are not the funds that will be pledged for repayment.

Chairman McKenzie said there is a motion and a second to send this to print. The motion carried by **voice vote**.

RS18058

Senator Geddes stated this is a Concurrent Resolution that calls for the Legislative Council to appoint members of an interim committee, to undertake the complete study of the medical education needs in Idaho. Last year **S1210** was passed which appropriated three hundred thousand dollars to allow the State Board of Education to engage and hire a consultant to conduct a medical education study within the state of Idaho. MGQ & Associates (MGQ) out of Florida was the contractor that was hired, and they spent two hundred sixty nine thousand of the three hundred thousand dollars to complete the study. **Senator Geddes** said the remaining thirty one thousand dollars was returned to the millennium fund. Like every study the more you know, the more questions develop. That is the case with the study that was completed.

The interim committee will focus on trying to fill the gaps that have been identified within that study, and to give the state a better feel as to what direction the state of Idaho should take to provide more adequate medical educational opportunities to the citizens and for the citizens. This study will engage a lot of people that he believes will be the focus of what can and should be done as Idaho continues to provide the needs and services for our citizens. Most of the members have been suggested through this legislation and they are members of leadership, or designated replacements for them to fill this interim committee. It also calls for a number of ex officio members to serve, all the three presidents or their designees from our major universities, a member from the Idaho Medical Association and a member from the Idaho Hospital Association along with two members of the state board.

Senator Geddes stated what he has tried to do with this legislation is to make sure that all of the people who have a significant vested interest in medical education within the state are invited to the table to discuss the needs of medical education within our boundaries. A typical interim committee costs about ten thousand dollars to complete. That is based on an average membership of the Legislature and the anticipation for meetings to be held. That will cover the travel costs and support for the interim committee to take place. The cost was expanded a little because he anticipates that one of the first meetings would be to invite a representative from MGQ, to walk us through the study and answer questions and provide information from the study itself.

Senator Geddes said he anticipates the cost to be more in line with a fifteen thousand dollar cost. The costs are paid for out of legislative budgets and not a cost to the general fund. A lot of money was spent to complete that study, and like many studies they are put on a shelf and gather dust. Medical education in our state will be a significant issue to deal with in the future. One thing the study did identify is the fact that not only does the state have a lower number of physicians per capita, but the physicians in the state are closer than average states to retirement age. Idaho needs to do a lot to attract more physicians or provide an opportunity or incentive for physicians to relocate and continue take care

of the medical needs in Idaho.

MOTION: **Senator Darrington** moved to print **RS18058**, which also means that it will go direct to the floor. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

HJM7 **Representative Nielsen** addressed the committee regarding **HJM7**. **Senator Davis** said the Memorial pretty much speaks for itself. As an attorney who advises clients who deal with this regularly with their employees, he is very sympathetic to this memorial. He said on page 2, line 13, he is with the Memorail all the way until he gets to "and", on the line before starting with internet and then pornography, and that legislation be enacted to facilitate the technology based solution. **Senator Davis** asked **Representative Nielsen** if he really wants the federal government to get involved and define effectively and create the technology. If the government were to do this, it could have a chilling impact on the explosive growth of technology in the world. He asked **Representative Nielsen** what is the intent in that language?

Representative Nielsen responded when he first became aware of this, he thought why can't the state of Idaho contract to do this very thing. He explored that somewhat and he went to **Representative Moyle**, who suggested he go to the Attorney General (AG) for an opinion. The AG said that technologically or legally the state could not do this itself. The U.S. government would need to create a solution or a court could exclude all of this material, but other courts would be allowed to have the material to overcome the objection that the Supreme Court had. It was ruled unconstitutional under the first amendment because of the rights of free speech. The intent is to have the United States to create a port and that port would screen out the pornography. **Representative Nielsen** said he doesn't know of any other source to go to be able to create a port to do that, or to create rules and regulations to accomplish what he is trying to do. Idaho does not have the power to create those policies.

Representative Nielsen said last year he saw a movie at the Flicks Theater called "Traffic Control" and the movie was very intriguing. This legislation is almost verbatim of what passed in Utah one year ago.

Senator Davis stated that he has that dvd and it is a very compelling documentary. It is a remarkable documentary to watch. **Representative Nielsen** commented that is exactly where he found out about this problem, so that is why he thought why can't Idaho do this. On line 14 addresses the internet and the work place, which is one of the biggest source of pornography during the hours of nine to five. It is not the intent of the legislation to take the place of parents. Parents have the primary responsibility to take care of their children. On the handout provided to the committee regarding CP80, it states the State has duty to protect the morals of children, not in a way that imposes morality on children, but in a way that supports the right of parents to deal with the morals of their children as they see fit. Basically, this will allow the creation of a port for a choice to subscribe or not.

Senator Geddes stated that he participated in the presentation that

Representative Nielsen invited him to earlier in the session. The arguments **Representative Nielsen** has presented are very compelling. There is a huge amount of money spent on filters and an effort to keep employees focused on work during work hours. **Senator Geddes** said his question is why can't private industry come in and make something available, instead of depending on a filter. He fears when his son graduates this year he may have a problem with watching tv, because of technology and just figuring out what remote does what. It seems like there is an opportunity here for private industry to create an alternative that many would take advantage of. Our system here is unfiltered to the internet, it is virtually impossible to open something that you don't expect to see.

Representative Nielsen said he welcomes any effort to take a look at the private sector. He believes that would be the better solution, but it will probably take a partnership to have policies and rules put in place.

Senator Kelly said as an observation she is acutely aware of this problem. She has three teenage sons and for probably three years she has had a blocker on her computer and her laptop as well. She can't even pull up this bill without turning the blocker off. There has to be some program out there, and to her knowledge she doesn't believe her sons have been able to get around this. There are mechanisms and as a parent she takes responsibility for this.

Senator Geddes said from what he understands the blockers generally protect what comes in, but if someone searches for something there are ways to get around most of that. You may not be hit by the oncoming car and if you want to merge into that traffic there are ways to do it.

Senator Davis stated in the documentary Traffic Control, it speaks not just to pornography in the workplace. It also talks about the computer science guys who address the weakness in technology that is out there. The port concept is being advocated and if any committee member would like to watch the dvd they are welcome to borrow it. What **Representative Nielsen** is trying to do is at the heart of it. The free speech concerns may be alleviated if the public could see exactly what is being proposed.

MOTION:

Senator Davis moved to send the Memorial to the floor with a recommendation that it **do pass**. **Senator Geddes** seconded the motion.

Chairman McKenzie said he has a question on the technology. What is the community port versus open port, and how does it work?

Representative Nielsen responded he hasn't explored that in depth, but he will offer his opinion. An open port suggest just that, it is open to everything. A community port means that you can select or only allow certain items to come in, and it has a protective element around it so you can screen out the things you don't want to come in. This is done at the port level. **Chairman McKenzie** asked what does not mean? **Senator Geddes** said he understands this somewhat. When you use the internet you generally go to an address with www.com, and that is the port that

you route through. All of this questionable material is not on a common port, but for example an address that is www.address.xxx that you could separate the material from this questionable type material. All that adult material would be routed through a different port.

Representative Nielsen said that http is the predominant port and all information has to go through a port somewhere, to come into your computer. That is the route it must travel.

Senator Little asked in the AG's opinion one of the issues is that the United States controls the web by assigning those I.P. numbers. There is a significant effort worldwide to take that over. Right now one part is centrally controlled, if we create other venues out there it might make things worse rather than better.

Senator Stegner said the xxx won't solve your problem, the front end at the I.P. could put you in a secure limited access. **Senator Davis** said in the dvd they talk about a similar situation. It is compared to a satellite or cable provider where you can choose to not subscribe to certain channels and that is the target here, to effectively create these different avenues of identifying the category in which your broadcast might qualify. As a parent you can decide not to subscribe to that channel, it gives you the very menu that **Representative Nielsen** is speaking about.

Representative Nielsen said this will be a battle, there is no question about it. There is nothing ventured nothing gained so we have to start somewhere.

There was no further discussion on the motion. The motion carried by **voice vote**.

MOTION:

Senator Geddes said before you bang the gavel, our committee secretary asked me to review some minutes for approval on March 10. He had time this morning and read them and they are accurate and well written. **Senator Geddes** moved to approve the minutes of February 22 as written. **Senator Little** seconded the motion. The motion carried by **voice vote**.

Senator Little said he reviewed and moved to approve the minutes of February 15. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

ADJOURN:

There was no other business before the committee. **Chairman McKenzie** adjourned the meeting at 9:10 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

- DATE:** March 10, 2008
- TIME:** 8:00 a.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, and Kelly
- MEMBERS ABSENT/ EXCUSED:** Senator Stennett
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENE:** **Chairman McKenzie** called the meeting to order at 8:05 a.m.
- GUBERNATORIAL APPOINTMENT:** **Chairman McKenzie** stated the confirmation vote on **Vernon Baker** to the Human Rights Commission who appeared telephonically is before the committee.
- MOTION:** **Senator Little** made the motion to approve the appointment of **Vernon Baker** to the Human Rights Commission. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.
- RS18035C1** **Senator Little** stated the necessity of this is the agreed transfer of part of the Boise State University West Campus in Nampa, to the College of Western Idaho. The legislation will allow the Idaho State Building Authority to continue to make payments on the bonds. The building was part of the 2003 bonding package.
- MOTION:** **Vice Chairman Jorgenson** moved to print **RS18035C1**. **Senator Geddes** seconded the motion. **Senator Little** asked if it is the desire of the committee to have a hearing, or send it to the floor. **Chairman McKenzie** said the motion is to send it to the floor, even though it was not specifically stated. The motion carried by **voice vote**.
- RS18080** **Vice Chairman Jorgenson** said there are some definition changes and he asked for the RS to be held until Wednesday. **Chairman McKenzie** said there is a unanimous consent to hold this. Hearing no objection **Chairman McKenzie** said the **RS18080** will be held.
- RS18064** **Senator Pearce** addressed the committee regarding **RS18064**. **Senator Pearce** said in 1993 congress passed the North American Free Trade Agreement (NAFTA). It was not a treaty and passed by the majority. President Clinton made the statement when this was passed that in two years this will create two hundred thousand jobs for America. The exact

opposite happened and in seventeen months one million jobs were lost in regards to NAFTA. On line 22 is the real heart of the bill, which allows for the withdrawal of the United States from the agreement and provides that a party may withdraw from this agreement six months after it provides written notice of withdrawal to the other parties. It continues and deals with the job loss. The year 2002 was the last year that the government tracked what happened to the loss of NAFTA jobs. Most jobs were in the highway and manufacturing sector. Line 31 references the trade deficit of nearly one hundred thirty nine billion dollars with Mexico and Canada.

Senator Pearce stated on line 35, NAFTA has reduced the value of the dollar and harmed the U.S. economy. This result is a lack of parity regarding laws and regulations related to the environment and labor as well as other laws and regulations placing America at a disadvantage. The Economic Policy Institute in Washington D.C. did a fifty page study of NAFTA. The Institute believes that NAFTA rules protect the interest of large corporate investors while undercutting workers rights, and environmental protections and democratic responsibility. Future foreign unrestricted foreign trucking allowed by NAFTA in the U.S., has the potential of posing a safety hazard to the American people due to inadequate maintenance and inspection. Lack of background checks, in addition the lack of drug and alcohol testing, lack of enforcement of size and weight requirements, and lack of national security procedures undermines the very charge given to the U.S. Department of Homeland Security against our borders.

There was a vote before Congress of 411-3 in the House, stating that they did not want Mexican trucking allowed in the United States. The U.S. Senate passed 75-23, again opposing Mexican trucking, so the President implemented a pilot program which we are under today. Only one to two percent of the trucks crossing the border are inspected, which increase the drug and illegal alien problems. **Senator Pearce** said on January 10, 2007 H.C.R. 22 was introduced in the U.S. House of Representatives expressing that the President should provide notice of withdrawal of the United States from NAFTA. In Idaho alone we have lost sixty three hundred and ninety five jobs due to NAFTA, and more jobs have been lost internally in the United States as illegal aliens have replaced American workers. Our livelihood has been directly affected by NAFTA as it has allowed cheap Korean chips to flood the U.S. and undercut Micron, causing massive layoffs. To date eighteen hundred jobs have been lost, and an estimated two thousand more are expected over the next two years.

Senator Pearce said that **Henry Kissinger** stated in the Los Angeles Times in July of 1993, what Congress will have before it is not a conventional trade agreement, but the architecture of a new international system. **Robert Pastor**, was the architect of NAFTA and he said in a 2002 essay that illegal immigration increased and NAFTA has been encouraging illegal immigration and not reducing it. The very architect of this plan acknowledged this. There are numerous organizations who are on board with this. **Senator Pearce** provided a newspaper article from the Idaho Statesman on NAFTA dated March 4, 2008 to the committee.

Senator Little asked **Senator Pearce** to explain how NAFTA has anything to do with DRAM (Dynamic Random Access Memory) from Korea? **Senator Pearce** responded he provided the quote out of the Statesman. The relationship is that as we deal with world trade, NAFTA places us in the World Trade Organization. We will not be under the guise of the World Trade Organization if we are no longer under NAFTA. Because we are part of NAFTA, it puts us in world trade as part of the agreements. **Senator Little** asked if he is advocating that we just stop all world trade. **Senator Pearce** replied no. **Senator Little** asked how do we regulate world trade? There are terrible inadequacies, and we have to start somewhere. Health issues cannot be regulated without some kind of dialogue. **Senator Pearce** stated the present form and format we are using has caused us to have those inequities. **Senator Little** said he agrees and that he is all for fixing NAFTA, but there are a lot of businesses in Idaho who have relationships to export their product. That is predicated on some kind of protection or an agreement signed by the sovereign states. **Senator Pearce** said he recognizes what **Senator Little** is saying. Yes we need to protect, but at the same time he is saying look at the damage to America. It doesn't mean we will not continue to trade when this is eliminated, it means we will not use this form and format to do it. Twenty-five percent of our oil is from Canada, and he is not advocating that Idaho should not trade with Canada.

Senator Stegner said he spent a short lifetime in northern Idaho in the grain industry, selling wheat, dried peas, and lentils that America does not want. Ninety percent of the soft white wheat grown in America is exported. Eighty percent of dried peas and lentils are exported as well. These are the two primary commodities grown in northern Idaho and we get more oil from Canada than any other single country in the world. If we have exported so many jobs to Mexico, why do we have so many illegal aliens trying to come to America for jobs? **Senator Stegner** stated this is the wrong direction for the U.S. to take, and in his opinion we would be burying our heads in the sand by refusing to understand the demands that America has placed today trying to get rid of agricultural products. There is so much food raised in this country and it is nearly impossible to get rid of it. The best free trade agreements we have allow for the export of our own products is in the best interest of America. **Senator Stegner** said he cannot support this Resolution or printing it.

MOTION:

Senator Stegner moved to hold **RS18064** in committee. **Senator Little** seconded the motion.

Senator Davis said the Resolution is asking for the support of a Congressional Concurrent Resolution 22, is that resolution here. **Chairman McKenzie** said that is not in our packet. **Senator Davis** said if he is being asked to support a Congressional Resolution he would like to know what it says. He cannot support something when he doesn't know what it contains.

The motion carried by voice vote to hold **RS18064** in committee. **Senators Darrington** and **Geddes** requested it be recorded that they voted nay.

**GUBERNATORIAL
APPOINTMENT:**

Melville Fisher addressed the committee regarding his appointment to the Idaho Lottery Commission. **Mr. Fisher** said that **Governor Kempthorne** appointed him five years ago to the Commission. He does this part time and the Committee meets every other month. The Commission has had record profits every year, and he asked **Governor Otter** to reappoint him because of the expansion of bingo and Indian gaming. **Mr. Fisher** said he is very impressed with the new director, **Jeff Anderson**, and the direction he is taking the Commission.

Senator Geddes asked **Mr. Fisher** how he feels about the Indian gaming and whether or not they are complying with strict provisions of the lottery? **Mr. Fisher** replied that the Commission's role is to monitor what machines they have. There was some debate to add the lottery on some of the reservations.

Senator Little asked **Mr. Fisher** if the money from Indian gaming is taken out of their administrative overhead? **Mr. Fisher** replied that is correct.

Jeff Anderson, the Director of the Lottery Commission spoke in support of Mr. Fisher's appointment. **Mr. Anderson** stated that In his first year on the Commission he has found **Mr. Fisher's** advice and counsel to be indispensable. He is very engaged and attends all meetings and he helps guide him and his staff.

Chairman McKenzie advised **Mr. Fisher** that the committee would vote on his appointment at the next meeting.

RS17997

Pete Skamser presented **RS17997** to the committee. **Mr. Skamser** said this Memorial is for the purpose of asking the federal government to move the process along for issuing the necessary permits for the Idaho Cobalt Project. It will not weaken any environmental standard. The permitting process has been lengthy and at this point it has been fourteen years and forty million dollars has been spent, and they still do not have a permit. **Mr. Skamser** stated the Idaho Cobalt Project is the only known pure cobalt mine in the western hemisphere. The refining process takes longer and it is more expensive. When this project is permitted there will be one hundred ninety six new jobs, a 9.5 million dollar payroll and eight million in local state and federal taxes. Cobalt is a strategic metal, the U.S. uses sixty percent of the world's production of it and we don't produce any. Defense applications, batteries in hybrid cars that reduce greenhouse gas emissions and batteries in computers and other high technology products are some of the uses of cobalt.

Senator Davis said what **Mr. Skamser** is proposing is a decision and to apply pressure to get it. **Mr. Skamser** said it is the final part of the permitting process that just can't seem to be passed. This is a small underground mine, the process uses no harsh chemicals or acids. The ore gets concentrated and then it is shipped to the big refinery near Kellogg, where it goes from ore to the finished product. They need the permit to go forward and if they don't start this summer they can't go too deep into the earth. **Senator Davis** asked **Mr. Skamser** who is opposed to this and what is the opposition? **Mr. Skamser** replied the biggest

opposition they have encountered is from Blackbird Mine site. At one point the government took it over because of the need for cobalt. There is a cleanup effort taking place there and the project will not interfere with it. **Senator Davis** asked where is that mine located? **Mr. Skamser** said it runs along the edge of our project. **Senator Davis** asked what countries in the world are leading producers of cobalt today? **Mr. Skamser** replied the Congo, Zaire, Russia, Cuba, and Canada. The Congo just recently suspended all mining contracts for the purpose of renegotiation.

Senator Stegner asked **Mr. Skamser** who is he employed by? **Mr. Skamser** replied the Formation Capital Corporation. **Senator Stegner** said what he is uncomfortable with is that the committee has spent eight minutes to consider this. The committee has not had an opportunity for a full hearing with all the facts for the ability to make a determination. **Senator Stegner** said you are stating the Capital Corporation will act appropriately with full compliance of the laws. It may be the best company in the world and you are asking us to take your word for it. **Mr. Skamser** said this is a print hearing. **Senator Stegner** said traditionally this kind of resolution is printed and it goes direct to the floor. This is the hearing unless the committee decides to bring it back for a hearing. **Senator Stegner** stated he is unaware of this issue until now and while he can understand **Mr. Skamser's** frustration, he wonders about the appropriateness of the Idaho Legislature and this committee to make a determination that we don't have any knowledge of. **Mr. Skamser** replied he was told that the Resource Committee asked for this to be introduced here and then return to that committee for a full hearing.

Senator Davis asked if we have unanimous request from the Resource Committee? **Chairman McKenzie** said yes we do.

MOTION:

Senator Davis moved to print **RS17997** on the condition that it go to the Resource Committee for further consideration. **Senator Geddes** seconded the motion. **Chairman McKenzie** said that is the request by the Resource Committee.

Senator Kelly said she does know about this issue and she was council for the Blackbird Mine on behalf of the state. It is a very complicated issue to go through the permit process. For the state and the Legislature to sign on to the statements in this Memorial, would require a lot of background information in order for her to have the confidence to vote for it. It is an inappropriate area for the state.

Senator Little said that **Mr. Skamser** gave his presentation in the Resource Committee, and it would have helped the committee if they were advised beforehand that it was at their request.

Senator Geddes stated he met with many representatives from Formation Capital Corporation. He does have the same concerns that **Senator Stegner** expressed. A fourteen year process for a permit is a very long time. He would have liked the Idaho Mining Association to be here in support of this. He asked **Mr. Skamser** if the Association supports this? **Mr. Skamser** said **Jack Lyman** did not testify at the

Resource Committee. Senator Geddes said this Memorial speaks to one hundred fifty jobs, and **Mr. Skamser** increased that. **Mr. Skamser** replied about forty jobs at the refinery were not included. **Senator Geddes** stated he will support printing this.

The motion carried by **voice vote**.

H348a

Dyke Nally, Superintendent of the Idaho Liquor Dispensary, presented **H348a** to the committee. **Mr. Nally** said **H348a** relates to the sale of distilled liquor on election day. This law is from 1935 and should have been changed. You can buy alcohol on election day, just not distilled spirits. **Mr. Nally** said this law creates a great deal of confusion for consumers. They can purchase beer or wine but not a vodka tonic. The Alcohol Beverage Control (ABC) has difficulty enforcing this as well. The Idaho Liquor Dispensary does about one hundred forty five million dollars a year in sales, with forty seven million in net profit for the sale of alcohol. Every general election day this costs the state money, they lose about four hundred thousand dollars across the state. If there is a run off in a city or county, those stores have to close with additional loss in revenue.

Senator Darrington asked if the amendment is to make *Idaho Code 23-927* consistent with the language in *23-307*? **Mr. Nally** said yes.

Senator Davis said this is a significant problem as defined, and the effective date is July 1. He asked **Mr. Nally** if this would apply to this primary? **Mr. Nally** said no. **Senator Davis** said if a city wants to preclude the sale of liquor by the drink on election day, will the language prohibit it or limit it? **Mr. Nally** replied as he understands this, a city could decide to sell or not on a local election day.

Senator Geddes said he is stuck on the first line of the statement of purpose. He does not believe this is archaic. Voting is an important thing and people need their wits about them when voting. **Mr. Nally** said he understands the point, but he is here representing the state because it is already allowed. This is taking away the choice for what type of alcohol to consumers, and limiting state revenue that goes to the general fund and the cities and counties.

Senator Davis said that part on the statement of purpose that caught his attention is that voting actually took place in a drinking establishment. He asked if he is misreading that, and if so, is it still allowed today in voting locations? **Mr. Nally** replied some voting occurred in saloons and taverns and he doesn't know of any today. Most voting locations are in churches and schools now.

Senator Kelly stated it is her understanding that there is still a few places that serve alcohol that are voting locations. Could this be a situation where they often serve liquor by the drink? **Mr. Nally** said yes liquor by the drink can be served after 8 p.m. when the polls close. Beer and wine can be served all day in restaurants, but if you want distilled spirits you have to wait until after polls close. **Senator Kelly** asked if there was an establishment that was a voting place, and it is licensed to serve liquor by

the drink, will this change whether or not it could serve on election day before the polls close? **Mr. Nally** said it will affect that. **Senator Kelly** said there is one in Boise County.

Senator Geddes said he was looking at the Idaho Constitution, Article 3, Section 24, relating to promotion of temperance and morality. **Senator Geddes** read that section to the committee which states "The first concern of all good government is the virtue and sobriety of the people and the purity of the home. The Legislature should further all wise and well directed efforts for the promotion of temperance and morality." He asked **Mr. Nally** how does this comply with the sobriety aspect? **Mr. Nally** responded he is aware of that section, and the Dispensary does that with the operating hours and the fact that we are a control state. The Legislature already allows beer and wine to be sold on election day. This is asking for something new in terms of serving alcohol on election day. It will provide that all alcohol can be served on election day. **Senator Geddes** said it appears the question here is not about sobriety, or the ability to vote or not vote. The real issue is that the state is losing several hundred thousand dollars a day by not marketing this particular variety of liquor. **Mr. Nally** replied that is correct. There is a loss of revenue, but it is also about consistency.

Chairman McKenzie said a former President of this country who ran for the Virginia House had to budget in a quart of rum per voter, if we change this law he doesn't think he can afford it.

TESTIMONY:

Pam Eaton, the President of the Idaho Retailers Association and the Idaho Lodging and Restaurant Association testified in support of **H348**. **Ms. Eaton** said there are many grocery stores in rural Idaho who are contract liquor stores. The problem with this law is that it is just confusing. The younger generation is just not aware that they are not supposed to sell liquor on election day. Contract stores can sell beer and wine, but they cannot sell hard liquor. It is confusing for customers and the retailers are verbally abused over this. **Ms. Eaton** stated on election day restaurants can only serve beer and wine. So some comply and others don't because ABC does not have the man power to enforce this law and they don't necessarily enforce it either. This issue is about fairness and making it consistent and eliminating the confusion.

Senator Davis asked **Ms. Eaton** if she is aware of any voting site that is also involved in the sale of liquor by the drink? **Ms. Eaton** said she is not, but she has heard about Bear Creek and she will check on that. None of her members of the associations that she represent are involved.

MOTION:

Vice Chairman Jorgenson made the motion to send **H348a** to the floor with a **do pass** recommendation. **Senator Stegner** seconded the motion.

Senator Kelly said changing the law will generate more money for the state and she does not think that is a good reason. Not having enough enforcement authority is not a good reason either. The law is inconsistent and difficult to follow and that is a good reason to change it. The state should use the increased revenue for enforcement and for alcohol

prevention and treatment. The statement of purpose is worded awkwardly and the state's conclusion is questionable. **Senator Kelly** said she will support the motion.

Senator Davis said he would prefer a motion to send this to the floor without a recommendation. The question that has not been answered is whether or not there are places of election that are involved in the sale of liquor by the drink. He would like to know the answer to that before he votes and he would prefer to vote on a different motion. He wondered if the maker of the motion would like to amend his motion, but he is prepared to vote.

The motion carried by **voice vote**.

H403a

Melissa Vandenberg, Deputy Attorney General for the Department of Administration (DOA) presented H403a. **Ms. Vandenberg** said this legislation makes changes to the statutes governing the DOA. There are two main areas with some clean up, and the others clarify the division or the responsibilities of the two divisions that make up the Department.

Ms. Vandenberg stated the Department's responsibilities are quite diverse. The language changes made to statute have not always been consistent with other sections of the statute. So clean up areas will make the changes consistent between the divisions. The more specific changes start on page 9 of the bill for the Division of Public Works. The notices for bids will be electronic and continue to be published in the newspaper. The Division of Purchasing begins on page 16.

Senator Kelly asked **Chairman McKenzie** if questions can be asked now? **Chairman McKenzie** replied yes. **Senator Kelly** asked **Ms. Vandenberg** to talk about contested case, because it is changed in a number of places. Is the intent to cut off any possibility of contesting appeals pursuant to those rules, and is it consistent with current practice? **Ms. Vandenberg** replied it is consistent with current practice within the Division of Public Works, and it is what contractors expect. In the Division of Purchasing there is one area where they would be able to contest a case, and it is when the administrative ruler appoints a determination officer and that can be contested and appealed. **Senator Kelly** asked why wouldn't there be a contested case if there is an administrative and judicial review? **Ms. Vandenberg** responded the time it takes for a contested case to be reviewed slows the process down in the attempt to award the debt. That can be anywhere from three to six months from the date of the notice of intent to award to lend the debt to a contested case proceeding. For a contractor this is too long, and the preference is to appeal directly to the District Court.

Ms. Vandenberg continued with her presentation and said the Division of Purchasing language on page 16, will give the Administrator of the Division more flexibility in what types of performance guarantees he can acquire. The language provides additional clarity to the appeals process for vendors, and there is more detail on the appeal procedure for when a vendor is disqualified. Previously, there wasn't a process set out for

determining whether or not an officer should be appointed every time.

Senator Little asked **Ms. Vandenberg** if performance guarantee is defined? **Ms. Vandenberg** replied yes. **Ms. Vandenberg** continued and said for the disqualified vendor there wasn't a process, and it wasn't clear that a determinations officer should be appointed. This makes it clear that an officer will be appointed and consistent with the language. The major change is that the department has to respond within five days instead of three. On page 18 the language allows for purchases without a competitive bidding process until it is approved by the administrator. The administrator could provide for exemptions to the competitive bidding process which is a requirement of rules. It clarifies that the bid documents are public record after the award.

Ms. Vandenberg said there are a couple of other areas under the Office of the Chief Information Officer (CIO). Last year information technology equipment was added to CIO division. **Senator Kelly** asked would information technology also include software? **Ms. Vandenberg** deferred to **Kevin Iverson**. **Mr. Iverson**, a Chief Technology Officer for the DOA responded that is correct. In section 67-5747 it would refer to equipment as well as software. **Senator Kelly** said is this a big change in terms of consolidation for applications. **Mr. Iverson** said from his perspective this is really a clarification. Historically, this particular section as it relates to communications had been interpreted as broader than what it was defined as. This will make it consistent throughout the entire section of the code as it relates to information technology.

Senator Little said on page 9 it deals with responsive and responsible bidders. Is this defined in code? **Ms. Vandenberg** replied she does not believe it is defined. The intent from her understanding is that it would be determined by the Administrator of Division of Public Works. **Senator Little** said in essence will the division become a public works czar. Is there a sideboard regarding who is prohibited from bidding? **Ms. Vandenberg** said she disagrees because if it is determined that you are a non-responsive bidder, you have the right to challenge an award. The challenge would go to the Administrator and it could be appealed at District Court. **Senator Little** said refresh his memory regarding the hurdle on the bidding process. When does the department go through a bid process? **Ms. Vandenberg** responded currently it is twenty thousand dollars. **Senator Little** he believes it has been increased to forty thousand. **Ms. Vandenberg** said on page 7 and 8, for a public works project it is one hundred thousand dollars, and purchasing is at twenty thousand.

Senator Kelly asked **Ms. Vandenberg** to explain discretion and how the section on the bottom of page 10, would be implemented? **Ms. Vandenberg** said her understanding is that it would be rare to object to a bid if it were responsive and a responsible bidder. The process is under section 9, there would be a review, and then the right to appeal it in district court.

Senator Davis said it is his understanding that in subpart (a) the standard

of awarding it is a best interest standard. He asked **Ms. Vandenberg** if it is in the best interest of the state of Idaho once the determination has been made after the responsive and responsible bid process? **Ms. Vandenberg** replied for the Division of Public Works there is no appointment of a determination officer, only for the Division of Purchasing. **Senator Davis** asked if that is from the Administrator, not the Director? **Ms. Vandenberg** said that is correct. The current practice is for the Director to review if there is an appeal. DOA's purpose is to make sure there isn't any arbitrary capricious happening in the evaluation phase.

Senator Kelly said she doesn't see the director involved at all with Public Works. **Ms. Vandenberg** said when there is an appeal the Director will review. **Senator Kelly** asked if that is an appeal to the court? **Ms. Vandenberg** replied yes, the Director would review the entire bid process.

Senator Davis said he is not sure about some of the measuring devices for this. The language on page 9 for responsive bidder states consideration of skill and expertise, financial resources, management ability, business judgment, integrity etc. He asked **Ms. Vandenberg** to speak to that. **Mike Gwartney** stated he would like to respond to this. **Mr. Gwartney** the Director of DOA said when the state was building a lab out by the old state prison, there was a complete misrepresentation of everything the contractor did. Under the integrity provision that contractor would not be considered. There are instances where integrity comes in to play either directly to the state or through others who provide references. **Senator Davis** asked is there something more broad you are trying to include with the word integrity? **Mr. Gwartney** replied past practices with the state or references from other sources would be acceptable, but we live with integrity at this point in time. **Senator Davis** said subpart (c) tells him that the process will not be arbitrary, but a requirement of the bid. He asked is that correct, and if the answer is yes, how will it be measured? **Ms. Vandenberg** responded that her reading of subsection (c) is correct. Each job it may be more or less important depending on the size of the project and the cost, etc. **Senator Davis** said that is the part that confuses him and he doesn't understand the relationship of (b) and (c). Everything will have a percentage and if integrity is the disqualifier, how will (c) impact (b)? **Ms. Vandenberg** replied she believes the department will make the determination that the vendor is non-responsive or non-responsible based on their bid and previous history. There are so many technical points for each question, references, and documentation that the company will sustain throughout the life of the contract. **Senator Davis** said the definition of Public Works means any new construction building, operation or repair, including equipment and furnishings. If a company only wants to provide furnishings, will this change a contractor's license? **Ms. Vandenberg** said the term of furnishings is not for household furnishings, it is for fixtures. **Senator Davis** said on page 15 is another new section of definitions, but it doesn't seem to limit its application. He asked are the definitions in 67-5716 apply to all of Title 67, Chapter 57? **Ms. Vandenberg** said no it only applies to the Division of Purchasing.

Senator Davis said the definitions in 15 and its application for the lowest responsible bidder standard will not be the standard in Public Works contracts. It will be the responsive and responsible standard as contained in 57-11(c). He asked if that is correct? **Ms. Vandenberg** replied that is correct. **Senator Davis** referred **Ms. Vandenberg** to page 17 and asked her to touch on that and why it is limited to 5720? **Ms. Vandenberg** said page 17 and 18 is one example where the chapter is struck because it only applies to the sections that are listed there.

Senator Kelly asked **Ms. Vandenberg** what are the changes to section 6 on page 20? **Ms. Vandenberg** stated this is when a vendor has provided services or influenced the procurement process. If an agency hired an independent contractor, that particular contractor may want to bid on it, they would be disqualified.

Senator Davis asked where are the public contractors and their associations on this bill? **Mr. Gwartney** responded that he and **Ms. Vandenberg** spoke with them. This was amended in the House and their issues were responded to. **Senator Davis** said he believes the Director, but what he hears from them is that they have to work with the Department. They are afraid to stand up and speak to their opposition to the bill. The standard is too heavy handed, any effort to contest the bidding process is nearly impossible to overcome and they know it. They are afraid to be in this room and speak in opposition for fear of what it might do. That is why they are not here and this is a major shift to their disadvantage.

Chairman McKenzie said the bill is before the committee.

Vice Chairman Jorgenson asked **Senator Davis** given the tenure you just described would it be possible to ask these bidding agencies and contractors to come in before the committee votes on this? **Senator Davis** stated they do not want to be here in opposition. They need to participate in the process, so they expressed their concerns privately. They should be here and speak publicly to this and give the Director something specific that he can step forward to address those concerns. Alternatively, the committee could look at some amendments that might alleviate some of the anxieties. As a committee we will have to make a determination. **Senator Davis** said personally he feels this is a shift that goes further than it should.

Vice Chairman Jorgenson asked **Mr. Gwartney** given the information that has come forward, does he have a response to that? **Mr. Gwartney** said he is somewhat surprised. No one has been bashful in discussing the provisions of this bill with the Department. He is not surprised that the contractors are not here today because the questions were resolved. If **Senator Davis** is getting a different perspective he would yield to their concerns.

Senator Darrington said he works in one area of Public Works. He has not heard any complaints from contractors regarding the process.

Senator Geddes said if he were a contractor worrying whether or not he could qualify or not for a bid, he is surprised to not see any of them here today. He believes they should be curious about what this committee's action would be. **Senator Geddes** said he is in a quandary about what to do with this bill. If this will undermine their ability to work for the state he believes this room would be full with those individuals.

Senator Little said he is not worried about the contractors who are under an organization. He is concerned about the ones who aren't. This legislation will broaden the authority.

Senator Kelly said in streamlining a process the Legislature needs to be concerned with due process. This is transparent and it has some tremendous side boards for the ability to appeal, and the standards under which they can make an appeal.

Senator Geddes said he agrees with **Senators Little, Kelly and Davis**. His problem is that he doesn't have enough experience in contracting law or purchasing law to understand what this bill does or doesn't do. The only thing he can go on is the experience that **Mr. Gwartney** is bringing to this committee saying that there needs to be some changes here. **Ms. Vandenberg** did an excellent job in her responses to **Senator Davis'** questions. He is confused and uncertain about the balance that **Senator Kelly** talks about.

Senator Stegner stated it is one minute to ten, he asked for unanimous consent to continue this discussion. It is not an attempt to kill it; the committee needs additional time to assist in this process. **Chairman McKenzie** stated there is no objection, so this will be held for the committee's next meeting.

ADJOURN: **Chairman McKenzie** adjourned the meeting at 10 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 12, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Jorgenson Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly

MEMBERS ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

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

GUBERNATORIAL APPOINTMENT: **Carla Campo** appeared before the committee regarding her appointment to the Bingo-Raffle Advisory Board. **Ms. Campo** said she and her husband own an oil company and two convenience stores in Fruitland, which she oversees and operates. She has worked with the lottery for fifteen years and she is an avid bingo player. Initially her church needed money to build a new church, she started bingo to raise funds for that. In the last two years it has grossed over forty six thousand dollars for the church. The Lottery Commission asked her to be on the board because of her knowledge from the perspective as a player.

Chairman McKenzie asked **Ms. Campo** how many board meetings has she attended? **Ms. Campo** replied three.

Chairman McKenzie thanked her for appearing before the committee and advised her that the committee will vote on her appointment at the committee's next meeting.

The confirmation vote of **Melvin Fisher** to the Idaho Lottery Commission was before the committee.

MOTION: **Vice Chairman Jorgenson** made the motion to confirm **Mr. Fisher**. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

Chairman McKenzie stated **Jeff Anderson** is here from the Lottery Commission. He asked **Mr. Anderson** if he would like to speak to the committee regarding **Ms. Campo's** appointment.

Jeff Anderson, the Director of the Lottery Commission stated he

endorses her appointment. **Ms. Campo** attends every meeting, she is very engaged, and she is a very successful bingo operator. She understands what is required in terms of the regulatory provisions.

RS18046

Senator Stennett presented **RS18046** to the committee. **Senator Stennett** said this Concurrent Resolution is an effort to aid the ongoing efforts of the Idaho Soil Conversation Commission and the Idaho Carbon Sequestration Committee to develop a Carbon Credit Exchange Framework for the state of Idaho. It will create a rangeland /cropland for possible trading through the Chicago Climate Exchange (CCX). Cropland is not a current designated region for our state, although the CCX has recognized rangeland, forest land and grasslands. This resolution is urging the CCX to consider approving Idaho's request to designate "cropland" as acceptable to qualify for the exchange program. There was several discussions in the Agriculture Committee and after printing it will return to the committee for a hearing.

Senator Darrington asked **Senator Stennett** if this was sent here by a unanimous consent request. **Senator Stennett** replied yes it was. **Chairman McKenzie** stated he has a letter requesting that from the Agriculture Committee.

MOTION:

Senator Darrington moved to print **RS18046**. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

RS18089

Vice Chairman Jorgenson presented **RS18089** and stated that this is a rework of **S1181** from last year. Last year's version passed through the Senate, but did not make it through the House because of the timing. This bill will define by Federal Code what a public safety officer is, and what a permanent disability is. If a public safety officer is permanently disabled in the line of work they would be offered a one time one hundred thousand dollar cash settlement. The cost of providing this to all public safety officers in the state of Idaho is a total cost of about two hundred ninety thousand dollars. The cost would be born by .04 from the employee and .06 from the employer. **Vice Chairman Jorgenson** said what that really means is about four dollars and sixty cents per month dependent upon what the officer's wage is. The committee supported this last year and the bottom line is that when public safety officers put their lives on the line and sustain permanent disabilities, they lose their health insurance. This will provide them with a way to replace that. **Mike Gwartney** from the Department of Administration, has stated that when this bill is passed, a rule will be written to provide that the families of officers would receive insurance.

Senator Davis asked if the Commerce Committee asked this committee to print this. **Vice Chairman Jorgenson** replied that last year he brought this to State Affairs, if he made a mistake he apologizes for that. **Senator Davis** said this committee should make certain that the Commerce Committee does not have a problem with this. **Vice Chairman Jorgenson** said that he approached **Senator Andreason** for this to be heard in State Affairs. He did not indicate that a letter was required.

Senator Stegner said that is the procedure that should be followed. In

order for a new RS to be introduced, it must be by unanimous consent from that committee.

Senator Darrington said it appears to him that **Vice Chairman Jorgenson** is requesting that this committee be the germane committee for this issue. Last year this committee was the germane committee for this very bill. **Vice Chairman Jorgenson** responded that last year this committee was the germane committee on this issue. Based on last year, that is why he did this, but in addition to that he did discuss it with **Senator Andreason**. **Senator Andreason** said he was honored.

Senator Davis said that he told **Vice Chairman Jorgenson** several days ago that he needed to go to the committee and get their permission to do this. It was pulled from Monday's agenda and **Senator Andreason** knows what the appropriate process is. The minority as well as the majority should be held to that standard

MOTION: **Senator Davis** moved to return the RS to the sponsor until he receives the authority from the Commerce Committee. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

S1455 **Senator Stennett** presented **S1455** and stated this is an amendment to the retail liquor code, that strikes the language regarding ski resorts not being able to have a liquor license. This will affect the Warm Springs Lodge which is located within the city limits of Ketchum. The River Run Lodge is located in the county and they have a liquor license based on current code. The Sun Valley resorts work hard to attract tourists to the area. This is an attempt to provide hospitality to visitors and tourists as what they would anticipate it to be.

TESTIMONY: **Dick Anderson**, who represents the Sun Valley Company stated that there is a ski resort liquor license at River Run and not at Warm Springs. **Mr. Anderson** said this is because it is located in the city of Ketchum and not in the county. This bill will allow a ski resort liquor license to be issued for the Warm Springs Lodge.

Scott Turlington, from the Tamarack Resort testified in support of **S1455**. **Mr. Turlington** said he has been before this committee regarding this issue. He felt it was important to speak out and support the resort industry in Idaho, and the challenges that year round destination resorts face. The market is becoming increasingly more competitive throughout the western United States. Idaho is positioning itself to attract and capture more of those destinations. The Tamarack Resort supports this effort and believes it will be equitable for the Sun Valley Company.

Senator Kelly asked **Senator Stennett** if this will only apply to the Warm Springs Lodge? **Senator Stennett** said a portion of the language is stricken, and within a ski resort was added to apply to a facility that is within city limits. This is the only resort that he is aware of that this will apply to.

MOTION: **Senator Kelly** made the motion to sent **S1455** to the floor with a **do pass** recommendation. **Senator Stegner** seconded the motion. The motion

carried by **voice vote**.

H531a

Chairman McKenzie said **H531a** is next on the agenda, and at this point he needs to turn the gavel over to the Vice Chair.

Roger Batt stated he represents the Idaho Eastern Oregon Seed Association, the Idaho Ground Water Association and the Idaho Mint Growers Association. Legal counsel, **Dan Steenson** is here today as well. **H531a** addresses negotiated rulemaking and not the formal rulemaking process. **Mr. Batt** provided a diagram to the committee regarding the process and how it works. This will enhance the negotiated rulemaking process by clarifying the purposes of negotiated rulemaking.

Mr. Batt said this legislation does not mandate negotiated rulemaking it will allow the agency to determine whether it is feasible or not to conduct negotiated rulemaking. If it is not feasible they must explain why in its notice. Several examples for not conducting negotiated rulemaking were provided and **Mr. Batt** read from the Department of Health and Welfare's notice. So there are reasons why some agencies decide it is not feasible. There are three phases of rulemaking. 1) negotiated rulemaking, 2) formal rulemaking and 3) legislative authority and review. This bill will not restrict the authority that the Legislature currently has to review, accept, or reject rules. **H531a** is very consistent with the Attorney General's rules, which are rules 800 to 860 when it comes to rulemaking. These specify the procedures for state agencies to facilitate negotiated rulemaking. Agencies have the option to opt out of these rules, rule 800 to 860 by adopting their own rules, which are subject to review by the Idaho Legislature. **Mr. Batt** said that **Dan Steenson** has done some extensive research and not many agencies have opted out of rules. Over the last fifteen years agencies should be complying with the Attorney General's rules.

Mr. Batt stated on page 9 of the writer's rule manual states that the advantages of negotiated rulemaking are to save time and money, improve the substance of the proposed rules, and an agency arriving at a consensus in expediting formal rulemaking. To accomplish these objectives set forth in this legislation will provide a better process for the citizens and to make the process more transparent. If the agency is serious about negotiated rulemaking, these procedures include giving reasonable time to advise interested persons in the agency personnel about participation, convening public meetings of interested persons, which means that interested persons are not excluded. These meetings can be conducted by phone, teleconference, web conferencing etc. If an agency is serious they will not exempt public information available to participants, as better informed participants provide better information. They will also consider recommendations of interested persons which is outlined in this legislation. If an agency is serious they will prepare a written summary with written recommendations and explanations of the agencies response to a proposed rule and post them on their website. In the past most recommendations have been verbal and never written. Putting something in writing will be a more serious commitment from the participants because it will go into a formal record. These may also be

used in formal rulemaking, which is the process after negotiated rulemaking.

Mr. Batt said the amendment that was made in the House is found on page 2, line 1, which strikes written. Currently as written before would mean that agencies would only have to consider written recommendations and they want to include oral as well. Line 3 of page 2, "such" was stricken to cover a written summary of written recommendations from the agency. Better rulemaking will result in better rules through the use of efficient time and resources to create better public policy under this legislation and allow our citizens a seat at the table. There is an emergency clause because of several groups and agencies wish to conduct negotiated rulemaking, either during the Legislature or immediately after in order to implement these procedures.

TESTIMONY:

Dick Armstrong, Director of the Department of Health and Welfare, testified in opposition to **H531a**. **Mr. Armstrong** said Health and Welfare is extremely dependent on rulemaking and they produce more than fifty dockets a year. The department was surprised when this bill surfaced, and the sponsors have not spoken to the department. Although he is not an attorney, the proposed language changes do not add clarity, do not simplify the process, and will increase the cost to the state for rulemaking. The department is very responsive to public input. If a rule is posted and they receive a response, the department begins the process to address concerns and gather public input. They are receptive to ideas that streamline the process and make it more responsible to public input. This proposed legislation will mandate additional work and expense for rulemaking, which will not produce better rules or efficiencies. **Mr. Armstrong** asked the committee to vote no on **H531a**.

Jeanne Goodenough, Deputy Attorney General for the Department of Health and Welfare, testified in opposition to **H531a**. **Ms. Goodenough** stated this bill will create additional work that is not required now. The Legislature has left it up to an agencies expertise to determine the best way to implement legislative intent as expressed in statute. Just because there is negotiation, there is no guarantee that there will be an agreement on difficult issues. The additional procedures required in this bill will not prevent mis-communication from occurring. This bill only addresses written recommendations, not verbal discussions. The Administrative Procedure Act was rewritten in 1993, and the intent was to allow for negotiated rulemaking in a number of informal ways. This bill will remove that flexibility. Current law encourages agencies to issue notices of intent to promulgate a rule. The proposed legislation will mandate that it must publish a notice of intent, arrange meetings, consider written recommendations, summarize and post them on the department's website, and then begin the actual rule process. Most of the requirements will add to the agency's risk that a rule will be challenged in court. The requirements make an already complex process even more difficult and increase the amount of time, money and energy needed to promulgate rules, without fixing the stated problem. **Ms. Goodenough** said overall this bill creates an Idaho version of the Federal Register, which was a concept rejected as unnecessary in 1993.

Julie Pipal, legislative liaison for the Idaho Transportation Department, testified in opposition to **H531a**. **Ms. Pipal** said the Department has a long standing reputation of working cooperatively with industry partners and the public in the rulemaking process. The Department is statutorily authorized to do this through the Dealer Advisory Board, and the Executive Order that establishes the Motor Carrier Advisory Committee. Rulemaking includes scheduling meetings with interested parties prior to beginning the process, which is outlined in the Administrative Procedures Act. During the formal rulemaking process the public is invited to comment and the opportunity for public hearing takes place if requested by twenty-five individuals. There has been no indication that this process is not working. **H531a** will add costs and it will complicate a process that is working. The Department believes that on an average year their costs will increase by approximately fifty thousand dollars to accommodate the changes proposed in this bill. **Ms. Pipal** said in addition to the added costs, **H531a** will remove all flexibility.

Senator Davis asked **Ms. Pipal** if the problem for Health and Welfare and the Department of Transportation's solution would be to declare that negotiated rulemaking does not work here? **Ms. Pipal** responded as they interpret this it would require a board action in order to make that determination when it is codified. **Senator Davis** said he really doesn't know what this does to the Department. If the agency determines that negotiated rulemaking isn't feasible, it requires a notice as to why it isn't feasible, and then proceed with formal rulemaking. **Ms. Pipal** replied under current procedure they don't do negotiated rulemaking very often. The new language indicates that they will have to change and make that determination. The Department follows the Attorney General's rules, but this raises the bar for agencies.

Senator Kelly said current statute encourages negotiated rulemaking, not a mandate. She asked **Ms. Pipal** if the language in this will narrow the discretion for an agency to enter into negotiated rulemaking? **Ms. Pipal** said that is her assessment.

Senator Little said interested persons is not defined. He asked **Ms. Pipal** who are interested persons? **Ms. Pipal** responded there is a variety of ways in determining who they might be, and it is left to the Department's discretion. As an example, the people who are registered with the commercial motor vehicle section would be sent a post card. Or they would go to the motor carrier advisory committee. **Senator Little** said if you went through a rulemaking process and twenty people showed up, and it was specific to a highway district, would a new list of people be made for that process. **Ms. Pipal** replied most likely they would.

Senator Davis said rulemaking is not required when it is not feasible, and this could be interpreted that it is now mandatory. If the agency doesn't have discretion as to the content, he isn't sure what to do with the language "including but not limited to". **Senator Kelly** said that she agrees with **Senator Davis** that language opens it up and makes it broader. Because this changes the encouragement that is in current statute to "shall", it may be a potential for a challenge. **Ms. Pipal** said

subsections (a) and (b) were significant to the Department because they deal a lot with “mandate”. The Department is a client based agency in terms of how money is spent, what sort of regulations their customers are subject to, and in her experience they should have an ability to weigh in. When it comes to rulemaking, customers do want some input and they expect it.

Senator Little said a high percentage of the Department’s rules are federally mandated. He asked **Ms. Pipal** what is the Department’s interpretation of (b) in 4 on page 2? **Ms. Pipal** responded because the bar is raised for the Department, it would be difficult to determine that it is not feasible, even under these circumstances.

Senator Davis asked **Ms. Goodenough** if subpart 4 was changed, would it alleviate some concern for the Department? Or is it more than that? **Ms. Goodenough** replied subpart 4 is not much of a problem. But the Department would have to determine whether or not negotiated rulemaking is feasible or not. The issue is the creation of the website requirements which duplicate the administrative rules coordinator website and official rule record keeping. The agencies will not casually determine that everything is not feasible to negotiate.

Dan Steenson, said he is an attorney in Boise, and he is here representing the groups that **Mr. Batt** mentioned. His job is to answer questions that were raised. The Attorney General’s rules were promulgated in 1993 for all agencies pursuant to the Legislature’s direction in *Idaho Code Section 67-5206*. The Legislature directed that the Attorney General adopt rules, specify procedures to facilitate negotiated rulemaking. The current statute is spare, and it basically states that the Legislature should “encourage” negotiated rulemaking when it is feasible. With respect to the determination of when to proceed with negotiated rulemaking, the rules that the agencies have operated under are on page 36, in (a) 10 and 11. This language states that the agency, when feasible, shall proceed by informal negotiated rulemaking. If the agency determines that informal negotiated rulemaking is feasible, it shall publish a notice of intent to promulgate rules.

Mr. Steenson said the Attorney General’s rules that are in effect now, were promulgated and approved by the Legislature, so that they have a force and effect of law. So taking the same standard or requirement and putting them in statute is not raising the bar, or forcing the agency to do something different. The language in Subsection 4 was recommended and it came from the Department of Environmental Quality. The same language that has been working for fifteen years is reflected in the importance of maintaining the agency’s discretion to make the feasibility determination.

Senator Davis asked **Mr. Steenson** if this is the legal standard under which the agency needs to operate today, why does it need to be in code? **Mr. Steenson** responded that he isn’t suggesting that there isn’t anything new in this bill. If it is determined that negotiated rulemaking is feasible and conducted, parties should have an opportunity to participate,

and submit written reports.

Senator Kelly asked **Mr. Steenson** if he talked to the Attorney General about fleshing out his rules a little more, rather than creating a bill? **Mr. Steenson** replied they did not talk to the Attorney General's office about the rules. He talked with various departments about the changes to the statute, and he believes it is important for the Legislature to flesh out what is expected when negotiated rulemaking is engaged.

Senator Darrington said on line 10 language was inserted and down below in paragraph 3 there are provisions. He asked **Mr. Steenson** if all the provisions will apply to all rulemaking or just negotiated rulemaking? **Mr. Steenson** responded *Idaho Code Section 67-5220*, applies exclusively to negotiated rulemaking. **Senator Darrington** said one side states that there is an increased savings to the state, as noted in the fiscal note. The other side, the agencies, state it will cost a lot more money, he hopes someone will address that. **Mr. Steenson** said there may be some additional costs during the negotiated rulemaking process, such as the hand written summaries and posting them on the website.

Vice Chairman Jorgenson stated there are others that have signed up to testify. He requested that they keep their comments brief and not to repeat what has already been addressed.

Gary Duspiva, a water well driller and a member of the National Ground Water Association stated his main concern is that these rules will not be done by consensus. Another issue is that once the informal process is completed it is one day before the deadline to submit public comment. The agencies can't agree on everything that the industry puts forward, but the cost to individuals should be considered who shut down their business in order to actively participate.

Jayson Ronk testified in support of **H531a** and stated that he is the Vice President of the Idaho Association of Commerce and Industry. **Mr. Ronk** said **Mr. Batt** brought this to the Association and they voted to endorse it. **H531a** will streamline the rulemaking process and ensure that rules will move forward for Legislative approval and have public input. He hopes this legislation will encourage state agencies to utilize the negotiated rulemaking process, to continue to solicit input on rule changes that affect the business community and citizens of Idaho.

Pat Barclay, Executive Director of the Idaho Council on Industry and the Environment testified in support of **H531a**. **Ms. Barclay** said the Council reviewed this legislation and they voted to support it. This bill enhances the process and allows for more consistency, better consensus, and communication among all parties.

Senator Geddes said he has been involved in rulemaking and what concerns him deals primarily with public utilities. He asked **Ms. Barclay** to comment on whether or not they don't have enough access to the process. **Ms. Barclay** said in the short time she has been involved, it is difficult for the public or small businesses to be involved. On short notice

it is hard to pull people together and participate. But more people should get involved and maybe there would be less controversy in the end. **Senator Geddes** asked when your Council met and discussed this legislation did they find this as an opportunity to enhance and improve the rulemaking process? **Ms. Barclay** replied yes they did. She is learning about the websites and tracking down information.

Norm Semanko, representing the Idaho Water Users Association, and Vice President of Food Producers of Idaho testified and he stated the Water Users Association reviewed this bill. They support it and they are very involved in the rulemaking process with the Idaho Department of Water Resources and the Department of Agriculture. There have been instances where this bill and the provisions within it would have assisted them. Additionally, they have not experienced any additional costs for this process. **Mr. Semanko** said that any interested persons are those who respond to the agency notice and get involved. This allows for everyone to participate not just the regulatory community.

Senator Kelly said that she would like to ask **Dennis Stevenson** a few questions. She asked **Mr. Stevenson** how does the process currently work, and could he comment on the fiscal note? **Mr. Stevenson** said that he has not heard a big outcry from the public or the industry that there is a problem with negotiated rulemaking process. There is a conflict regarding the Attorney General's rules of administrative procedure. The current statute states that the agencies may enter into the process and the Attorney General says they shall do that. In most cases when there is a conflict between the statute and the rule, the statute takes precedent over the rule. He asked the Attorney General's office and he has not received a concrete answer as to how they arrived at "shall versus the may" that is in statute. The flexibility is vital to allow for many contingencies that arise in the process. If the agency realizes that they cannot reach consensus, then they go to formal rulemaking. Time is a concern because there is a moratorium during the legislative session on formal rulemaking. There is a small window in which to promulgate rules and they must get the rules to the committees for review early in the session. If they can't get through the process, it will not be a viable option for the agency. Some agencies may look and find reasons that it is not feasible. That will be problematic along with the abbreviated time. The Attorney General states the feasibility issues are not reviewable. Will the Legislature reject rules based on the fact that a consensus was not met? With this legislation if the agency decides to enter into the proposed rulemaking, can they just simply state that in the notice versus publishing that they are not going to enter into negotiated rulemaking? Finally the last section of the bill speaks to the legal notice that is published, and it really has nothing to do with negotiated rulemaking. **Mr. Stevenson** said he does provide notice regarding meetings being held, when there is proposed rulemaking being promulgated. He does not post a notice regarding temporary rules.

Senator Stennett asked **Mr. Stevenson** how will this affect Fish and Game, and how complicated will it make that process in determining their rules? **Mr. Stevenson** said currently Fish and Game does a lot of outreach and they hold meetings continuously and he isn't sure if they

would change anything for that. They would have to publish a notice. **Senator Stennett** asked **Mr. Stevenson** in his opinion would this put the Legislature in a precarious position as far as authority in the future to have some control? The Legislature has a great deal of control over what the agencies can do and not do, would this be challenged in court? **Mr. Stevenson** replied that he didn't think this would affect it, but he cannot say for certain that it wouldn't be a court challenge.

Senator Little asked **Mr. Stevenson** given the time constraints that he eluded to regarding a moratorium on the Legislature, will it default as a result to more guidance and less rulemaking? **Mr. Stevenson** said he does not think so. Agencies have to have rules and guidance does not rise to the level of a rule. They may use it as some sort of utility.

Senator Kelly asked **Mr. Stevenson** if there is a cost involved for publication of the notice? **Mr. Stevenson** said yes there would be a cost.

Senator Davis said the Director from the Department of Administration is here. He asked **Mr. Gwartney** if the Department has a position on this? **Mr. Gwartney** replied the process as it exists today is transparent, it works well, it is embodied in what the Legislature does. The Department's position is that this bill is not needed.

Roger Batt stated they did not meet with all the agencies, but they did meet with Fish and Game, Water Resources, ISPA and the DEQ. At the end of those discussions he asked if they were the majority of the agencies that conduct negotiated rulemaking in the state. The answer was yes, so they didn't pursue other agencies. What this bill will do is ask the agencies to post this on their website and allow for citizens to have a seat at the table during negotiated rulemaking.

MOTION:

Senator Geddes moved to send **H531a** to the floor with a **do pass** recommendation. **Senator Darrington** seconded the motion.

Senator Little said he wished that we entered into negotiated rulemaking without the statutory change.

SUBSTITUTE MOTION:

Senator Kelly moved to hold **H531a**. **Senator Stennett** seconded the motion.

Vice Chairman Jorgenson requested a roll call vote on the substitute motion.

Senator Darrington - Nay
Senator Geddes - Nay
Senator Davis - Aye
Senator Stegner - Aye
Senator Little - Aye
Senator Stennett - Aye
Senator Kelly - Aye
Vice Chairman Jorgenson - Nay

Chairman McKenzie - Absent
The substitute motion **carried**.

MINUTES: **Vice Chairman Jorgenson** moved to approve the minutes as written for February 18. **Senator Little** seconded the motion. The motion carried by **voice vote**.

ADJOURN: There was no other business before the committee. **Vice Chairman Jorgenson** adjourned the meeting at 9:42 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 14, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly

MEMBERS ABSENT/ EXCUSED: Vice Chairman Jorgenson

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

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

GUBERNATORIAL APPOINTMENT: **Chairman McKenzie** said the confirmation vote on **Carla Campo** to the Bingo-Raffle Advisory Board is before the committee.

MOTION: **Senator Geddes** made the motion to approve the appointment of **Ms. Campo** to the Bingo-Raffle Advisory Board. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

**H556
H592** **Chairman McKenzie** said the intent is to refer **H556** and **H592** to another germane committee to hear. He asked **Senator Geddes** what is the procedure for doing this? **Senator Darrington** replied that they need to be sent to the floor with a recommendation to refer them to another committee.

MOTION: **Senator Darrington** moved to send **H556** and **H592** to the floor for referral to Commerce and Human Resources Committee. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

RS17820 **Ben Ysursa**, the Secretary of the State (SOS) presented **RS17820**. **Mr. Ysursa** said this is a print hearing and he would like to commend **Keith Allred** and the Common Interest Group for his work on this. This RS is the "one party call for ballot provision". It will implement a rule for public recognition for public recordation that there is an affiliation on a primary ballot. This isn't exactly in rule, and none of the bills conform to rule. It will not provide for political party registration and there is no cost for a change in registration forms. In 1960 and 1962 there was a call for ballots in Idaho. The voters had to call for one party's ballot or the other and that would be the ballot they received and noted in the poll book. Poll workers were under criminal penalty if the information was released. This would make it part of public record as to what ballot an individual took. **Mr. Ysursa** said if we go down this road we will have to have separate ballots.

Idaho has never had party registration and this will preserve that long held tradition. The main difference between this and other bills is that it will be recorded and made a public record.

Senator Little asked **Mr. Ysursa** if this will require more or less work for the counties? **Mr. Ysursa** replied the poll book would have a box for indication the voter picked up a party ballot. There won't be a change to registration cards, and no change in the statewide voter registration system to indicate which party. **Senator Little** asked will it be noted that the voter called for a ballot? **Mr. Ysursa** said it will be marked in the poll book and noted, then it would be public information. **Senator Little** asked if the record will be on election day, or after election day? **Mr. Ysursa** said poll books are all public record. **Senator Little** asked if there will be access to the poll book during the day. **Mr. Ysursa** stated that the poll book is now, and it can be challenged on election day, but not to the point that it is disruptive.

Senator Stennett asked **Mr. Ysursa** when a voter goes to vote does he have to call out for democratic ballot? That is a concern for him especially in a republican county. **Mr. Ysursa** replied the worker will indicate that and could attract some ire. If a particular party has a rule and you are voting in their primary you will have to indicate that and the poll worker would record it. **Senator Stennett** said he is serious about this question. Is it announced and the poll worker would hand the ballot to the voter? **Mr. Ysursa** said yes, they would say it aloud. The poll worker needs to know what ballot the voter wants. The rule requires it, and it will be recorded. **Senator Stennett** asked is it announced? **Mr. Ysursa** replied yes, they have to know which ballot. **Senator Stennett** asked is there a list and would the voter be refused a republican party ballot? **Mr. Ysursa** said there wouldn't be a list, that is the point of this, there isn't party registration. The voter is on the registration list period. **Senator Stennett** asked would this be public record and published in the newspaper, and/or on a website? **Mr. Ysursa** responded as any public record out there, it is for public knowledge. **Senator Stennett** asked **Mr. Ysursa** would this have a chilling affect for voters who are not in a major party? **Mr. Ysursa** said he is sure it could. He is not extolling the virtues of any change in the current election system, but this is the lesser of so many evils.

Senator Darrington asked **Mr. Ysursa** could it be interpreted that this could be considered as party registration? **Mr. Ysursa** replied it could be, because the voters sometimes say now they are registered when Idaho does not have it. This would indicate that the voter participated in a republican primary, that would be known.

Senator Davis said he agrees with the SOS that the current system is working well. He has no strong desire to see it changed, but when he votes today his memory is that the poll worker asks for his name and he gives it. Then he signs in, he isn't sure why this bill couldn't just have a box to check, and the voter wouldn't have to announce verbally what party he is affiliated with. He asked **Mr. Ysursa** wouldn't that be consistent with what this legislation is proposing? **Mr. Ysursa** replied he would think so. This is a good point, and how can we make this as less obtrusive as

possible and still have a record that would satisfy the rule.

Senator Kelly said the fiscal note indicates a two hundred thousand one time general fund fee. Additionally there is a printing cost, she asked **Mr. Ysursa** would there be two ballots printed? **Mr. Ysursa** stated right now there are different types of systems. The smaller counties still have paper and non-partisan ballots is separate. Other counties have optical scan and they can be combined on one ballot. The counties that are too large would have two separate ballots. It should not be overlooked that judges are elected at a primary, that is a key to the whole party process.

MOTION: **Senator Davis** moved to print **RS17820** and **Senator Geddes** seconded the motion. The motion carried by **voice vote**. **Senators Stennett** and **Kelly** requested that they be recorded as voting nay.

RS18061C2 **Keith Allred** who represents the Common Interest Group, presented **RS18061C2** to the committee. **Mr. Allred** stated this is a print hearing so he will be brief. This RS will provide two methods by which a party nominates their candidate for a general election. The first option is the state and county option, and it would modify how it currently works. It would provide for primary registration. The way it would work is that in the primary election there would be a check box in the poll book. The voter would sign in and check off the box noting which party they are affiliated with. After the primaries in 2012, if someone has not voted in the primary then by default they would be non-partisan. In a primary, if the voter has designated party affiliation they can only vote in that party's primary. The undeclared voters have a choice of which primary to vote in. The voter would be provided both ballots, they would vote, and return them to the poll worker.

Mr. Allred said the second option would be an election that the party could opt for an option in lieu of the state and county conducted primary. This would be a party conducted nomination process which is provided for in the party's rules and provisions. The cost and administration expense would be incurred by the party. Open primaries will probably not withstand legal scrutiny that appears to be coming. The Supreme Court has made it increasingly clear that states cannot force parties to allow members of rival parties to participate in their nomination processes. Under the current open primary it forces republicans to affiliate with those who are not members of the party. Both aspects of the bill work to strike an equitable solution. In terms of the modified open portion, the requirement that voters who declare an affiliation with a party, vote in that party's primary rather than in a rival party's primary, substantially reduces the burden the state places on parties' rights of freedom of association. The option for voters to choose to be "unaffiliated" but still vote in the primary of their choice, maintains respect and fairness to Idaho voters.

MOTION: **Senator Little** moved to print **RS18061C2**. **Senator Stegner** seconded the motion. The motion carried by **voice vote**. **Senators Kelly** and **Stennett** requested it be recorded that they voted nay.

H403a **Melissa Vandenberg** stated after further review by the Director of the Department of Administration, and the issues that were raised at the

previous hearing on **H403a**, she requested that the bill be pulled. **Ms. Vandenberg** said the Department is looking at splitting the bill into two more manageable bills and to introduce them next year.

MOTION: **Senator Darrington** requested a unanimous consent to hold **H403a** in committee. There was no objection; **H403a** was held.

RS18078
RS18079 **Page Parker**, from Legislative Services Office (LSO) presented **RS18078** and **RS18079**. **Mr. Parker** said these two resolutions deal with the fee rules and temporary rules. The committees that completed the rule review process sent their letters of approval to the Speaker and the Pro Tem detailing the reports of those committees. These RS's are the culmination of that process. The temporary rules do not go into effect unless approved. **RS18078** deals with fees and charges and approves the fees and charges that are imposed. **RS18079** approves all temporary rules except for one that was rejected. None of the rules will go into effect without the resolutions.

Senator Geddes stated the rules that were rejected were also considered on the floor of the Senate.

MOTION: **Senator Stegner** made the motion to print **RS18078**. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Stegner** made the motion to print **RS18079**. **Senator Stennett** seconded the motion and the motion carried by **voice vote**.

RS18113 **Dan Chadwick**, Executive Director of the Idaho Association of Counties presented **RS18113**. **Mr. Chadwick** said this is a reprint for **SJR106**, and it has the approval of Joint Rule 20 signed by the Majority Leadership. There is one change on page 2, line 25. There was concern expressed by the investor owned utilities that perhaps the language that was originally presented would allow local government to purchase privately owned utilities. The language that is inserted is "not including those owned by investor owned utilities" would take that potential ability out of the hands of local government. **Mr. Chadwick** requested that the committee reprint this particular constitutional amendment.

Senator Davis said this joint resolution in all regards will be treated as a bill. He will make the motion to print the RS, but if the committee report is processed immediately, it can be introduced in the fifth reading, and go to first reading, printed, and be referred back to this committee this morning.

MOTION: **Senator Davis** moved to print **RS18113**. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

ADJOURN: There was no other business before the committee. **Chairman McKenzie** adjourned the meeting at 8:45 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 17, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly

MEMBERS ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

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

RS18118 **Senator Pearce** presented **RS18118** to the committee. **Senator Pearce** stated this Resolution will urge and petition the Congress of the United States, and particularly the congressional delegation representing the State of Idaho, to use all their efforts to withdraw the United States from any further participation in the North American Free Trade Agreement (NAFTA), as allowed by Article 2205 of NAFTA, to stop additional harm to the American economy and workforce, loss of sovereignty and border security. Job loss due to NAFTA has a negative affect on the general fund.

Chairman McKenzie asked what are the changes in this from the prior RS? **Senator Pearce** said it is simply that this asks that certification goes through these various aspects, that they establish what happened here. 2002 was the last year specific job loss was tracked, so the figures in this bill are old. The basic changes are on line 8 where it states continued participation is conditioned on these following terms.

Senator Davis said the Statement of Purpose is not consistent with the language of the Memorial. He suggested to change "use all effort to withdraw" to "use all effort to ensure certain conditions for continued NAFTA participation are met and in the event of default of such conditions then withdraw". **Senator Davis** said if these changes are made he will move to print the RS.

MOTION: **Senator Davis** moved to print **RS18118** with the changes suggested. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

S1484 **Senator Pearce** said this legislation allows for a statement of fiscal impact of proposed voter initiatives on state revenue, local government,

private property, and business. The statement of fiscal impact will be verified by the Department of Financial Management. The verified fiscal impact statement will allow voters to be fully informed on the cost or benefit of any initiative. It also establishes the effective date of initiatives as April 15th of the year following the election. Senator Pearce stated that this really levels the playing field. All the legislation we do here requires a fiscal impact. Voter initiatives only ask if the voter is in favor or not. This will increase the understanding of citizens when signing petitions and the things that have a fiscal impact.

Senator Pearce explained the various aspects of the bill. Line 25 amends the law. On page 2, line 10 adds a new section, 34-1809A, concerning the analysis of the statement of fiscal impact and the rebuttal of the statement. Another change on page 2, line 38 is regarding the copies of the statement of fiscal impact, and line 43 which states the voters pamphlet shall be published on the secretary of state's website. The final change is on page 3, line 23 where the bill adds the April 15 effective date.

Senator Davis asked **Senator Pearce** why was the April 15th date added? **Senator Pearce** said there are several reasons, but the main reason is that if there are two opposing initiatives, this allows time for the Legislature to look at them to make a choice.

Senator Kelly said she remembers an initiative in 2006 concerning property rights. It was a far reaching initiative that would have affected government's ability to regulate, as well as have impact on private property. That would have been a huge and relatively subjective undertaking to quantify the fiscal impact. She asked **Senator Pearce** if he has thought about that? **Senator Pearce** replied he vaguely recalls that, but the key to this is that they need to be well informed. If it requires greater effort, it is worth the effort.

Senator Stennett said the Legislative fiscal notes don't look at the effect on private property, they look at the effect on state and local government. He said it would be fairly hard to ascertain the value or impact it would have on private industry or private business. He asked **Senator Pearce** to address that. **Senator Pearce** said that points at the importance of this bill. If we're going to pass legislation that impacts businesses statewide or where private property rights are an issue, there should be some attempt to inform people of the cost. **Senator Stennett** said the Legislature isn't held to that same standard, so why are we holding the public to a different standard than the Legislature? **Senator Pearce** said he sees a lot of legislation around here that is either turned back or held up to correct the fiscal impact statement, so he doesn't understand **Senator Stennett's** statement. **Senator Stennett** said the bill they just passed said job loss due to NAFTA has a negative effect on the general economy. He asked if that is adequate? **Senator Pearce** said probably not.

Senator Little said he agrees with the motive behind this one hundred percent, but he wonders if **Senator Pearce** should have the Attorney General's office look at it. The Constitution states that the people have basically the same rights that the Legislature does from an issue

standpoint. If an individual did the work to get all the signatures for an initiative and then was held to a higher standard than the Legislature, would that requirement of a more in depth fiscal impact statement be grounds for a Constitutional challenge? **Senator Pearce** stated he has a hard time seeing what **Senator Little** is saying because he believes we are held to fiscal impacts in the Legislature. **Senator Little** said he would love to see this kind of specificity on the fiscal impact statements of the bills we have in the Legislature. **Senator Pearce** said he didn't know who else to ask to look at this. The Department of Financial Management was the natural place for it to fall. He said they aren't trying to raise the standard higher, the standard the Legislature looks at should be the same standard the initiative writers operate at.

Chairman McKenzie said in Joint Rule 18 when we do a fiscal impact, it isn't explicitly clear what impact that is, but it does say when it's a bill making an appropriation, increasing or decreasing an existing appropriation or requiring a future appropriation, or increasing or decreasing revenue of the state or any unit of local government, or requiring significant expenditure of funds by the State or unit of local government, then it has a fiscal impact. The Legislature's fiscal impact only applies to the general fund. He asked **Senator Pearce** if he considered mirroring that language in this bill? He understands the reasoning behind wanting to clarify the effect on private business. **Senator Pearce** replied that he had some very good attorneys look at this and they didn't seem to see an issue, but maybe there is one. If the standard is really higher they could somehow scope it out and change it so everyone feels it is equal. **Senator Pearce** stated this bill would be a great benefit for the State.

Senator Davis said there are a variety of initiative processes to go through including asking for the Attorney General to look at the initiative. Additionally, there are statements of pros and cons, to say that the Constitution requires an exact mirror of the legislative process is, frankly, impossible.

MOTION: **Senator Davis** moved to send **S1484** to the Senate floor with a **do pass** recommendation. The motion was seconded by **Senator Geddes**. The motion carried by **voice vote**. **Senators Kelly** and **Stennett** requested it be recorded that they voted Nay.

RS18096 **Senator Corder** presented **RS18096** to the committee. **Senator Corder** stated that this RS comes by way of a unanimous consent request from the Transportation Committee that it be printed and returned to that Committee for further review. **Senator Corder** stated that this bill is an attempt to form an agreement between local entities and the Idaho Transportation Department (ITD). It is a voluntary agreement on behalf of participants, although once united and an agreement is struck, the agreement is binding and it requires that these entities form together to have plans in regard to the build up or build out of all transportation issues in a specific area. Cut outs, access and all those issues are to be discussed and agreed upon prior to the commencement of activities, or if activities have already begun, to have unified effort in what the outcome will be. One example this legislation addresses is that we hope to avoid

in the future, is Eagle Road. The problems there continue to be an issue and this legislation is nothing more than an effort to bring the parties to agreement as to how things shall be developed in the future.

Senator Darrington asked if **Chairman McKenzie** has a letter from the Transportation Committee? **Chairman McKenzie** said he does.

MOTION: **Senator Darrington** moved to print **RS18096**. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

RS18115 **Vice Chairman Jorgenson** said he is requesting this RS be printed so there can be negotiations to move it forward. The reason for this is that in the session before last there was discussion that there should be some sort of an agreement, and the timeliness of those proposals have slipped by what this Legislature might be able to accomplish. The purpose of this proposed legislation is to increase the opportunity for competition for the provisions of video services within the State, together with increased provider choices for video service customers and increased investment into video infrastructure by new entrance into the market. It is important to know that this proposal provides for an equality of treatment between incumbent cable service providers and new video service providers, in a continuation of the right of local government to receive revenues from incumbent and new service providers on an equal basis.

Senator Stennett asked **Vice Chairman Jorgenson** to point out to him where in the RS that it says local cities and counties would be the local recipient of franchise fees, and they would be able obtain them. As he reads the RS it states that everything is reserved for the State of Idaho. **Vice Chairman Jorgenson** asked to defer that to **Bill Roden**.

Mr. Roden, representing Qwest Communications, said there is no state law to deal with franchises at this time. This bill would allow the state to authorize video and equality of service should the Legislature approve this in the future. This will not create new rights of way. **Senator Stennett** said the RS is in conflict with the Statement of Purpose (SOP). The SOP says reserved for the State of Idaho and the RS says the incumbent service provider will have a continuation of the right of local government to receive revenue. **Mr. Roden** said the SOP is incorrect. There is a different Statement of Purpose. **Senator Stennett** asked for the correct SOP.

Senator Kelly asked **Mr. Roden** who is he representing? **Mr. Roden** said he represents Qwest Communications.

Chairman McKenzie said once we get the revised SOP, questions can be asked and answered concerning that.

Senator Darrington asked **Vice Chairman Jorgenson** if this RS will be printed and not be run this year? **Vice Chairman Jorgenson** said that is correct. He apologized for presenting the wrong SOP.

Senator Geddes asked if the desire of the sponsor is to print this but not to have any further action this session? **Vice Chairman Jorgenson** replied that is correct.

MOTION: **Senator Little** moved to print **RS18115**. The motion was seconded by **Chairman McKenzie**. The motion carried by **voice vote**.

RS18074C1

Vice Chairman Jorgenson stated that this deals with unlicensed employees working in the State of Idaho. He said he wants to make it clear that he is only asking for the RS to be printed. He has visited with a number of Idaho industries and there are a number of industries that are dependent upon foreign workers, but he just wants to make sure that they have proper guest worker papers. Section 2 relates to the Preemption of the Federal Immigration Reform and Control Act (IRCA) which states “the provisions of this section preempt any state or local law imposing civil or criminal sanctions (other than through licensing or similar laws) upon those who employ, or recruit, or refer for a fee for employment, of unauthorized aliens.” **Vice Chairman Jorgenson** said the whole point of this bill is to begin negotiations in earnest to help describe the guest worker agreement. There are no penalties that would rise to the level of criminal, only misdemeanor.

Senator Little said page 3 of the bill states that if anyone makes a complaint, the Attorney General has to investigate. That might be a significant fiscal impact. He asked **Vice Chairman Jorgenson** what the standing would be for the complaint? If there was no standing and the Attorney General has to investigate, it states “the Attorney General shall investigate”. Additionally, the Attorney General has to find out whether the complaint was based on race, ethnicity or national origin. **Senator Little** said he is having a hard time figuring out how this will work relative to the fiscal impact. **Vice Chairman Jorgenson** said that is a possibility if this bill went beyond printing it. He is only requesting that this be printed and that we enter into negotiations. E-Verify is a part of this bill that essentially exempts all employers if those employers use the program. If there were a complaint, the first thing to happen would be a check to see if E-Verify had been used. E-Verify is required by the State of Idaho and is currently used throughout all its agencies.

Senator Kelly said the statement of purpose talks about a federal law for preemption and then it states it is not subject to the preemption clause because it deals with licenses. There is also a criminal solution in here as well. She asked **Vice Chairman Jorgenson** if the Attorney General’s office looked at this? **Vice Chairman Jorgenson** responded yes. The only power the state was given going back to 1986, was the possibility of dealing with suspending business licenses. The state really doesn’t have any power to penalize outside of suspending business licenses. That is why he tried to soften this, to get it printed, and then enter into material negotiations with employers who are dependent with this type labor, and to make certain that we would have a good guest worker program. That is the motivation for this bill. **Senator Kelly** asked whether or not the Attorney General’s office looked at the language of this statute? **Vice Chairman Jorgenson** said the Attorney General’s office has, and they have had a number of lawyers give opinions, which are varying to say the least. This legislation is trying to abide by what the federal regulations allow the state to do and, and at the same time, put some enforcement into it. The reality is that this law has passed in Arizona and has gone to court and it was upheld. Whether that can happen in Idaho remains to be

seen. That is why he is asking for time to negotiate.

Senator Geddes said he knows there is a high standard for employers, but he fears that the employers of the state don't have the wherewithal to determine if documents are valid, invalid or forged, or authentic, and yet this would impose a penalty on employers for hiring illegal people. He asked **Vice Chairman Jorgenson** how will we balance that? What about privacy laws and the lack of employers to verify. Are we holding them to a standard that is virtually impossible for them to comply with? **Vice Chairman Jorgenson** said he doesn't believe we are holding them to an impossible standard. E-Verify is a program that is free to any employer. It is a very simple program and doesn't require that the identifications that are tendered for employment be legitimate. All they say is that if you make an attempt to E-Verify, the employer is exempt from reprisal from the government.

Chairman McKenzie said **RS18074C1** is before us. The RS will die for lack of a motion. Hearing none, the RS was returned to the sponsor.

SJR 107

Daniel Chadwick, Executive Director with Idaho Association of Counties, thanked the committee for allowing them to reprint **SJR106**, which is now **SJR 107**. **Mr. Chadwick** stated that **SJR107** is a proposed Constitutional Amendment related to Article VIII, Section 3 of the Idaho Constitution, which proposes limitations on how local government can incur debt. In the case of *City of Boise v. Frazier* a number of years of precedent were restricted by the Idaho Supreme Court, when it came to the ability of local government to incur debt. Normally, if it is long term debt beyond one year, there must be a vote of the people and a two thirds vote approving that debt. The ordinary and necessary expense exception has been used over the years to allow local government to engage in day to day operational needs. But this particular case severely restricted that. **Mr. Chadwick** said a law review article from 2007, which is in your folders discusses this case. It explains very well the outcome in that case and the last four pages set forth the current state of the law. On page 2, lines 6 through 8 of the bill, contain the ordinary and necessary expense language that was the subject of this case. This case raised questions about when it was appropriate for local governments to incur debt without a vote of the people, and the issue of day to day operational necessities. This is trying to resolve some of those issues to a moderate degree.

Mr. Chadwick said the first change is on page 2, line 11 which adds new language, "revenue-generating" public and took out some language. This relates to fees that must be paid and the circumstances, if there is a problem with the fee generation, that the taxpayer could be at risk. Lines 23 through 26 relate to circumstances where facilities are being constructed, fees are being collected, and the fees are paid by those individuals who choose to use the facility. An example would be the airport parking garage. The new language satisfies concerns by investor owned utilities that would not contain a situation where local governments could force the sale of an investor owned utility, and incur debt to take them on. In these circumstances a majority vote would still be required. Lines 33 through 47 addresses multi year contracts for goods and services that do not extend beyond five years. These are exceptions to

the vote rule. The final language in this new provision is the long honored tradition of engaging in a debt where there was a non appropriation clause, which simply means that in order to pay the bill the Board must have an annual appropriation if no longer obligated to make a payment on a particular debt. **Mr. Chadwick** stated this issue is in doubt right now. There are very few financial institutions that are willing to allow the underwriting of those types of debts. He asked that the Committee send **SJR107** to the floor with a do pass recommendation.

Senator Little asked **Mr. Chadwick** to give the Committee an example of what he can't do now that he would be able to do after the passage of this bill? **Mr. Chadwick** said a good example is heavy equipment like a grader. Normally you sign a contract with a dealer, and most of these contracts are for less than five years. In that contract would be a non appropriation clause stating that this contract is subject to an annual appropriation by the Board of Commissioners, the Highway District Commissioners, the City Council and, if they fail to appropriate, then the property must be returned and there would no longer be any obligation by the Board. **Senator Little** asked do those businesses deliver this new piece of equipment thinking they're not going to get paid? **Mr. Chadwick** replied they are going to get paid and they are willing to take that risk. **Senator Little** asked why will this Constitutional Amendment change that? He believes the businesses won't do business if they think they won't get paid. **Mr. Chadwick** said right now there is no one really willing to underwrite that. That is the problem with that type of debt. **Senator Little** asked isn't this between you and the business? **Mr. Chadwick** said everyone is involved in this discussion. If the business doesn't have a financial institution to back it up it will not be able to lease this property to any local governmental entity. **Senator Little** asked **Mr. Chadwick** if he is telling the Committee that none of this is happening in Idaho, that no one is leasing equipment on a five or ten year payment plan today? **Mr. Chadwick** said there is a little bit of that going on, the door is not absolutely closed. However, the financial institutions are very concerned about engaging in that kind of debt, so there isn't nearly as much going on as before. **Senator Little** asked if we pass this Constitutional Amendment, and every entity of local government goes out and enters into long term leases, will it lower everyone's property taxes? **Mr. Chadwick** said those leases were engaged in long before the *City of Boise v. Frazier* case was decided. He doesn't think it has anything to do with property taxes at all. It has everything to do with good business practice and trying to plan for how you buy equipment as a local governmental entity. The costs will be the same over time.

Senator Darrington asked **Mr. Chadwick** if a citizen asks him what that Constitutional Amendment does, what should he say? **Mr. Chadwick** said it does several things. Number one, it reaffirms that there is a required vote in almost every circumstance of engaging in debt at a local level. However, in those day to day circumstances that will not have any impact on the taxpayer long term, a vote won't be required. **Senator Darrington** said if that is the answer he gives his constituents, they will ask him what he just said. Then some may ask if it is a good deal or a bad deal? Then they'll ask why it is a good deal? There has to be an answer that will make

sense to a constituent. **Mr. Chadwick** said you have to be honest with the citizen. You have to tell them this provision will, in effect, not require you to vote on a local government going into debt. That is the honest statement.

Senator Little said there is a very logical reason. His comfort level is shaky when everything that has always been purchased by the local government is now going to be a lease option. He needs comfort that the flood gates aren't going to open and every entity of government will not purchase all kinds of new things because what they were paying for with cash they will now pay for with debt. That is the hurdle he needs to get over. **Mr. Chadwick** said some of the small taxing districts don't have the cash flow that allow them to go out and purchase equipment for cash. They have two or three choices. They can keep the equipment until the wheels fall off, and then figure out how they can save long term for that equipment. However, that's a risk because the taxpayers don't like to see cash balances in taxing districts budgets, they are criticized for saving money. Or, they pay cash, or they engage in debt over a short period of time to spread payments out over five years or less. **Senator Little** asked if we do nothing, is that five year option still available? **Mr. Chadwick** said not necessarily, and that is the problem. The financial institutions are not willing to loan the money to back up those lease options. This resolution will settle that issue. The Supreme Court never addressed that issue in *City of Boise v. Frazier*. He said at some point, if the Constitution isn't changed, we may be subject to another legal action. With the Court's restricted reading of ordinary and necessary, it could very well say those aren't authorized either. But this has never been clearly on point in a case before the Idaho Supreme Court.

Chairman McKenzie said he thought one of the outcomes of Frazier was that they interpreted ordinary and necessary expense as they had in a case from the 1800's, where they said it has to be expenditures within one year. He believes when they tried to do long term debt financing of things that most of us would consider as ordinary and necessary, we couldn't do that under the Constitution because that ruling restricted that. **Mr. Chadwick** said that is correct and the article he presented the Committee addresses that. It talks about cases that were decided at the turn of the century. Ordinary is easy, almost every day to day expense is an ordinary expense. The court deems necessary expense means urgent and within a one year period of time. That is what they reverted to. However, the issue of the leases with the non appropriation clause is still left out there in doubt. The court never really addressed that issue.

Senator Geddes said he believes he heard in the Transportation Committee that all of these front end loaders and trucks that are being leased by the Idaho Transportation Department are now saving the department tremendous amounts of money because they are leasing them instead of buying them. He asked **Mr. Chadwick** how can the state get away with that and find a lending institution to back that up where the cities and counties can't? **Mr. Chadwick** said it is the Constitution. The state does not have the same limitation that local government does.

Steve Millard, President of the Idaho Hospital Association, stated more

than half of the members of his Association are critical access hospitals with twenty five beds or less. Their operating margins are zero and they struggle. The *City of Boise v. Frazier* ruling really impacted hospitals and it was not anticipated. For the last thirty years hospitals were able to remodel facilities, buy equipment, and incur long term debt that they are no longer able to do now because of the Frazier decision. That has caused some severe problems and no one has been able to get around it. One hospital was in the middle of a ten year building project that was brought to a halt and they are losing money as a result of it. Their patient load is down and it has put a chill on the local environment. **Mr. Millard** said they support this bill in order to allow hospitals the same authority they had prior to the Frazier decision, to incur debt without a vote. Language was added to **SJR107** to make clear that things would be the same as they were prior to the Frazier decision. The Association supports **SJR 107** and will campaign for this if it is put on the ballot.

TESTIMONY:

Jo Elg, Assistant General Manager of Idaho Falls Power and Vice President of Idaho Consumer Owned Utilities Association, testified in support of **HJR10**. **Ms. Elg** said this specifically addresses the ability of municipalities to sign long term power sales contracts with the Bonneville Power Administration. In August 2008, the Bonneville Power Administration is expected to offer long term (20 year) contracts to public power entities in Northwest. Idaho municipalities maintain that entering into a long term, cost based power sales agreement is an "ordinary and necessary" expense for a municipality under Article 8, Section 3 of the Idaho Constitution. It is an effort to keep low, affordable power rates for consumers. The *City of Boise v. Frazier* decision has cast serious doubt on their ability to sign long term contracts to be offered by the Bonneville Power Administration later this year. If they are unable to receive low cost power it would have a devastating impact on consumers in Idaho. She asked the Committee to support **SJR107**.

Senator Stegner asked **Ms. Elg** if the long term contracts will exceed five years? **Ms. Elg** said they are twenty year contracts. **Senator Stegner** said the language on page 2, line 42 talks about the duration of the contract not to extend beyond five years. He asked if that limits the ability to contract long term? **Ms. Elg** said if you read down a little farther it also allows for longer than five years for capacity if it is to be paid solely by user fees or rates. As long as the revenue rates received from the utility will cover the cost of the long term contract, her understanding is that it is allowed for a contract longer than five years.

Elizabeth Criner, representing the Boise Airport, stated the airport supports **SJR107**. **Ms. Criner** said Boise Airport gets their funding from terminal rent, landing fees, concessions, parking, advertising, tenant rents and fees, and passenger facility charges (PFC). The charges are regulated by the Federal Aviation Administration (FAA), capped by federal law, and any funds collected through them have to be expended on airport improvement program eligible projects. They are highly monitored and regulated at the federal level. **Ms. Criner** stated the Boise Airport does not get general revenues and, when a bond is created for the airport, it specifically states that the taxpayer cannot be the payer of last resort if something should happen with that. One of the challenges they

have is that only a small portion of the population base they serve is allowed to vote on bonds. Therefore, the airport supports having a straight majority vote for this funding. The airport competes with other airports for carrier traffic, cargo services and direct flights, and they want to be an attractive facility. They must stay up with building needs and capacity needs out of the facility and because of this, bonding is very important to them. Growth issue is a concern. In seven years they will hit a medium hub designation with the FAA. At that time the FAA will take away seventy-five of their airport improvement program grant money. The reason is based on the size of the airport, and bonding has the kind of income available on the property to build what is needed for the property. This makes **SJR107** even more important to them as they head toward that change.

Senator Little said he doesn't understand some of the language in this legislation and he has no idea what it means other than we can have more debt. **Mr. Chadwick** responded if a citizen asks what this means, the bottom line is the issue for this Constitutional provision is whether or not local government can enter into a debt and put a taxpayer at risk. The language this proposes does not put the taxpayer at risk, except where the taxpayer would normally otherwise agree to the risk through the vote. If a local government defaults on one of these loans, will the taxpayer have to pick up the bill? Generally, for the new language, the answer is no. **Senator Little** said lines 44, 45, and 46 say fees, rates, and charges for a budget decision that is no longer in use. He asked if those are the three factors for a budget item less than one year? **Mr. Chadwick** said that is correct. Actually it is they don't extend beyond five years or are paid by fees, rates, and charges which refer to capacity or the contract has a non appropriation clause, and it doesn't extend beyond one year. **Senator Little** said he is having trouble with the five years versus the annual budgetary decision. He asked what the difference is between the five years and the annual? **Mr. Chadwick** said the five year contract would be one of those equipment lease contracts, or something of less than five years duration, a short term debt as opposed to long term debt. **Senator Little** asked what falls under one year, and what falls under five years? **Mr. Chadwick** said the five years or less is a debt without the non appropriation clause in it. You can enter into a contract for five years. If it is a one year or a year to year contract it could go beyond the five year period, and could be six or more years. As long as it had the non appropriation clause in it, and it was a year to year renewal, then it would fit into that last provision.

Senator Stennett asked **Mr. Chadwick** what if someone goes broke? The taxpayer is not responsible under this language, but ultimately the taxpayers pick up the pieces. **Mr. Chadwick** said under these provisions there is a limited risk under the five years. But, under the other provision the taxpayer is not at risk. **Senator Stennett** said if he goes out and borrows money and doesn't pay it back, he is at risk. If the city borrows money and doesn't pay it back, the taxpayers are the ultimate backstop for the city. **Mr. Chadwick** said it goes to the underwriters and whether they're willing to take that risk themselves. The underwriters and lenders enter into these situations knowing that they may not get all their money

out of the deal, but they're willing to take that risk and won't necessarily look to the taxpayer or the public entity to repay that. **Senator Stennett** said they don't just walk away, they utilize their fiduciary responsibility and get down to the bottom to find out who will pay.

Pat Collins, Attorney with the Idaho Bankers Association, said **Mr. Chadwick's** answer is correct. If you look at the language in line 34 through 47, the first part refers to hospitals. Then it says "provided further that multi year contracts for goods, services, purchase of capacity or output or leasehold interests." This is important because you don't see real estate in this. The provision of multi year contracts in lines 39 through 41 does not include anything to do with real estate and states "they do not constitute indebtedness or liabilities limited by this section if they do not extend beyond a duration of five years." The point of this is that the leaseholds are service contracts. There are power sales contracts, there are contracts for the lease or acquisition of equipment that don't extend beyond five years. Because of the short term nature of that and the fact that there is no real estate involved, this is the sort of obligation that the governing body of a local government ought to be able to enter into. On those five year contracts there is a risk to the taxpayers if there is a default by the county or whatever entity it is. They owe the money. That is the only part of this provision that has risk to the taxpayer because the next part says "or if they constitute contracts for goods to be paid for solely by user fees, rates and charges." There is no taxpayer obligation there. The third part says "or they allow an opportunity for termination by budgetary decision in the sole discretion of the public agency no less frequently than annually." In those cases the most that the taxpayers can possibly be liable for is that one year because on a year to year basis, they can cancel those contracts. **Mr. Collins** said there has never been a Supreme Court case in Idaho that blesses that year to year non appropriation clause concept, even though it was very commonly used prior to the Frazier decision. The Frazier decision showed the Supreme Court's hostility toward local government indebtedness. One way to answer **Senator Darrington's** constituent's question might be that it is all about getting your roads plowed or graded. It is about allowing the government to do what it has to do and have the tools to do it with. The road graders, the police cars and the fire trucks, all these things are subject to the Frazier decision and extremely difficult to finance in this climate.

Senator Little said on line 40 it talks about leaseholds. A parking garage is real property, but **Mr. Collins** said this didn't include real estate. **Mr. Collins** said the parking garage is covered on lines 24 to 26, which is a facility that is strictly at user discretion and financed through user fees. That new language is in a section that states you can do that on a majority vote.

Senator Stegner said line 26 states "the use of which is at the discretion of a facility user." He asked for an explanation of what that means and whether or not it applies to the entity in line 24, other revenue-generating public facilities, or whether it applies to line 25, not including those owned by investor-owned utilities? He cannot tell what it applies to. **Mr. Collins** said the phrase "not including those owned by investor-owned utilities" is

the difference between **SJR105** and **SJR107**. He said the facility user relates back to other revenue generating public facilities. **Senator Stegner** asked how would we know that? **Mr. Collins** said it is probably up to the Supreme Court to decide, but it is a question of English grammar, he supposes.

Senator Little requested a chart showing what requires a vote, and what can be purchased. That would be very helpful if the sponsors could provide that.

Senator Stennett said he is curious about who the ultimate backstop is. He doesn't understand how the taxpayer is not liable. **Mr. Chadwick** said as an example, the Boise Airport requires a vote of the people in that circumstance. It is created and operated by user fees. The way it would have been underwritten is that the underwriter, the lender, would look to the operation only and the collection of the fees to pay off the debt. It would not go to the taxpayer to pay off that debt. In effect, what the lender would do is take over the operation of the facility, secure its investment, collect the fees and then return the building back to the local governmental entity once the debt was retired.

Senator Little said he would add to his chart wish list who is responsible and what vote it takes, what items can be purchased over what period of time, what is the ultimate collateral, and what kind of vote it requires. He said that would be very helpful in diagraming this monster sentence.

Chairman McKenzie asked for unanimous consent to hold **SJR107** and **SJR105** on the agenda for Wednesday. **Chairman McKenzie** said hearing no objection, the committee will hold these until Wednesday.

ADJOURN:

There was no other business before the committee. **Chairman McKenzie** adjourned the meeting at 9:38 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

- DATE:** March 19, 2008
- TIME:** 8:00 a.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENE:** **Chairman McKenzie** called the meeting to order at 8:03 a.m.
- GUBERNATORIAL APPOINTMENT:** The appointment of **Darrell Kerby** to the Idaho Energy Resources Authority was heard. **Mr. Kerby** addressed the committee and stated he was born and raised in Bonners Ferry, Idaho. Recently, he retired from elected office after twenty eight years as city council and Mayor of Bonners Ferry. Bonners Ferry is a hydro electric city and utility. He was appointed to the Authority a few years ago.
- Vice Chairman Jorgenson** said Idaho is very fortunate to have him on the Authority. He asked **Mr. Kerby** to talk about any projects that are in your area? **Mr. Kerby** said the greatest non success so far is Raft River, which was a project that was funded for transmission facilities. The Authority has funded it and it probably wouldn't have continued without the help of the Authority. In Bonneville there is project to serve the southeastern part of the state and it will go up into northern Idaho. The Authority will be able to fund and extend the line of credit to them. **Vice Chairman Jorgenson** asked **Mr. Kerby** to describe the delicateness of the economy and how will these projects help in your area? **Mr. Kerby** replied the nature of the economy in northern Idaho is resource dependent. The resource industry has been under fire for years, and Boundary County is no different. One of the two major lumber companies that operated in the city of Bonners Ferry closed about five or six years ago. **Mr. Kerby** said now there are only two left in the area. The transition and cost of producing lumber is a factor because it is related to the cost of energy. With lowered costs they can provide energy to the industry and to promote new industries to diversify. This will have a positive effect on the economy.
- Chairman McKenzie** thanked **Mr. Kerby** and advised him that the committee would vote on his appointment at the next meeting.

H606

Representative Hart presented **H606** to the committee. **Representative Hart** stated this bill is about the Real ID Act of 2005. The Real ID Act will mandate that the states follow certain criteria in the issuance of driver's licenses. When this was introduced it took about a year and a half before the preliminary rules from the Department of Homeland Security were available. The state has estimated that the cost of compliance for all fifty states will be around twenty three billion dollars. Since then a final ruling in January 2008, are estimating it to be 9.9 billion dollars for the states to comply with Real ID.

Representative Hart said that Real ID started as **House Resolution 418** in the House of Representatives where it passed and attached to a bill that was already passed in the House. That resolution is **1269** which never went through the Senate. A conference committee attached the bill as a rider called The Global War on Terrorism and the Tsunami Relief Act. Prior to that, about six hundred non government organizations (NGO) with the Department of Homeland Security, and the ACLU were trying to negotiate some form of an improved driver's license to meet certain criteria. Those negotiations were abandoned. There is quite a bit of resistance to this because of privacy issues and the costs to implement it. Real ID is an unfunded mandate that the federal government is trying to commandeer the states to do.

Representative Hart said last year seventeen states passed legislation that object to Real ID. Idaho is one, and seven states put in code that their states shall not comply with Real ID. Last year Idaho passed **HJM3** stating Idaho objects to Real ID. **H606** will put in Idaho code that the state is not going to comply. This doesn't mean the state will remain static as to how driver's licenses will be issued. The Department of Transportation (ITD) has plans in place to enhance driver's licenses to make them more secure. **H366** was introduced this year which would allow ITD the authority to not issue driver's licenses to illegal aliens who cannot prove they are here legally in the United States. In January 2008 the Department of Homeland Security reduced the cost, but this will still cost the state about 9.9 billion dollars a year.

The Governor requested an extension until December 31, 2009. The National Association of Governor's, The National Conference of State Legislators, and The American Association of Motor Vehicles Administrator's have collaborated and their analysis of Real ID estimate the cost to be eleven billion dollars to comply. The federal government has provided approximately eighty million dollars to help the states, but this is still an unfunded mandate. **Representative Hart** stated the current budget for the President for 2009, only included one hundred ten million dollars to be split for the implementation of Real ID and the Department of Homeland Security programs.

TESTIMONY:

Hannah Saona, legislative counsel for the American Civil Liberties Union of Idaho (ACLU), testified in support of **H606**. **Ms. Saona** stated that 9.9 billion dollars is the lowest amount they have heard as to the cost of this. Even if that is the cost for Real ID, congress has appropriated less than one percent of the total to help Idaho. President Bush's last budget did

not include any additional funds except for Homeland Security. **Ms. Saona** said in addition the National Conference of State Legislatures and National Governors Association has indicated that they need at least one billion dollars for start up funds.

In addition to the costs, Congress expects the states to bear, implement and maintain Real ID. The program also requires sweeping changes to state driver's licenses and to the systems by which the licenses are administered. The Real ID Act requires uniform data elements on every license and it requires information-sharing among states' databases, while providing no guidance whatsoever on how data sharing is supposed to be implemented. The infrastructure of the database is unknown so there is no way to know how the privacy of Idahoans' personal information will be safeguarded. **Ms. Saona** stated the final regulations contain no national security plan for American's personal information. Instead, the Department of Homeland Security simply expects the states to figure it out.

Real ID will present the Idaho Transportation Department (ITD) with a logistical nightmare. ITD will have to reprocess existing licenses, applicants will be forced to complete an application similar to first time drivers, and the result will be longer lines and angry Idahoans. ITD will also likely be overwhelmed by the need to develop and maintain significant new document storage and retention capacity. This will result in the necessity of additional staff, new equipment and computer software.

Ms. Saona said the Real ID Act threatens certain constitutional rights. There are significant implications for due process as Real ID will be required to enter all federal buildings, including courthouses. Real ID places a burden on American citizens right to travel and may impact the free exercise of religion. Idaho law currently provides for an exemption to the photo requirement on driver's licenses for religious purposes. Such an exemption would not be allowed under this program. There are so many problems with the Real ID Act that the ACLU believes it cannot be fixed. The problems are inherently problematic and that is why the states have taken action against the federal government's unfunded mandate to implement Real ID. **Ms. Saona** stated **H606** would ensure that the privacy and the pocketbooks of Idahoans are protected and it would send a message to Congress, that it cannot bully the states into implementing programs that threaten our privacy and cost billions of dollars.

Senator Little asked **Ms. Saona** if she has seen all the changes that deal with Real ID? **Ms. Saona** responded the Real ID Act itself has not been changed. The regulations have been changed from the original draft to the final regulations. The final regulations are almost three hundred pages in length, so she doesn't remember all of them. The ACLU has a scorecard and they used it with the draft regulations and almost none of the problems were addressed in the final regulations. **Senator Little** said she talked about the religious and the courthouse exemption. To his knowledge the only restriction in Real ID is access to a nuclear plant. **Ms. Saona** replied she is not aware that the courthouse restriction has been

taken care of. Additional documents may be produced. She did overlook the religious exemption and she is under the impression that it was still in place under the final regulations. **Senator Little** said Real ID has some significant problems. He asked **Ms. Saona** to explain what the consequences are on page 2 and 3, lines 51 through 53, and 1 through 6. **Ms. Saona** responded that it is stating ITD cannot implement the entire package of the Real ID Act of 2005.

Senator Kelly said it sounds like the federal government has given an exemption to implement this until 2009. She asked **Ms. Saona** what is the reason for that? **Ms. Saona** replied that the state has applied for a waiver and the point of this bill is to not implement Real ID at all. The consequences will not take away federal funding, but it may affect travel. Additional documentation may be needed or secondary screening may be a requirement. Seven states have passed similar legislation to this. Montana has not applied for the waiver so in a few months they will be non compliant.

Senator Little said the state has a nuclear facility and that is one of the criteria. He asked **Ms. Saona** what about the citizens in Idaho Falls that need access and it is required that Real ID apply? **Ms. Saona** said as she understands this, there will be additional screening at the airport and courthouses, or additional identification will be required. She will look into that further. **Representative Hart** responded if someone possesses a passport, that is equivalent to Real ID. That would be an alternative for airport and courthouse screening. He did look at the scorecard from ACLU, which is based on the January 2008 final rule. According to the scorecard there is still a problem with the picture for a religious objection and additionally the issue of getting into a federal building for those who do not have a passport and Real ID.

Senator Davis said he needs to know what affect this will have on the Idaho National Laboratory (INL), and he needs to know before he can vote on this. He asked for unanimous consent to hold **H606** until Monday, March 24 to allow for more information and what the impact will be on INL. **Chairman McKenzie** said there is unanimous consent request and hearing no objection, this will be held until Monday.

SJR107

Chairman McKenzie said we now have **SJR107** and **SJR105** before us and the sponsor has provided the additional information that the committee requested, and it is in your folders. **Dan Chadwick**, who represents the Idaho Association of Counties said he will start the discussion on that. **Mr. Chadwick** said it was obvious in discussions on Monday that this issue is still a complex one. The current constitutional provision is not drafted very well with all of the changes that have occurred over the years. Based on questions, comments and discussion the chart was prepared with explanations. **Mr. Chadwick** requested that he defer to **Mike Stoddard** to explain the chart.

Mr. Stoddard stated he is an attorney and a member of the Idaho Health Facilities Authority. There is one premise to this and five or six different exceptions or additions to the basic premise. The basic premise is that a

governmental entity in Idaho, a local governmental entity or a subdivision of the state, in order to incur debt longer than one year requires a two thirds vote. The exceptions flow from that and the primary one is not changed which is the ordinary and necessary exception. It doesn't require a vote and the debt can be longer than one year.

The first exception following ordinary and necessary is on page 2, lines 8 through 18. It was expanded to include all revenue generating public facilities, and it only applies to cities. Cities can incur debt with a two third vote, and no taxes will be pledged to pay off the debt. The next exception applies to everybody not just cities, but the counties and highway districts etc. Long term revenue debt can be incurred with a majority vote for revenue generating public facilities, and used at the discretion of the facility user. **Mr. Stoddard** said this would be parking garages or a recreational facility, the fees or revenues would pay for the debt.

On page 3, lines 33 through 39 is a new exception that is a long term debt for county hospitals and hospital districts. This also relates to **SJR105**, which is the hospital only companion constitutional amendment. This was included as an all in one amendment and it does not require a vote. It permits county hospital or hospital districts to incur debt without a vote, provided the debt is paid solely from revenue generated by the hospital or hospital district. **Mr. Stoddard** stated the last exception, which is probably the most complicated has three parts. The provisions apply to everybody with three types of debt that may be incurred.

Senator Davis said he appreciates the chart. On page 2, line 6 this would be roman numeral I and it applies to the ordinary and necessary expenses. Roman numeral II would state any city may own, purchase, construct, extend or equip within or without the corporate limits of the city. He asked **Mr. Stoddard** if he is right so far? **Mr. Stoddard** replied yes. **Senator Davis** asked now, would the next section only apply to II? **Mr. Stoddard** said yes. **Senator Davis** said III begins on line 18 which will apply to everybody such as water/sewer and other revenue generating public facilities. The cost will be voted by the majority and the debt will be paid solely from the fees, rates and charges for the use of facilities. He asked **Mr. Stoddard** if IV will begin on line 33? **Mr. Stoddard** said yes. **Senator Davis** asked will there be a V? **Mr. Stoddard** said yes. **Senator Davis** asked IV is a stand alone or is it a modifier of I, II, and III? **Mr. Stoddard** responded they are all stand alone. **Senator Davis** said this must be the one for the hospitals that some in the room are particularly anxious over. So IV applies to the hospitals and on line 39 it is now V a, b, and c, is that correct? **Mr. Stoddard** said conceptually it is, but they could not put in a specific a, b and c. **Senator Davis** asked if VI starts on line 47? **Mr. Stoddard** answered yes. **Senator Davis** asked if there is a VII? **Mr. Stoddard** said no. **Senator Davis** asked **Mr. Stoddard** to help him see a, b, and c in V? **Mr. Stoddard** said he did exactly what **Senator Davis** just did a month ago, before he realized he was rewriting the entire section. He struggled with what a, b, and c are, but a is the multi year contracts, b is long-term revenue, and c is the annual appropriation debt.

Senator Darrington asked **Mr. Stoddard** if VI is the old language and

was anything added or deleted? **Mr. Stoddard** replied that is correct. **Chairman McKenzie** said that was very helpful just as **Senator Davis** went through it. **Mr. Stoddard** said a, b, and c are slightly more complicated and there are three different really separate provisions there. One provides for contracts that are no more than five years in length, and available for everyone. There is no limitation on them and no voting requirement and they could be paid by taxes or revenues.

Senator Kelly said she is looking at II and III and the differences between them regarding the voting requirement. She asked if some things are considered discretionary? **Mr. Stoddard** replied originally II was going to be eliminated, because most things are covered by III, which is the majority vote as opposed to the two thirds vote. There was concern that it would be doing damage to the constitution so II was left even though it wasn't clear how many things are left. The language on line 18 applies to cities and on line 25 it states "may otherwise purchase, construct or refurbish". The purchase language was restated because the language in 26 is at the discretion of the facility user, and is intended to only modify the language on line 23 for revenue-generating facilities. The intent was to differentiate between the water system and sewage collection systems, which are not at the discretion of the user.

Senator Little asked **Mr. Stoddard** if he is talking about airport parking garages? **Mr. Stoddard** said yes that is a good example. **Senator Kelly** asked why are you making a distinction if they have the same standards? **Mr. Stoddard** replied the reason is to describe what other revenue-generating public facilities would be. They didn't want to do damage to I which requires a two thirds vote. Exception II includes everything. **Senator Davis** said except in I, it is a general law of the state, II is the one that needs follow up on. **Mr. Stoddard** said on lines 8 through 18 is what he was referring to. **Senator Kelly** asked what is the public policy reason for holding cities to a two thirds? **Mr. Stoddard** said because they are exceptions to the general voting requirement. Two thirds is required for a city, but on lines 18 through 33, it permits cities and other entities to have a majority vote for other things. Counties would not be able to finance those at all. **Senator Kelly** asked what does II mean then, was everything excepted out of it? **Mr. Stoddard** answered if there are revenue generating facilities that are not at the discretion of the user. It would require a two thirds vote for the city, and counties and other entities cannot under current law and they are not included in the proposed language.

TESTIMONY:

David Frazier stated the things in this bill are the very things that he is afraid of with regard to changing the constitution. **Mr. Frazier** said the citizens are left out of the loop and that is why he went to court. There is no need to alter the constitution. The only need is for local governments to understand that it is the citizens who hold the power and the purse strings. Any authority that the local governments have is derived from the citizens. Both of these bills have only one real purpose and that is to limit the authority of the citizens and deprive them of constitutional rights that we all enjoy. There were many references to revenue generating facilities, but there is no definition for one. A hospital could build an office

for doctor's offices and say it is a revenue generating facility, as well as a wing for cosmetic surgery. The citizens would have no voice whatsoever when it comes to expansion. Coeur d'Alene and Pocatello have expansion plans for their hospital in excess of two hundred million dollars and this amendment provides no oversight from the citizens if the intent is to pay for it with fees and services from the users.

Senator Davis said as he understands the Legislature has engaged by defining those terms statutorily. He asked **Mr. Frazier** isn't that the protection you are looking for? **Mr. Frazier** replied the protection is already there in the constitution and this bill does not actually define a revenue generating facility. The police department's traffic division could be a revenue generating facility. They write tickets and generate revenues, and there is nothing to preclude that. The safeguard is the oversight of the citizens. All revenues and fees are public monies. He opposed the parking garage at the airport because it was before the city council went through the system. They proposed to build five floors and dedicate two of them to the rental car companies. The cities and counties would all lose the tax revenue from that. **Senator Davis** said he doesn't want to get involved in whether or not the business decision of the city was correct or not. He wants to talk about the definition component. There isn't a definition section of the Idaho Constitution and the Legislature does not define a lot of terms. **Senator Davis** stated he is not concerned that a revenue generating facility is not defined. From his point of view, historically and regularly, those terms are defined statutorily. The court allows the Legislature to do that so long as it is within the general concepts and constraints of the Constitution. He asked **Mr. Frazier** why he thinks there should be a definition for a revenue generating facility? **Mr. Frazier** responded he does not have a position on that, he is saying there is not definition offered and that is one of his fears. It could be construed by local government to be anything. This is what happened with ordinary and necessary. Police departments were deemed ordinary and necessary and the court upheld that ordinary and necessary was of an emergency nature public safety. **Mr. Frazier** said he is not asking for anything, this is just one of the pitfalls.

Mr. Frazier said he would like to address the two thirds issue. In Ada County at least half of the assessed value is not represented by a vote. There are absentee landlords and commercial property, so the two thirds majority is a safeguard against having a minority impose taxes on the majority. **Senator Davis** said his understanding of the proposed language is that the remedy for the bond holder is exclusively against the revenue. They have no remedy beyond that and this is what he finds value in. He asked **Mr. Frazier** how he jumped from the limitation of being able to go after the fees and revenues to satisfy the bond to imposing a tax on the citizens? **Mr. Frazier** stated when it becomes an issue for the citizens or the property owner when the tax base is eroded by making the public facility taken off the tax roles. That is why it is important to have the two thirds majority.

Steve Millard, President of the Idaho Hospital Association, stated he would like to make a few comments about **SJR107**. **Mr. Millard** stated

the purpose of this is to allow local governmental entities to be more efficient. If a hospital has to go to an election to buy a new scanner that is going to provide services for the patients that it serves, and the patients are going to pay for it, not the tax payers, it is a more efficient way to operate a hospital. He cannot speak for the cities and the counties, but he believes they have the same issue. Going to a vote to buy a road grader is not a very efficient operation. Conducting the election will cost just as much as the equipment. **Mr. Millard** said hospitals are built to take care of the patients and they pay property taxes on those office buildings because it provides space for the physicians to do that. The hospital in Coeur d'Alene pays five hundred thousand dollars a year in property taxes on their non hospital buildings.

Chairman McKenzie said **SJR107** is before the committee. **Senator Geddes** said there are two pieces of legislation that could ultimately pass and be placed on the ballot. How will that work functionally? If **SJR105** passes and goes to the floor, will it satisfy the need for **SJR107** and it won't be taken up, what is the direction on that concern? **Chairman McKenzie** said if both come out of committee, **SJR107** incorporates everything that **SJR105** does, which is just the hospital portion. The members of this committee know better than he does. One could be held in the amending order or some other mechanism. The concern for the hospitals is if **SJR107** doesn't make it through, they want **SJR105** somewhere in the process to be acted on if that is the will of the Legislature.

Senator Kelly asked **Mr. Chadwick** if some of the terms will be defined in statute? **Mr. Chadwick** responded they would ultimately have to be defined in statute if that is the will of the Legislature. They don't necessarily need to be, but they could be in the future. **Senator Kelly** asked if this is placed on the ballot will it become effective without the definitions? **Mr. Chadwick** said it would be and the revenue generating facility issue is the language that you are talking about, and maybe **Mr. Stoddard** has a better response. There isn't any legislation at this point that would define that item. **Mr. Stoddard** said implementing legislation for that isn't necessary. Effectively, in a broad variety of statutes there are a number of limitations on the ability of the various entities to enter into transactions, so if this legislation passes all of the existing limitations would be doable. The statutory abilities are there but there are a number of limitations which would circumscribe what would otherwise be authorized by it. **Senator Kelly** said the ordinary and necessary language was interpreted differently by the court. She asked how does that apply in I? **Mr. Stoddard** responded starting with the premise that the two thirds vote is necessary, everything else is an exception to it. Ordinary and necessary would remain and there would be one exception amongst the others. **Senator Kelly** asked what about the interpretation of the ordinary and necessary language? **Mr. Stoddard** replied it would remain and not be altered by this statute. **Senator Kelly** said the hospital language in IV has a provision that states "so long as no tax revenue was to be obligated". She asked if that language is anywhere else? **Mr. Stoddard** responded in a perfect world this would have been rewritten. In most of the revenue provisions it states provided it is paid for from fees,

taxes, etc. The hospital tracks the language that is in Article 8, Section 3 (c), which is the companion hospital provision that exists right now. It provides that hospitals may engage in ventures if they don't use ad valorem taxes. At the Hospital Association's request, additional protection was added in order to be consistent with Article 8, Section 3(c), the ad valorem language for hospitals. It doesn't add anything because it is limited to be paid solely from these revenues. **Senator Kelly** said in her view including it in the hospital language and not including it in everything else, that tax revenue could be obligated as collateral back up to fees. **Mr. Stoddard** said the hospitals are subject to a statutory limitation which states there cannot be any ad valorem taxes pledged to repay the debt.

MOTION:

Senator Stegner made the motion to send **SJR107** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion.

Senator Stegner said this bill was anticipated for a year, and he expected the attack to be made on the definition of ordinary and necessary. He believed there would be some expanded definition or some attempt to expand it. The bill is precise in terms of offering some clarity in some areas that make obvious sense and particularly in section V.

Senator Davis said he would like to completely rewrite section III, it is hard to follow. It took one and a half committee meetings to get through this. This is sensitive to the concerns raised by **Mr. Frazier** in his appeal, that the Idaho Supreme Court preserve some of the concerns and concepts that he expressed to the court.

There was no other discussion on the motion. It carried by **voice vote**.

MOTION:

Senator Davis said although the committee has not formally heard **SJR105**, he is prepared to make a motion on it. **Senator Davis** moved to send **SJR105** to the floor with a recommendation that it **do pass**. **Senator Darrington** seconded the motion.

Senator Davis stated under the Senate rules, Joint Resolutions are treated like a bill. It will go through second reading and sit in the third reading calendar, and **SJR107** can work its way to the House. **SJR105** will be held without the necessity of an additional committee meeting and determine the necessity of advancing it.

Senator Little asked if **SJR105** will be held at the bottom of the calendar? **Senator Davis** replied yes at this point.

The motion carried by **voice vote**.

H604

Representative Hagedorn presented **H604** to the committee and he stated that **H604** is an amendment to code for the protection of shooting ranges in the state. **Representative Hagedorn** said it applies to non-state shooting ranges and **H604** amends Title 55, Chapter 26. On page 2 definitions for range and some changes in use are better defined, because it wasn't well defined in code. There were a number of court

decisions that determined what substantial change is. This is defined much better for local government and ensure that local planning and zoning will have clear definitions and guidance when planning a shooting range. How to measure noise standards were also added for ranges, which comes from **H515** as it relates to state ranges.

Brian Judy, the Idaho liaison for the National Rifle Association addressed the committee regarding **H604**. **Mr. Judy** stated that **H604** is a very important piece of legislation. One of the greatest threats to gun owners and shooters, particularly in the western United States because of growth and development, is the closure and loss of shooting ranges. It started in California, then Washington and Utah, as states develop and the population expands. **Mr. Judy** said as **Representative Hagedorn** said this bill is a trailer to **H515** which has been signed into law by the Governor. **H515** was drafted by Fish and Game because of the closure of the shooting range in northern Idaho. It was a state range that was shut down because of encroachment, due to some expansion that Fish and Game was doing with the programs in that range. The increased activity at the range was a court decision that there was a substantial change in use, and the existing range protection in statute prevents it but it doesn't define what it is. **Mr. Judy** said an opinion from the Attorney General for Fish and Game, indicates that there is essentially no range that is safe right now in the state of Idaho. Because of the lack of a definition, can be construed as a substantial change in use and lead to the closure of a range. This bill will expand and apply to all shooting ranges the standards that were **H515** regarding noise. It will also define substantial change in use and states the current primary use of the range no longer represents activity previously engaged in at the range. A substantial change would be if a small pistol range were changed for high power rifle range. An increase in membership, repairs and improvements to a range, or adding activities that are consistent with the primary use of the range would be accepted from the definition from substantial change in use.

Senator Little said he differs a little about what the problem is here. The problem is establishing new ranges. This bill has great language but if a new range is established this provides that every municipality will be hindered by this. **Senator Little** stated he donated a piece of real estate for a shooting area and if he were to add another, the neighbors could have a say in that. For preserving the existing ranges this is good, but for new ones he believes this is going in the wrong direction. **Mr. Judy** responded the first thing that is needed is to protect the existing ranges. There is a serious threat right now and there are a number of ranges in the state that could be in trouble. This bill needs to be enacted to protect the existing ranges and in the interim work to develop and improve on this language to allow for that latitude. **Senator Little** said the last bill does a lot more harm than the language in here. Acquiring additional lands for buffer zones is great language. There is a problem in Nampa with the Nampa Rod and Gun Club. The Planning and Zoning and County Commissioners are not recognizing the fact that the Nampa Rod and Gun Club was there first. The ground surrounding it is no different than the ground around a dairy. They should have some kind of senior property rights, and he is sympathetic to the problem.

Senator Darrington said doesn't lines 43 through 45 on page 2 speak to your concern. **Chairman McKenzie** stated the problem is once houses are built you can see on the range what is around you, and that is a big problem. It is hard to fix that without taking away personal property rights for the owner of that property. This will do what is necessary.

Mr. Judy said he is somewhat familiar with that situation in Nampa. This bill will protect that range from the perspective of noise and it will protect shooting ranges from encroachment and the potential for complaint regarding noise. Nampa has an issue with bullet containment and that is a whole other issue. If a range has bullets leaving the property and landing on adjoining land owners property, that is a problem regardless whether the development is five miles or five hundred feet away. It is trespassing and the first thing a range needs to do is to maintain the bullets on their property. This bill will not address that. It only deals with the nuisance suits and the issues associated with noise.

Vice Chairman Jorgenson said in his district the Farragut shooting range has been there before the second war, and it is a very sensitive issue. The problem is as remote as Farragut is, citizens are choosing to buy property there and put themselves in the line of existing use. If that shooting range is shut down it will not solve the problem. There are no restrictions for shooting anywhere in the county and the shooting ranges need to be protected.

Senator Kelly asked what is defined as a substantial change? **Mr. Judy** replied on line 18 it is defined and means the current primary use of the range will no longer represent the activity previously engaged in at the range. Going back to the Nampa situation, one possible solution would be to use that property for a lot of other things. That range is not absolutely in jeopardy. It just needs to go in the other direction.

Senator Little said the real question is primary use. The Gem County Rod and Gun Club is a shotgun and pistol range. Occasionally someone goes way beyond the range up on his ground and they shoot from there. One day he was riding and someone missed his target and came over two hills and landed near him. If that happens once in a while does that constitute primary use? **Mr. Judy** said he is not sure about that, but probably not. A range could have multiple primary uses. **Senator Little** said he donated some land and he has a contract with Gem County Rod and Gun which addresses who is responsible for lead contamination and some liability issues. They have use of the ground on a temporary basis. He asked if this will change the agreement he has with them? **Mr. Judy** responded he does not believe so from what he explained, but if he has an agreement with them to address that, it is really beyond the scope of this bill.

Senator Kelly said with regard to new facilities, the bill states that local government could adopt an ordinance. She asked if a county or city could issue a conditional use permit to a new facility and state they can only operate during certain hours? **Mr. Judy** said lines 34 through 36 provide local governments the ability to regulate the location and the construction

of shooting ranges. The operation would have limitations as **Senator Little** pointed out based on those definitions. There could be an issue establishing a future range if there are concerns on the local level with these particular exceptions. It could be an issue and cause a problem in the construction of future ranges. The bottom line is that the local government has the ability to restrict future ranges and this may need to be tweaked going forward for that. **Senator Kelly** stated the point she was trying to make is that there is a difference between an ordinance and a permit.

Chairman McKenzie said there are others who have signed up to testify and they are not opposed to it, including **Ron Fritz** from Idaho Fish and Game, **Paul Jagosh** from the Fraternal Order of Police and **Jim Jatkevicius** from ISSA.

MOTION: **Senator Darrington** made the motion to send **H604** to the floor with a **do pass** recommendation. **Vice Chairman Jorgenson** seconded the motion.

Senator Darrington said he believes that **Mr. Judy** extended an offer to **Senator Little** to do necessary research to accommodate some of his concerns. He would like to see that happen to improve this.

The motion carried by **voice vote**.

ADJOURN: **Chairman McKenzie** stated that **HCR45** and **HCR52** will be held over for the committee's next meeting. There was no other business before the committee. **Chairman McKenzie** adjourned the meeting at 9:42 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

- DATE:** March 21, 2008
- TIME:** 8:00 a.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly
- MEMBERS ABSENT/ EXCUSED:** None
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENE:** **Chairman McKenzie** called the meeting to order at 8:05 a.m.
- GUBERNATORIAL APPOINTMENT:** **Chairman McKenzie** stated the first order of business today is the confirmation vote on **Darrell Kerby** to the Idaho Energy Resources Authority.
- MOTION:** **Senator Kelly** moved to approve the appointment of **Darrell Kerby** to the Idaho Energy Resources Authority. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.
- HCR54** **Representative Nonini** introduced **HCR54** to the committee and stated this was a trailer bill to **H500**. **Representative Nonini** stated that this was a Concurrent Resolution to explore opportunities for the development of renewable resource energy generation on state endowment lands. This process can be accomplished by developing geothermal and wind power which are environmentally friendly, and could allow for the opportunity to create good money and returns for the endowment lands and Idaho public education. This will help meet Idaho's future energy needs. In 2006, Idaho was and currently continues to lead other states in the west on endowment lands and this Resolution will allow Idaho to do more.
- Senator Kelly** asked **Representative Nonini** what are the actions in place to implement this? **Representative Nonini** replied some of the things they are working on consist of providing a map of areas with hot geothermal spots in Idaho, and overlay those areas with endowment lands. Then the land board can lease those spots out to energy companies that would come in and develop a windmill area or a geothermal plant.
- Senator Darrington** stated he supported that Resolution. In the future the biggest concerns we will face to save water will be access to public

lands. There is some concern that the more facilities that are built on public land, individuals will be restricted to access these areas.

MOTION: **Senator Little** made the motion to send **HCR54** to the floor with a **do pass** recommendation. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

S1485 **Ron Crane**, Idaho State Treasurer, addressed the committee regarding **S1485**. **Mr. Crane** said **S1485** clarifies that sales tax, liquor tax, or other revenues which are distributed to municipalities throughout the state that are subject to intercept by the state treasurer, and if those municipalities fail to make payment on the loans.

Senator Kelly asked **Mr. Crane** if there was a problem that the state was trying to fix by this legislation? **Mr. Crane** responded yes, the existing statute had a quasi intercept in place that was voluntary, and this legislation states they have the authority to intercept any funds that flow through the state to that municipality to make a payment. **Senator Kelly** asked if the municipalities were denying that intercept? **Senator Davis** stated the main problem was political subdivisions because of the broad definition of a political subdivision. They were applying such as local improvement districts where they had no ability to secure the indebtedness, other than providing a method for them to get lower interest rates. **Senator Kelly** asked what about the funds that would not be interceptable? **Senator Davis** replied if this were to pass they would not necessarily be eligible to participate, because they do not have revenue to intercept.

MOTION: **Senator Little** made the motion to send **S1485** to the floor with a **do pass** recommendation. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

HCR45 **Representative Clark** presented **HCR45** to the committee and stated this bill authorizes the Legislative Council to establish an interim committee to study Idaho's property tax system.

Senator Stegner stated he was also intrigued by this issue and asked **Representative Clark** if they found an alternative method for state finance for the court system? Also, what will be the preferred method of dealing with the employees who are currently employees under the direction of the county commissioner, and then become state employees working in the county courthouse. How would that resolve itself? **Representative Clark** answered the bigger issue is the constitution. There is one employee that is elected and thirty five percent of property taxes support this.

Senator Darrington stated he was disappointed to see that it is going to be narrowly pointed towards the criminal justice system, and thought it was going to be broader than that. It may bring up some uncertainties.

MOTION: **Senator Little** made a motion to hold **HCR45** in committee. **Senator Stegner** seconded the motion.

SUBSTITUTE **Senator Davis** made a motion to send **HCR45** to the floor with a **do pass**

MOTION: recommendation. **Senator Kelly** seconded the motion.

Senator Davis noted that if it does not pass the Senate floor, then it will be referred back to the committee.

The substitute motion carried by **voice vote**.

HCR52 **Representative Eskridge** presented **HCR52** to the committee. **Representative Eskridge** stated this will develop and initiate a three year, pilot fee discount program. It will provide a waiver of campsite fees to any Idaho resident who is a disabled veteran, whose service related disability rate is at fifty to ninety percent permanent, and for total disability. This legislation provides guidance to the Department of Parks and Recreation to develop this pilot program. that will allow them to see what kind of participation will occur and what the loss of revenue would be. The preliminary thought is to cap the participation at three hundred participants a year.

Senator Little asked **Representative Eskridge** what method do they use to prevent individuals from camping in one place all year, and if the limitations on how many days you can camp in one area would apply? **Representative Eskridge** responded those limitations would still be in place.

Dean Sangrey, the Administrator for the Department of Parks and Recreation, stated the Department supports this effort and they look forward to working with the Legislature on this pilot program.

MOTION: **Senator Darrington** made a motion to send **HCR52** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

H559 **Representative Luker** presented **H559** to the committee. **Representative Luker** stated **H559** requires the Department of Health and Welfare to publish printed material in order to provide information to pregnant patients considering an abortion. This legislation also requires the Department to place that material on a secure internet website. The fiscal impact will be approximately twenty-seven thousand dollars for both copyrighted photos and the secure website development.

Senator Kelly asked **Representative Luker** where will the funds come from to implement this? **Representative Luker** answered from the Department of Health and Welfare. **Senator Kelly** asked if these funds were in their budget? **Representative Luker** answered they have the funds available to do this. He asked the committee to defer that question to **Representative McGeachin**. **Representative McGeachin** stated this was a good faith estimate from the Department on how much it would cost. The reasoning behind creating the fiscal impact was if the Department of Health and Welfare did not have the funds for the project in their existing budget.

Senator Kelly asked what does "stable internet site" mean? **Representative Luker** responded it is a technical term that means the internet site is safeguarded from having its content altered other than by

the Department of Health and Welfare. **Senator Kelly** asked if the Department has a website? **Representative Luker** replied that is correct, and that is why the legislation provides that it can be part of their existing website.

Senator Stennett asked **Representative Luker** how will the appropriations fit in section 2 of the legislation? **Representative Luker** replied the idea here is to give a long range target so that the Department of Health and Welfare has time to put this project together, and also time to get information out to physicians that may be affected. It is anticipated that there is funding available, but if not, there would be a short period of time to allow for supplemental funding.

Chairman McKenzie stated that bills that typically deal with constitutional issues are reviewed by the Attorney General's (AG) Office. He asked if he had spoke with the AG and did he receive an opinion on the legislation? **Representative Luker** stated they did request an opinion and that and he did receive a letter addressing the issue from the Attorney General.

Senator Kelly asked **Representative Luker** what the penalty would be for noncompliance? **Representative Luker** answered there is no penalty as it is written.

Senator Stegner stated that he was having a hard time with subparagraph 3(c), it requires that when the physicians are contacted by telephone they must provide the email address or else they are subject to a civil penalty of one hundred dollars. **Representative Luker** responded that was a misinterpretation, because line 7 on page 2, was specifically narrowly drafted to require that this only applies before or while scheduling an abortion related appointment. So this doesn't apply to all physicians, or even all calls to a clinic, but only when there is an abortion related appointment being made.

Senator Davis asked **Representative Luker** how would the physician's office know if it was an abortion related appointment, and what is the definition of an abortion related appointment? **Representative Luker** answered if it was not stated in the phone call that it was an abortion related appointment, then it would not be considered a violation if the physician failed to mention the website.

Senator Kelly said what about the copyrighted photos that they need to purchase for the website. She asked **Representative Luker** if there are pictures that already exist and what do they represent? **Representative Luker** responded the photographs that are in the pamphlet right now are copyrighted and an individual in Norway owns them, so they would need to arrange to have the copyright for the website as well as the materials.

TESTIMONY:

Julie Lynde, the Legislative Coordinator for Cornerstone Institute of Idaho, testified in support of **H559**. **Ms. Lynde** stated **H559** authorizes the State of Idaho to offer to its citizens the benefits of acquiring accurate, objective, scientific information, utilizing current technology, and offering that information in a format that most women of child-bearing age have

come to rely upon. With the passage of **H559**, Idaho will join nine other states that incorporate the website requirement in their woman's right to know laws.

Ms. Lynde said a vulnerable pregnant woman or teen may be under age and living with parents, brothers, sisters, or with a single parent. She may have a roommate and living in a dorm or an apartment. She could also be in a dangerous relationship or recently single. The reality is regardless of her decision, web access to information can minimize her worry about being discovered by showing her face or giving her name to a stranger.

Senator Geddes stated he understood that we were taking information that was available in a pamphlet and putting it on the internet. He asked **Ms. Lynde** if that was correct? **Ms. Lynde** replied that was correct it will be on the Health and Welfare website.

Jason Herring, the Legislative Assistant for Right to Life of Idaho, testified in support of **H559**. **Mr. Herring** said one of the best ways we can empower a woman is to make knowledge available and easily accessible. The current website of the Idaho Department of Health and Welfare only has information available on abortion relating to vital statistics and definitions. This legislation will provide additional information for women who are contemplating an abortion. **H559** will empower the women in our state with knowledge so they can make educated decisions.

Senator Davis asked if **Steve Olsen**, Chief Civil Litigation Division, Deputy Attorney General, would respond to the constitutionality of this legislation.

Mr. Olsen stated they did have the opportunity to review the proposed language in the bill and did not find any case law which directly addressed the language that is being proposed in this legislation. They did review the United States Supreme Court decision *Casey*, which is a criteria used to evaluate this legislation. The question that is being asked is, would this place an undue burden on the woman considering an abortion.

Senator Davis asked if the language for abortion labeled appointment, is a defining term, and if it is not, would the courts find that to be unconstitutionally vague? **Mr. Olsen** responded there are different degrees of defensibility, when one is looking at defending the constitutionality of legislation. He personally would feel more comfortable in defending the bill against the constitutional challenge, if that language was more narrowly defined. The intent of that particular language is clear in the respect that if someone specifically called with an abortion related question, the website should be mentioned, but it could be more clearly defined by putting that language in the bill. **Senator Davis** asked if the court would struggle with this language and if so, should the legislation be redefined to include the definition of an abortion related appointment? **Mr. Olsen** replied it would be a wise decision of the committee to carefully define that language.

Senator Davis asked if other states had chosen to define “abortion related appointment,” how did they define it? **Mr. Olsen** answered he didn’t recall reading other statutes that have defined that language, and he wasn’t sure if there was another state that proposed identical language. **Senator Davis** asked **Mr. Olsen** if they could minimize the risk of an unconstitutional determination by inserting or requiring language in the legislation, that imposes a knowing standard? **Mr. Olsen** replied the focus should be on defining what is abortion related, as opposed to establishing whether the physician had knowledge.

Senator Stegner stated he was more concerned about a physician’s office trying to interpret their obligation. **Mr. Olsen** responded if a physician’s office has been contacted, and the individual answering the phone had knowledge that the appointment would be set to discuss the possibility of an abortion or to have an abortion, it would be necessary to advise the caller of the website.

Senator Kelly asked **Mr. Olsen** if the current discussion changed the legislation that was being presented? **Mr. Olsen** responded that was an accurate depiction of the discussion taking place.

Representative McGeachin testified that when the United States Supreme Court has made the decision to protect a woman’s constitutional rights on abortion. In the Casey case law, it was determined that a state has a vested interest to protect the life and safety of a woman, and the unborn child as well. All of the regulations on abortion in the states are intended to put reasonable restrictions on a woman who seeks to have an abortion. The Supreme Court has ruled what the states have a legitimate right and interest to protect the life of a child. **Representative McGeachin** said, having said that, she believes we all have the same desire and goal to pass good solid legislation related to this issues.

Representative McGeachin stated in the letter from the Attorney General’s Office, they believe this will not present a burden for a woman who seeks an abortion. That is important to consider when we look at this type of legislation. Section 18-609 addresses the issue if a physician performs an abortion, without a signed informed consent from the woman.

Senator Stegner said he does not agree. The use of a telephone call and the requirement of the physician and his agent to notify the patient of the website, and the failure of that is subject to a civil penalty. He believes that there is no reliance on a signed consent. There is no way to have a signed consent from a telephone call. **Representative McGeachin** responded section 8, line 48, states the failure of the attending physician to perform any one or more of the acts required under subsection 6, relates to the illegal acts subject to civil penalties. **Senator Stegner** asked then there isn’t a civil penalty for not providing the website? **Representative McGeachin** replied that is correct. **Senator Stegner** said if that is the case, then he stands corrected.

- MOTION:** **Vice Chairman Jorgenson** made a motion to send **H 559** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**. **Senator Kelly** requested it be recorded that she voted **Nay**.
- H630** **Mike Nugent**, from the Legislative Services Office (LSO), presented **H630** to the committee. **Mr. Nugent** said this is a bill that is passed every year. This resolution, is better known as the “drop dead bill”, which provides that administrative rules that expire on July 1, 2008, will continue to be effective until July 1, 2009. This Concurrent Resolution will authorize agencies to amend or repeal certain rules pursuant to the Administrative Procedure Act.
- MOTION:** **Senator Geddes** made a motion to send **H630** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.
- Senator Davis** asked for unanimous consent that the bill be placed on the consent calender. **Chairman McKenzie** said hearing no objection it will be placed on the consent calender.
- RS18126** **Senator Stegner** stated **RS18126** is a Senate Proclamation to recognize the Calam Shrine Temple for one hundred years of philanthropy service. The will acknowledged the contributions that the Shriners make to hospitals across the nation for children with physical disabilities. The services they provide are totally free.
- MOTION:** **Senator Stennett** made the motion to print **RS18126** and **Senator Davis** seconded the motion. The motion carried by **voice vote**.
- MINUTES APPROVAL:** **Chairman McKenzie** said there are committee minutes before us for approval.
- MOTION:** **Senator Darrington** moved to approve the minutes of February 27. **Senator Davis** seconded the motion. The motion carried by **voice vote**.
- Senator Jorgenson** moved to approve the minutes of February 18. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.
- Senator Jorgenson** moved to approve the minutes of February 25. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.
- Senator Little** moved to approve the minutes of March 3. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.
- Senator Geddes** moved to approve the minutes of March 7. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.
- Senator Stegner** moved to approve the minutes of February 20. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.
- Senator Stennett** moved to approve the minutes of March 5. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

Senator Kelly moved to approve the minutes of February 29. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

ADJOURN:

There was no other business before the committee. **Chairman McKenzie** adjourned the meeting at 9:30 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 24, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly

MEMBERS ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

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

RS18127 **Chairman McKenzie** stated that **RS18127** is a unanimous consent from the Transportation Committee Chairman to print. The Pro Tem and the Chairman of that committee has asked this committee to print it and send it to the Transportation Department for hearing

MOTION: **Vice Chairman Jorgenson** moved to print **RS18127**. **Senator Geddes** seconded the motion.

Senator Geddes said that this legislation requires that the damage placed on state and local road systems be shifted to the state exempt vehicles, as well as all other vehicles on the roads. This RS will remove the exemption of registration from motor vehicles owned, leased or operated by the state.

The motion carried by **voice vote**.

RS18074C2 **Representative Hart** presented **RS18074C2** to the committee and he stated that this legislation conforms with the federal Immigration Reform and Control Act of 1986 (IRCA) where the federal government provides criminal and monetary penalties to employers for hiring persons who are illegally in the United States. This will preempt state and local laws from making the penalty for employing illegal aliens who have anything to do with a criminal or monetary fine. IRCA carved out an area for the states to focus on with regard to licensing and similar laws. States and local jurisdictions can make it illegal to employ an unauthorized alien as long as they only deal with state and local licenses, or other similar type of authorizations. The first state to pass similar legislation was Arizona in 2007. Other counties and cities have passed similar laws to make it illegal to employ an unauthorized alien. The government of Mississippi signed into law a statute that is similar to the RS before you.

Representative Hart stated he has been working with the legislator in Arizona who was responsible for drafting their legislation. Arizona's law has been litigated recently in federal court and the court upheld the statute.

In Section 1 of the bill, it will not prohibit those who have something to offer employers of the United States, and who come to this country under a legal guest worker program. There are employers in this state who have needs that are fulfilled by those workers. Section 2 of the bill will make it illegal for a person to falsely personate another person for the purpose of getting a job. It would be a misdemeanor with a maximum fine of three hundred dollars and six months jail time. In Section 3 of the bill goes through a series of definitions and the definition of "unauthorized alien" matches up with the definition in the federal statute. The bill prohibits the employment of unauthorized aliens in Idaho, and the penalty for employing an unauthorized alien is that a business would lose its license.

Representative Hart stated the first violation would be a suspension. If the offending business files an affidavit within three days to the local prosecuting attorney, stating they would not knowingly hire unauthorized aliens, the business would be on probation for three years. Additionally, the business would be required to file a quarterly statement of compliance with the local district attorney. For a second violation, the court would have the ability to suspend that business license for up to ten days; and for a third violation, during the three year probation period, the court would revoke the license of the offending business. After the three year probationary period with no other violation, the company would be cleared.

Representative Hart said the RS would make it illegal to falsely accuse an employer of employing an unauthorized alien, and to pursue such a complaint based on a racial or ethnic motivation. It also requires the state to follow the same procedure and sets up a system whereby an employer was operating in good faith if they use the E-Verify system, which was created by the Illegal Immigration Reform Employment Act of 1986. This program passed by Congress, created the pilot program for Homeland Security for checking unauthorized aliens who are here legally to work. The accuracy rate of this system is in the upper ninety percentile, with a response in a few minutes.

Senator Davis said he knows quite a bit about this subject. His experience teaches him the opposite of what Representative Hart believes to be true. **Senator Davis** said that the employer cannot participate in the federal inquiry until after employment; therefore, a free employment inquiry is not provided. If they did, it would assist employers who genuinely want to hit the target. In addition, **Senator Davis** stated in working with one of his clients, he learned that there are only a few business communities in the state of Idaho who require a business license. There are some definition problems in the RS. There isn't a definition for a license. **Representative Hart** believes it would include articles of incorporation. All of these questions need to be answered and

the sponsors need to hit those targets.

MOTION: **Senator Davis** made the motion to print **RS18074C2**. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

RS 18140C2 **Ben Ysursa**, the Secretary of State presented **RS18140C2** to the committee. **Mr. Ysursa** stated the RS before the committee today is a serious matter that deals with election ballots. The current situation is the catalyst for this piece of legislation. This bill will incorporate some language from a Supreme Court case on the state and federal level, so a ballot cannot be used to express a political message to elect a candidate. In section 2 it provides for the secretary of state or the county clerk to insert the candidates name, if the candidate is using their name to send out a certain political message. The voters need a clear understanding of what they are voting on. **Mr. Ysursa** stated this could happen on anything and the individual they are dealing with right now is an independent candidate. It will not be in the primary election, but in the general election. An individuals name would rotate on the ballot in various cities. It is pragmatic enough to pass muster and allow the ballot for electing candidates.

Senator Little asked **Mr. Ysursa** if every independent can get on the ballot? **Mr. Ysursa** said the path to the ballot for an independent is a petition process with verified signatures. Since they are not a member of any political party, they do not participate in the party nomination process. After they file the petitions they are verified prior to filing by the county clerks, and they are then placed directly on the general election ballot.

Senator Kelly asked **Mr. Ysursa** if this came up in a district? **Mr. Ysursa** answered yes it has to some degree. There have been cases. One was in Minnesota where an individual's middle name was a political message, also in Tennessee. The problem here is that the individual's name has been legally changed, and the state has a legitimate purpose to have a ballot that does not have slogans and political messages put on it. **Mr. Ysursa** said if we do not clarify this now, we will likely see more of this. The voters need to know they are voting for a person not an issue. We do not want to get into a situation of over voting and the vote would be cancelled out. That is the worry.

MOTION: **Senator Little** made a motion to print **RS18140C2** and **Vice Chairman Jorgenson** seconded the motion.

Senator Davis said for the sake of possibly finishing this week, he asked if we need to have a hearing on this? Once it is printed the Chairman could then provide a committee report recommending that it go to the floor with a do pass recommendation. That would allow an opportunity for consideration and it would give it a chance to be heard in the House.

SUBSTITUTE MOTION: **Senator Davis** made a substitute motion to print **RS18140C2** and send it directly to the floor with a **do pass** recommendation. **Senator Darrington** seconded the motion.

Senator Kelly said she has one more question for the Secretary of State.

She asked **Mr. Ysursa** if similar laws in other states have been litigated? **Secretary Ysursa** said yes, and one case in Minnesota dealt with a nickname rather than an actual legal name. This provides for the real name to be on the ballot with some clarifying language. **Senator Kelly** asked if he was comfortable with this language, and could it be challenged? **Mr. Ysursa** responded he is comfortable, but anyone could challenge it. The persons name will appear on the ballot, but the state's right is to clarify what is being voted on. He is confident that it will be upheld. We need to stop it here and clarify it. Voting is serious business and it should not be mocked. **Senator Kelly** asked if this will allow the county clerks to make decisions when certain names are questionable? **Mr. Ysursa** replied yes, that is why the county clerk was included.

The substitute motion carried by **voice vote** to print **RS18140C2** and send it directly to the floor with a **do pass** recommendation.

H606

Representative Hart addressed the committee regarding **H606** and the questions the committee had on security issues at the Idaho National Laboratory (INL). Representative Hart said that **Hannah Saona** from the American Civil Liberties Union (ACLU) is going to make a few comments in that regard. **Ms. Saona** stated there were questions raised at the first hearing on **H606**. The religious objection to being photographed has not been taken care of by federal regulations. Real ID still requires a photo, so the state can continue to issue their own state id's for driver's licenses. For federal purposes, religious objections are not excepted. **Ms. Saona** said as far as travel or entry to federal facilities, regulations require Real ID. If you have another form of id such as a passport or a military id, they will not be affected. Secondary screening will still be an option for air travel. As far as access to nuclear facilities, **Ms. Saona** said the final regulations provides that Real ID is required, but the Nuclear Regulatory Commission can provide sufficient safeguards to use alternative methods.

Chairman McKenzie said he worked at INL and he had a pass for entry, and he did not have a passport or military id to get one. He asked **Ms. Saona** if that will change now? **Ms. Saona** replied that her understanding is that it will not. The process for people who work there will be the same. **Representative Hart** said he spoke with personnel at INL and they have three different clearances, a Q, L, and a general clearance. The Q clearance is the most rigorous one which requires a background check. The general clearance is the easiest to acquire and equivalent to what Real ID is. For any employees this legislation will not affect them. The Department of Energy is the owner of the site and they have the responsibility of screening everyone. This legislation might affect INL as it relates to guests, or for someone making a one time delivery. INL will make a determination on that issue.

Representative Hart stated that Real ID is a moving target. The legislation was passed in 2005 for Real ID and the preliminary rules were issued about one year ago. The final ruling was issued in January and it continues to change. The cost to Idaho to implement this will be approximately ten million dollars, and those funds have not been

authorized yet. Idaho would like to see Congress and the Department of Homeland Security back at the negotiating table, prior to where they were when Real ID was passed. Real ID is an attempt by the federal government to commandeer the states into doing something that is their responsibility to secure our borders.

Senator Darrington said last year there was a Memorial stating Idaho would not implement this and asking Congress to make some changes. There will be a lot of push comes to shove down the road when everyone will be required to have a passport. He asked **Representative Hart** why isn't this a Resolution instead of a statute? **Representative Hart** replied that the statute provides direction to the Idaho Transportation Department (ITD) as to what their responsibilities are. Right now ITD is in limbo as to what to do over this. They have a requirement to comply and we do have a waiver until the end of 2009 before Idaho has to do anything. With the continued resistance from other states and organizations, there is some movement in Congress to do something. There are bills pending in both houses to repeal Real ID. **Senator Darrington** said his question was why not a Resolution instead of a statute? **Representative Hart** responded that the statute will give direction to ITL as to what they should do or not do. The Resolution does not provide direction. **Senator Darrington** replied that is not his understanding. Resolutions do provide direction.

Senator Davis said he did his homework on **H606**. He contacted INL and there are two components. **Representative Hart** presented them as though they are the same. **Senator Davis** stated one is the contractors for INL and the other is the actual Department of Energy. As it relates to contractors, **Representative Hart** is correct. As to the Department of Energy, it may not be true. There are several buildings in Idaho Falls that are actually departmental buildings, and they are federal buildings. What he is not clear about is that this bill could impact access to the Department of Energy structures as well as other federal buildings. **Senator Davis** said we don't have answers for access to federal courthouses. A passport will resolve some concerns, and additionally some hurdles may be overcome. He isn't sure if this will not impact witnesses who are subpoenaed to testify. The legislation as written assumes that we are not going to comply and that the federal government will ultimately cave to the states. **Senator Davis** stated he agrees with the sponsor and he doesn't particularly like the mandate, but there are a series of questions that need to be answered. Further, the states that have requested a waiver are stating they are refusing to comply, and they are not well perceived by the federal government in requesting an interim waiver. **Senator Davis** said his last understanding is that the language in this bill is an aggressive approach, which other states have not taken. He asked if the ACLU or the sponsor would like to speak to his concerns, and assure the citizens of Idaho that we are not just thumbing our noses at the federal government and not disadvantaging the citizens of Idaho.

Representative Hart responded Real ID is a huge unfunded mandate with privacy and constitutional issues. Even if Idaho implements Real ID there are still unanswered questions. We don't have all the answers and this is a moving target that needs to be renegotiated. E-Verify was

implemented in 1997 and by 2007 it seems to be working. Real ID is substantially a greater undertaking. If we do this, other states will, and there will be a better solution negotiated for everyone.

Ms. Saona stated the language in this bill was taken from Montana's statute. It was updated because Montana passed their bill before the final regulations were issued. Some language is different, but the underlying language is the mandate of this bill.

Senator Little asked **Ms. Saona** if the ACLU is in favor of E-Verify? **Ms. Saona** answered she doesn't believe they have a position on that locally or nationally. **Senator Little** asked **Ms Saona** if she is in favor of any thing to verify what their status is? **Ms. Saona** replied she doesn't know, the ACLU does not have a formal position on the general immigration reform issues.

Senator Stennett asked **Ms. Saona** if someone is subpoenaed to appear at federal court and they do not have proper identification, what will happen? **Ms. Saona** said she doesn't know and that is the problem with Real ID and whether we implement it or not in Idaho. Some citizens will not be able to get Real ID regardless if Idaho opts out or not. In states that opt in and implement depending on the documents they supply, they will still not be able to acquire Real ID. Secondary screening may be needed and the federal government needs to figure that out.

Chairman McKenzie said what about the sixth amendment right to confront witnesses. He sees a lot of criminal cases where the witnesses do not have any form of a legitimate id. **Senator Little** said if you have a religious issue it means the hurdle is higher for travel. The rules that have been written since the passage of this bill in 2005 is moving in the right direction. **Senator Little** stated his objection to this statute is on page 3, line 4, regarding any attempt by the agency or agents of Homeland Security. He views any attempt as meaning that someone can enhance their record keeping, and that is the difference between a Resolution and a statute as **Senator Darrington** pointed out. **Senator Little** referenced a newspaper article in Montana where the ticket counter supervisor at the airport, stated he would bet his job against the Governor's ranch that it will take several hours to board an airplane in Billings. Things have changed somewhat since they passed their law. There are some problems with Real ID, but the structure of the code change and the demand it makes is a concern for him.

Representative Hart said in response to **Senator Little's** comments, the statute does say that if the Department of Homeland Security contacts or tries to persuade ITD to implement Real ID, it only means that they should report it if someone tries to influence ITD. **Senator Little** asked if ITD would respond to that? **Julie Pipal**, the liaison for ITD responded that ITD has concerns and they will not be doing anything that is remotely related to Real ID. ITD is looking at new technology to implement in the future for driver's licenses because that is the way things are going.

Senator Kelly said Idaho has an extension. She asked **Ms. Pipal** what

steps is ITD taking to implement Real ID? **Ms. Pipal** answered that ITD has no intent to implement Real ID. They have discussed with the Governor's Office as to what funds would be available. They estimate the cost to implement Real ID would be twenty million dollars. In order to do that, they would have to come to the Legislature for permission to do this. ITD is not implementing Real ID and they do not have the ability to do so.

Representative Hart said when this bill was heard in the House Transportation Committee, both he and ACLU made the point that the intent of this bill is not to prohibit ITD from doing anything to enhance Idaho's existing driver's licenses. Those comments were duly noted in the committee's minutes. If there is a question on that, it can be clarified. There was a program in place last year to make improvements to the driver's licenses. There is a plan to have driver's licenses issued centrally here in Boise, which will be more secure than issuing licenses at all the department of motor vehicles.

Senator Little asked **Representative Hart** if there isn't a problem with the way things are working now, why is this bill before us?

Representative Hart responded this bill provides clarification to ITD and last year there was debate on the Memorial because it included language that was possibly too strong and inappropriate. He believes the more direct language was better suited in the bill before the committee.

Chairman McKenzie stated **H606** is before us.

Senator Stegner said he cannot find a reason or a need for the state to implement this into statute. We have good policies in place and adding this language does not do any good in terms of participation. We can't ignore the reality of the world we live in. Our entire nation is dealing with this issue as the world changed on September 11, and it will continue to change. **Senator Stegner** stated the federal government may withhold transportation funds to the state of Idaho, but the state will do what is expected for a national solution. Ignoring the realities of the world today isn't beneficial. Idaho has an extension and he agrees with **Senator Darrington** that this should be in the form of a Resolution.

MOTION: **Senator Stegner** made a motion to hold **H606** in committee and **Senator Little** seconded the motion.

SUBSTITUTE MOTION: **Vice Chairman Jorgenson** made a substitute motion to send **H606** to the floor with a **do pass** recommendation. **Vice Chairman Jorgenson** stated there are a lot of issues here. Essentially what we are talking about is an extension of the Patriot Act. There are a lot of things we should do to provide security, and safeguards. But there are two facts that need to be considered before we shelve this. There are mixed messages from the federal government with regard to securing our borders, and this is an unfunded mandate. Unfunded mandates are tough to deal with even with surplus budgets. **Chairman McKenzie** seconded the motion.

Senator Little said he believes that he and **Vice Chairman Jorgenson**

are headed in the same direction, but they are going in different routes. He is not sure why we have a data base on citizens if they can't be identified. That is what he is mystified by on this issue. There are problems with Real ID, and there is no question about it. Idaho should participate in the solution rather than building a barrier for ITD in participating on the national level. **Senator Little** stated that he asked one of the sponsors of this bill, if the federal government came in and wrote the check to pay for it, would he be in favor of it? His answer was no, so it is not about the unfunded mandate. It is about the data base.

Vice Chairman Jorgenson responded when we talk about a data base, E-Verify, is an existing data base that has been paid for, funded, and it exists. He agrees with **Senator Little** that they are both trying to accomplish the same thing, but perhaps from a different perspective.

Senator Davis stated he is concerned that the federal government is taking over a component of what this target has been. He acknowledges **Senator Stegner's** point has value in that this is a national problem, not just for the states. He worries that the language here is more constrictive than it needs to be, and maybe it should be written to provide for ITD to participate in the event that the Act is substantially modified. Access to federal buildings is another area of concern.

**AMENDED
SUBSTITUTE
MOTION:**

Senator Davis made an amended substitute motion to send **H606** to the fourteenth order for possible amendment. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

ADJOURN:

There was no other business before the committee. **Chairman McKenzie** adjourned the meeting at 9:24 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 25, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Little, Stennett, and Kelly

MEMBERS ABSENT/ EXCUSED: Senator Stegner

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENE: **Chairman McKenzie** called the meeting to order at 8:12 a.m.

S1506 **Keith Allred**, from the Common Interest Group presented **S1506** to the committee. **Mr. Allred** stated **S1506** aims to strike a reasonable and fair balance between competing demands being placed on Idaho's primary election system. Over the last year and a half the Republican Party has taken a number of formal steps to close its primary to anyone but members of the Republican Party. The argument they make is that it is inappropriate for voters other than Republicans to determine who is the Republican nominee in the general election. In addition to that they argue that it is a violation of their freedom of association to determine who it will and will not associate with in choosing its nominees. **Mr. Allred** said as to the constitutional right, given the U.S. Supreme Court case law, Idaho's open primary is likely unconstitutional if the party wishes to close its primary. In *Beck v Ysursa*, Judge Williams stated in page 14 of his decision "The Idaho "Republican Party may decide, as in *Righeimer*, to adopt rules implementing its closed primary rule in spite of Idaho's open primary election laws." The most significant step taken by the party in January, was initiated by the state central committee who approved a resolution. That resolution provides that the party file a lawsuit to enforce the party's closed primary rule adopted last June within ten days of the close of this legislative session, if the Legislature fails to pass legislation implementing the party's rule.

Mr. Allred stated most voters, including many Republicans and almost all Democrats and independents object to a closed primary for a number of reasons. One is that they do not want to be forced to choose a party affiliation or to publicly declare which primary they choose to vote in. Another reason is that they feel it is unfair to expect taxpayers to fund the state to run a primary if it excludes many or most of those taxpayers. The Common Interest polled its members last year on this issue, ninety-three

percent were opposed to a closed primary. If the state adopts a closed primary, eighty percent supported the party's requirement to pay for it. **S1506** strikes a reasonable and fair balance among these competing claims by establishing two alternative methods by which parties' nominees can be chosen. The first method is a modified version of the state's current primary. Registered voters of rival parties could no longer cross over to vote in each other's primaries. The voters would have to vote in their own party's primary. The unaffiliated voters could vote in the primary of their choice and that choice would be confidential. This increases the fairness of the state primary to Republicans who object to the current open primary. It removes the burdensome part of the current statute's infringement of freedom of association, and members of rival parties can help determine their nominee.

By prohibiting registered members of rival parties from crossing over, this bill narrows the infringement substantially. Voters who do not want a formal and public affiliation with a party and who want their choice of primaries to be anonymous will have that option. The members of the Common Interest support such a modified open primary by eighty percent.

Mr. Allred said the hope of this legislation is that this state conducted modified open primary will satisfy the Republican Party. The Common Interest recognizes that this may not go far enough for the Republican Party, and that even this bill provides a second option. This is the party conducted nomination process. Under the bill a party may assume the responsibility and expense to conduct its own nomination process according to its own rules. If Republicans insist on having unaffiliated voters in their primary as unacceptable, than they can have a fully closed process. The resolution that was adopted in January calls for the "full" implementation of the party's closed primary rule. This bill will provide for that full implementation through this option. This option still maintains fairness to voters who would be closed out of such a process by saying that they don't have to help pay for it. Republicans can hardly complain about this and it would be a truly remarkable request to insist that independents help pay for a process that shuts them out. **Mr. Allred** said such a proposal will never pass the Legislature. Idaho legislators should take the responsibility to represent all people in their district, not just members of their own party. This bill establishes sound policy for nominating candidates for general elections by striking a reasonable balance that is fair to the competing demands placed on the primary process.

Finally, this will establish sound policy in that it is a policy that would not be vulnerable to court challenge. The current policy is extremely vulnerable and it is difficult to imagine a judge striking down this law. The state conducted process is far less burdensome on the right of freedom of association than the current statute. Secondly the bill acknowledges the right that parties have to conduct their own process. The remedy for a party is within the statute itself, eliminating the need for recourse to litigation. For a court to strike down a statute with this provision, it would have to find that a party had a right to compel citizens to pay for party

processes that shut them out. There is no precedent for a court taking such an action. This bill is good policy because it settles the legal dispute and prevents a lengthy and costly federal court case.

Mr. Allred stated **S1506** strikes a fair and reasonable balance among the competing demands on the state's primary election and it resolves an imminent legal challenge that the current statute is unlikely to withstand. It is good policy and he urged the committee to send it to the floor with a do pass recommendation.

Chairman McKenzie said before the committee takes on any questions, he needs to turn the gavel over to the Vice Chair at this time.

Senator Stennett asked **Mr. Allred** to comment on the recent U.S. Supreme Court decision that upheld Washington's primary, and how it relates to this bill? **Mr. Allred** responded it was a very interesting case and it does little to change the vulnerability of our current statute to constitutional challenge. There is a fundamental distinction between the Washington system that was being tested and reviewed by the Supreme Court. The Washington system is a system that is not a nomination process for parties. Idaho's open primary statute is expressly for party nomination process and the Supreme Court in California held that a party's rights and freedom of association are never more important than when they are choosing their nominee. So we have a fundamental constitutional scrutiny that is not true in the Washington case. **Mr. Allred** said it has a broader implication to him, and that it does point out an alternative in a situation where a party is insistent on a closed primary system. A state can conduct a primary process as long as it is not for the nomination of a party nominee. The Common Interest would probably prefer that over an outright closed primary. It has its problems and the nickname for this is "jungle primaries" or "Cajun primary". The problem is that everyone is in there in that first election process, and the top two advance regardless of party. In Louisiana a white supremacist made it through to the general election for governor. In a broader sense it provides Idaho with an alternative route. **Senator Stennett** asked **Mr. Allred** to comment on the fact that the people do want to be restricted to one party line. **Mr. Allred** replied the voters prefer to have as much freedom, choice, and confidentiality as they can. Given the Supreme Court case law on rights of freedom of association, and there is going to be a nomination process that is the party's nomination, then you can't do that. Washington had a blanket primary which was tossed by the Supreme Court and they came up with the non partisan as an alternative. It is an interesting prospect to get out from under some of the difficulties that rights of freedom of association put us in.

Senator Kelly asked **Mr. Allred** to talk about the privacy and confidentiality issues, and the ability for the voters to keep their party preference confidential at the polls? **Mr. Allred** responded currently there isn't party registration, so in the 2010 primary election the voter would sign in and check the party they wish to vote under. Voters who do not want to declare publicly a party affiliation will check the unaffiliated box. For those who check a party affiliation then they will be handed only that

party's ballot. The unaffiliated will be given all ballots and they will choose which ballot they want to vote and return all the ballots. If they vote in more than one of the ballots, they will be considered as spoiled, which is fundamentally what the system is now. Those who check Republican, Democrat, or unaffiliated will be registered and recorded as such. In 2012 the same process will be repeated. After that anyone who does not select a party affiliation will by default be declared as unaffiliated. **Senator Kelly** asked would this information be publicly available? **Mr. Allred** replied yes, it will be public information. **Senator Kelly** asked if anyone would be in any situation where they would publicly declare their party affiliation? **Mr. Allred** said the voter has the option to declare a party affiliation, but they don't have to. If they do declare it, that is public record. **Senator Kelly** asked how many ballots will have to be printed and what are the costs associated with that? How will more than one ballot be tracked? **Mr. Allred** answered the issue of multiple ballots is not unique to this bill. Whether or not the ballot is a punch card, paper, or optical scan, and some counties will have to have more than one ballot, this already happens in some districts. Certain ballots could be combined with Republican on one side and Democrat on the other. To maintain the integrity of the process it may need to be separated. The cost is estimated to be sixty four to seventy thousand dollars per primary election. The additional cost would be for voter education that would be a one time cost. **Mr. Allred** said the Secretary of State has provided that cost information.

Senator Stennett asked **Mr. Allred** if the voter uses multiple ballots are they thrown out? **Mr. Allred** said yes, they are spoiled ballots. **Senator Stennett** asked will they have an opportunity to vote again? **Mr. Allred** stated this is not unique to this bill, that is the process now under the open primary. Unlike California or Washington blanket primaries the voters can only vote one ballot. If the voter uses both party's ballots then it is considered spoiled. **Senator Stennett** said the rules on first go around will be substantially different from what they have been. Ballots will be consolidated, voters will choose which party to vote for. He asked **Mr. Allred** what number of ballots does he estimate will be spoiled? **Mr. Allred** said he can't make an informed estimation on that, but the circumstance under which that arises is not different from the current system.

TESTIMONY:

David Leroy said he is an attorney in Boise, and he has never appeared before a committee before as a private publicly interested citizen. **Mr. Leroy** stated he and many other citizens in the state are vitally interested in the outcome of this bill. He has been a party nominee for a major party's gubernatorial nomination. His family are Lewiston Democrats that have taken advantage of the open primary to vote for a Democrat or an independent. Today he wants to certify that this particular piece of legislation is essential to the public good and his party's good. **Mr. Leroy** said he believes this is the going home bill. There are other things that have earned that title, but in his opinion it is the "one". There is ensuing litigation based on decisions that have previously been rendered. We may be compelled to retool these statutes and the only alternative if we don't do this is to have a special session. **Mr. Leroy** stated in his opinion

this bill is good for the Republican party. It will help to identify the base more effectively and allows for encouragement of unaffiliated members to participate. This will also give the Republican party an option besides litigation to go forward and to participate. It clarifies that the non closed primary option for parties, if they so choose to, can be engrafted in the state statute even if the Republican party were to take the bold step of declaring its own nominating process. Party rules cannot do that effectively without having some statutes to coordinate and integrate the party process, and this bill will provide that. The bill is voter friendly and it will not cause confrontation or discourage citizens from voting.

Vice Chairman Jorgenson asked **Mr. Leroy** if he had a hand in drafting the bill? **Mr. Leroy** responded no, but he did review it. **Vice Chairman Jorgenson** asked him if he cared to speculate on what may happen if this were to go the way of the courts? **Mr. Leroy** said in his opinion this bill would satisfy the requirements that he foresees from the U.S. Supreme Court and the Idaho Attorney General's opinion and from the federal court.

Senator Geddes asked **Mr. Leroy** if this will forestall any challenge as to the ability of those interested in a more strict or restrictive primary? **Mr. Leroy** replied he believes that this bill will effectively preclude any court ruling against it and effectively preclude any disruption of the primary and general election this year. It gives any party the right to defend the freedom of association that has been the mainstream of the legal cases.

Senator Stennett asked **Mr. Leroy** what affect does he see in small town Idaho if a voter requests a certain party's ballot? Would it affect an employer, or a clergyman, or someone who holds power over an elector? **Mr. Leroy** responded your questions suggests an open primary, he prefers not to be in court over Idaho's primary law. This modified and balanced approach is useful. He does not foresee even in small town Idaho where mainstream politics or religion is a badge of moving forward successfully. This kind of bill is a major disqualification to anyone, in part because the parties and the climate of the time have made it much more competitive. Any challenge of that nature can be readily explained, so the unaffiliated choice for many reasons is a good choice. **Senator Stennett** asked **Mr. Leroy** if he had a politically partisan in his life and if he was absolutely opposed to their position, will he not vote in that situation? **Mr. Leroy** replied his personal observation is no it would not effect him. **Senator Stennett** asked him if he would risk his job or religious affiliation? **Mr. Leroy** said he would.

Senator Little asked **Mr. Leroy** given the line of questions you just had, how would that differ from participating in a caucus for a presidential primary, where you have to sign in and your political philosophy is somewhat different than the vast majority? **Mr. Leroy** replied that he didn't think there is a real difference. He is not perceiving this kind of disincentive that **Senator Stennett** views. In a primary that offers three choices he believes there need not be any kind of disincentive attached to selecting an unaffiliated vote.

Senator Stennett said in reference to **Senator Little's** question, the presidential caucus is a privately funded affair. He asked **Mr. Leroy** why isn't there a way to privately fund this type of primary? **Mr. Leroy** said there are methods by which the state compels our parties to privately fund any selection. The parties could be compelled to pay the public costs of a primary if that were in the public interest. An open primary where the public encourages all manner of participation and payment that is in the best interest of everyone. Under current conditions and looming litigation, this bill represents a proper balance and allows any party to participate in the publicly process to do as **Senator Stennett** suggests.

Senator Kelly said in regards to litigation, if the Legislature were to pass this, would it likely be litigated? **Mr. Leroy** responded that he would presume that maybe others could answer that more succinctly than his mere speculation. But he believes that this bill would encourage a substantial majority of the Idaho Republican party to accept it rather than to litigate it. **Senator Kelly** stated this seems to be an issue within the Republican party and the solution before us has litigation issues and heavy costs to all parties, and all Idaho taxpayers. It is complicated to implement no matter what. She asked **Mr. Leroy** to respond to that. **Mr. Leroy** replied he too wished the Republican party would get its house in order on this issue. He earnestly hopes that when and if they do it will not drive voters away from the solutions and policies and to other camps by virtue of the frustration of the procedure for choosing candidates. He does not view this as a Republican bill, but equally fair and useful to all parties. This is a decent step in the right direction at a critical time to avoid litigation that would frustrate the election of candidates of all parties in the general election. While this may not be a perfect instrument, and it may have some costs and complications associated with it, it is a going home bill.

Rod Beck addressed the committee in opposition to **S1506**. **Mr. Beck** said he is the **Beck** in the *Beck v. Ysursa* lawsuit. There have been some questions raised about this bill and whether or not it will forestall another lawsuit. In a resolution that was passed by the central committee of the Idaho Republican Party clearly states that the party will file a lawsuit to enforce the party's closed primary rule adopted in June within ten days of the close of this legislative session if the Legislature fails to pass legislation implementing the party's rule. So if there isn't sufficient legislation passed then party rules will dictate that only Republicans can vote in a Republican primary.

Senator Davis asked **Mr. Beck** if he is telling the Legislature that we must pass your bill? **Mr. Beck** replied he does not have a bill. He is suggesting that the Idaho Republican Party has requested through various means, that the Legislature pass legislation that would be sufficient to call for full and immediate implementation of the Idaho Republican Party's rules. **Senator Davis** said he understands that **Mr. Beck** does not have legislation but he is telling me that he does. If the Legislature doesn't do this that you will sue. **Mr. Beck** said he is suggesting that there is a bill before you and you can amend it to provide for the full and immediate implementation of the Idaho Republican Party

rules. The resolution was passed overwhelmingly by two thirds. **Senator Davis** said he agrees that the party has the right to define the terms and it probably should be the policy of the state of Idaho that **Senator Stennett** should not be able to vote in his Republican process. But most Idahoans aren't a member of either party. **Senator Davis** said he wants to understand **Mr. Beck's** position, he asked **Mr. Beck** if his intent is to say to those unaffiliated individuals we don't want you voting in our primary? **Mr. Beck** replied what we are really talking about is the constitutional rights of the Idaho Republican Party. It is clear and defined in case after case and most recently the Jones case, where it was articulated specifically that the right of the party is the right to exclude as well. Most independents do not vote in the primary anyway. If the Republican Party has articulated a position than it should be implemented. **Senator Davis** asked **Mr. Beck** if his intent is to exclude unaffiliated individuals from participating in a Republican primary election? **Mr. Beck** said it is his intent to work for the full and immediate implementation of the rules of the Idaho Republican Party. The rules state only persons who have registered as a Republican prior to the primary election, will be allowed to vote on an Idaho Republican Party ballot in their primary election. **Senator Davis** said it his understanding in reading the U.S. Supreme Court decision that it does not state that the state of Idaho or any state has a responsibility to provide a financial impetus. If anyone wants to vote in the Republican Party primary they are welcome to do so. It further suggests that unless the state is willing to write the check to do so, you do so at your own expense. He asked **Mr. Beck** if the Idaho Republican Party has the money or financial resources to do the very same thing that you are suggesting? Or do you want the court to strike it down and provide for a closed primary system at the expense of all Idahoans? **Mr. Beck** stated there are other Supreme Court cases that would suggest that if a state compels a primary election, it is the state's responsibility to pay for that primary election. **Mr. Beck** said he would have no problem if the state decided not to be involved in the candidate selection business, and that they are not going to pay for the process. There is some problem with the process that is articulated in **S1506**. **Senator Davis** asked **Mr. Beck** if he has read the Washington state decision? **Mr. Beck** answered he has read it. That case specifically states it will not overturn Jones, which calls for the rights of association of a party. He suggested that **S1506** be amended and provide for the implementation of the rules of the Idaho Republican Party.

Vice Chairman Jorgenson said with a state that has all four federal offices elected as Republicans, and with a state that has all constitutional officers elected as Republicans, and a state of something in the neighborhood of seventy percent of all legislators that are Republicans, he asked **Mr. Beck** what is wrong with our system? **Mr. Beck** said that is easy to answer. Republicans have been disenfranchised for years. When you recognize the existence of a franchise you know what to expect. A franchise means certain things and it should also mean certain things when we vote for a Republican candidate. The Idaho Republican and Democrat parties develop their platforms, policies and procedures and the voting public is to expect some nexus between the platforms and the governing policies. This is a perfect example of the Republican Party

being disenfranchised. A resolution was passed in 2006 and **Chairman McKenzie** part of the platform committee that considered this platform position. That platform position was passed in 2006 and this is the first hearing on this topic, so there is a disconnect.

Chairman McKenzie stated as a full disclosure he did chair that platform committee, but he did not vote for it. It was approved by the party at the 2006 convention. **Chairman McKenzie** said we are supposed to go on the floor at 9:30 so in the interest of time we need to proceed.

Senator Kelly asked if there is anyone else to testify? **Chairman McKenzie** stated he doesn't believe so. **Senator Kelly** said she has more questions regarding the fiscal impact.

Tim Hurst yielded to those questions. **Senator Kelly** said the fiscal note reads that there is a total of four hundred thousand dollars of general funds, two hundred thousand the first year and the second year. **Senator Kelly** asked **Mr. Hurst** if he participated in that? **Mr. Hurst** replied he did participate, but it is misleading because two hundred thousand dollars is for voter education. Any change will require that. Ten thousand dollars is allocated for voter registration cards. This bill will require party registration. The remaining costs are for the counties. **Senator Kelly** asked if the costs to the counties would be paid out of property taxes, and is it reflected in the fiscal note? **Mr. Hurst** said that is right. **Senator Kelly** asked if he knows what the cost will be to the counties to implement this? **Mr. Hurst** answered around one hundred fifty thousand dollars. **Senator Kelly** asked if that would be for every election? **Mr. Hurst** said probably somewhere in that ballpark. The bill requires a separate ballot for each party.

Senator Stennett asked **Mr. Hurst** what is the cost to the counties today for a single ballot? **Mr. Hurst** stated that is hard to say, but sixty percent of the ballots are punch cards which cost nine cents. At the general election this year seventy five percent of the ballots were optical scan ballots, which is a one sided ballot that cost about thirty cents, and a two sided ballot is probably forty-five to fifty cents depending on the length of the ballot. **Senator Stennett** asked if this will double the cost to do this? **Mr. Hurst** answered he doesn't believe it will double the cost and he would have to guess at the number of voters. **Senator Stennett** asked what if we are short of ballots, what will happen then? **Mr. Hurst** said that is a real problem, we can't just run to the copy machine, sometimes it is a challenge.

Senator Kelly asked **Mr. Hurst** to address the security issue, and what about absentee ballots, how do we know they are being accounted for? **Mr. Hurst** said an absentee ballot voter returns both ballots. If it is an independent voter it will not be checked to see if it was over voted because it is a violation of privacy. One will go into the ballot can and the other will go into the voter ballot box. They are accounted for and part of the process.

Senator Little asked **Mr. Hurst** if the fiscal impact of four hundred fifteen

thousand dollars is correct? **Mr. Hurst** replied he believes it is accurate.

Senator Stennett said that is not what the statement of purpose reflects. **Chairman McKenzie** responded that can be amended if it goes to the floor. **Senator Little** said the difference is three thousand dollars. He does not believe that a three thousand dollar difference should be scrutinized.

MOTION: **Vice Chairman Jorgenson** moved to send **S1506** to the floor with a **do pass** recommendation. **Senator Geddes** seconded the motion.

SUBSTITUTE MOTION: **Senator Stennett** made a substitute motion to hold **S1506** in committee and **Senator Kelly** seconded the motion.

Senator Stennett requested a roll call vote on the motions.

The roll call vote on the substitute motion was taken.

Senator Darrington - Nay
Senator Geddes - Nay
Senator Davis - Nay
Senator Stegner - Absent
Senator Little - Nay
Senator Stennett - Aye
Senator Kelly - Aye
Vice Chairman Jorgenson - Nay
Chairman McKenzie - Nay
The motion **failed**.

The roll call vote on the original motion was taken.

Senator Darrington - Aye
Senator Geddes - Aye
Senator Davis - Aye
Senator Stegner - Absent
Senator Little - Aye
Senator Stennett - Nay
Senator Kelly - Nay
Vice Chairman Jorgenson - Aye
Chairman McKenzie - Aye
The motion **carried**

HJR4 **Senator Davis** said he doesn't know how **long HJR4** will take and the presenter has to be on the House floor very soon. He suggested that **Representative Bedke** have an opportunity to present the resolution and then determine if the committee should return later today and continue, or the committee could pick the bill up again tomorrow. There is one more piece of legislation that could be addressed then as well. He asked the Chairman what he intends to do. **Chairman McKenzie** said his preference is to at least have the bill introduced now since **Representative Bedke** is here. He asked **Representative Bedke** what his preference would be? **Representative Bedke** responded he could do either. **Chairman McKenzie** said he would prefer that **Representative Bedke** present **HJR4** now. **Senator Davis** said if **Representative Bedke** could be finished by 9:45 including questions and answers that would be

his preference. **Senator Little** said this is a Constitutional Amendment. Fifteen minutes for a presentation, questions and answers might be a little too short. **Chairman McKenzie** replied he will see where we are at that time.

Representative Bedke presented **HJR4** to the committee and stated this bill will be on the November ballot and the question of a local option will be voted on. This question has been raised many times. **HJR4** is a clear path forward out of what has been a stalemate or deadlock. Some believe there isn't a need for a Constitutional Amendment and this has been tested before. There is trailer legislation that is broad and generic in its authority to give the local jurisdictions to pass local options. A copy of the trailer language has been provided to the committee.

Representative Bedke said there are three provisions in **HJR4**. One, a two thirds threshold of passage by the voters. Two, there is no jurisdictional slop over, which means extra votes won't be used from another jurisdiction to pass a major in another jurisdiction. Extra votes from a county should not be used to pass a major in another county or a city. Thirdly, the bill states the election will be held in November. That is when there is the most turnout. If this passes the Senate it will be on the ballot and approved by the vote of the people by a simple majority. After passage of the trailer language, local jurisdictions would have broad generic authority to pass local options to carry out plans of their own. Plans would have to be approved by county and city wide vote.

Senator Kelly asked **Representative Bedke** what is the trailer language? **Representative Bedke** said it was printed this morning in House Revenue and Tax. **Senator Davis** said should the committee send this resolution to the floor, it would be his intent not to advance the bill out of the third calendar until we receive the trailer bill from the House.

Senator Darrington asked **Representative Bedke** if the cities receive authority for local use tax, are the precincts separate from the cities? What will happen if precincts slop over between cities and counties? In smaller communities that is the case. **Representative Bedke** said he believes it will occur much the way it does now. Precincts don't always line out by city limits so it will probably be just cities, and not necessarily the counties. **Senator Darrington** said it makes a lot of sense for the counties, but he wonders why he didn't extend it to a regular city election. **Representative Bedke** said that is one of the things that has been at issue for local transportation issues in a major valley. This allows broad authority to cities and counties to have self determination.

Senator Little asked **Representative Bedke** what is the difference between "may and shall" authorize? Will "may" define the statutory guidelines that are envisioned in the trailer bill? **Representative Bedke** replied that is correct. It would be hard to be prescriptive in the Constitution.

Senator Kelly asked **Representative Bedke** if cities and counties are the only ones who adopt local options? **Representative Bedke** responded

that he believes that local options we have now are by city. He isn't sure if Blaine County is countywide. If **Senator Stegner** were here he could provide more detail on what Nez Perce County does.

Representative Bedke stated this is a very simple Constitutional Amendment and it grandfathers in the systems that are in place in Nez Perce, Blaine and Kootenai Counties. They will sunset and be under this sideboard.

Senator Stennett asked **Representative Bedke** to talk about the sunset clause? All the taxes in place in Blaine County have a sunset date and they have to be reauthorized. **Representative Bedke** replied that has happened several times in your local area and this will not be an obstacle to the continuation of what happens in Ketchum. **Senator Stennett** said if four counties voted for a proposed sales tax to fund a trade center, how will the fairness be handled? **Representative Bedke** said those are issues for a regional plan and as an example, in **Senator Darrington's** area a school bond requires a two thirds majority. When regional plans are contemplated, which is in the trailer legislation, they will have the ability to come together. Another example would be here in the Treasure Valley, that the extra votes in Ada County should not pass in Canyon County.

Chairman McKenzie said we are at 9:45 now, unless there are other questions his intent is to adjourn and return either later today, or to continue with additional testimony tomorrow.

ADJOURN:

Chairman McKenzie adjourned the meeting at 9:47 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 26, 2008

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Jorgenson, Senators Darrington, Geddes, Davis, Stegner, Little, Stennett, and Kelly

MEMBERS ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

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

GUBERNATORIAL APPOINTMENT: **J. Philip Reberger** addressed the committee regarding his appointment to the State Building Authority. **Mr. Reberger** said the Authority responds to resolutions from the Legislature authorizing them to look into bonding for designated projects. The latest example would be the Capitol renovation and extension. The biggest project prior to that was the privately built prison which is now financed by the Authority. Once those bonds are paid off it will revert to state ownership.

Senator Kelly asked **Mr. Reberger** if the Authority meets regularly or only when there is something to act on? **Mr. Reberger** replied the Authority meets when there is business. Some years they are busier than others. It just depends on the projects. **Senator Kelly** asked **Mr. Reberger** if he is a registered lobbyist and does he have any conflicts between that and his position with the Authority? **Mr. Reberger** answered there has not been any conflicts. The director of the Authority is an attorney and if issues arise he seeks his advice.

Senator Little asked **Mr. Reberger** when the Capitol renovation was bonded, were there any conditions on those notes, and have all of the bonds been issued? **Mr. Reberger** said his recollection is that all of the bonds have been issued. There were concerns over how long the monies would lie idle, and if there would be tax consequences to that. It has been resolved. **Senator Little** stated he believes that the conditions were based on any possible arbitrosh, he asked if he knows what the spread is and what is being paid for interest versus what is made in interest? **Mr. Reberger** replied he does not have that information with him, but he could get it. Any conditions on the bonds, other than what the bond council and the underwriters require, is that it does not exceed the authority in the legislative resolution. **Senator Little** asked if the range in interest the

state receives is what was anticipated? **Mr. Reberger** stated that is his understanding and he hasn't seen anything to the contrary.

Chairman McKenzie thanked **Mr. Reberger** and advised him the committee would vote on his appointment.

Chairman McKenzie welcomed **Senator Hammond** to the committee regarding his appointment to the State Building Authority. He asked the committee if they had any questions for **Senator Hammond**. **Senator Geddes** commented that is hard as we all know him so well. **Chairman McKenzie** thanked **Senator Hammond** for appearing before the committee.

HJR4

Chairman McKenzie said **HJR4** is on the agenda and there are a few who have signed up to testify. **Roy Eiguren** needs to be in the House to address the trailer bill that accompanies this, so he will speak first.

TESTIMONY:

Roy Eiguren testified in support of **HJR4**. **Mr. Eiguren** stated he is here representing his client, Valley Regional Transit. Valley Regional Transit is one of two regional public transportation authorities in the state of Idaho. Over the past five years he has worked and studied options for funding public transportation. Idaho is one of four states that does not have a local or state dedicated funding source for public transit, the other states are Alaska, Hawaii, and Mississippi. The coalition has worked hard to develop a broad based, statewide coalition to support the goal of establishing a funding source, which is called Moving Idaho Forward. It consists of over seventy five businesses, local governments and trade associations. Other members of the coalition will address this resolution today.

Mr. Eiguren stated after extensive study the coalition has concluded that the only viable revenue source for regional transportation projects is a local option sales tax. Thirty three states currently have a local option sales tax mechanism in place to fund regional and/or city and county transportation programs. Fifteen of the thirty three states allow the revenues to be used for roads. The reason the coalition selected the sales tax as the revenue mechanism to fund this, is because the sales tax is the only revenue generating resource that has the capability to generate the significant amount of revenues necessary to fund these extremely expensive projects. The coalition spent many months developing this legislation to provide a funding mechanism to fund both roads and public transportation on a regional basis. **Mr. Eiguren** said he has worked with local officials, members of the Legislature, the Governor, his staff and other interested parties in developing this. The coalition discussed in considerable detail the proposed Constitutional Amendment that is before the committee. As **Representative Bedke** represented yesterday, the sponsors do not wish that any local option sales tax for transportation legislation be introduced without first moving this amendment forward.

Valley Regional Transit's position is that a Constitutional Amendment is

not necessary, however, **Mr. Eiguren** said he is authorized to work with the sponsors in the hopes of agreeing on an amendment that would be acceptable. Discussions were made in good faith and substantial progress has been made to narrow the differences. A majority of the members of the board now support the amendment, only if acceptable implementing legislation is enacted by the Legislature at this year's session. That legislation was introduced yesterday in the House and it will be acted upon this morning. It is acceptable legislation that allows a majority of Valley Ride members to support the combination of **HJR4** and the implementing bill. It incorporates significant portions of the legislation that was drafted, and it provides broad based authority for cities and counties to levy, with voter approval, a local option sales tax for any purpose that a city or county is organized under Idaho law.

This legislation provides a mechanism for cities and counties to fund, either individually or collectively, a public transportation system, and for the first time in Idaho the citizens will have a way to fund public transportation. **Mr. Eiguren** stated although this is not the manner originally envisioned, **HJR4** along with the implementing legislation, provides for the local option sales tax funding mechanism for public transportation.

Senator Davis asked **Mr. Eiguren** in the event that the trailer bill does not make it out of the House, will his position change? **Mr. Eiguren** replied that is correct.

Chairman McKenzie said if this passes, and there is a vote in a regional area for a public transportation tax, how does he envision this applying? As he understands this, if it isn't approved in a specific city or county then it will not go into effect. **Mr. Eiguren** replied that the way this will work is that it will allow for the cities and counties that wish to participate, in a regional process, would enter into cooperative agreements. The existing mechanism for planning, will be done and then the specific question for the taxing will be voted on in that city or county. The tax would be between one tenth of a cent up to one cent of sales tax. A portion or all of the revenue could be devoted to transportation through the cooperative mechanism. It is not ideal and it is not the approach that was originally thought of, but it is the best compromise. **Chairman McKenzie** said his concern is that it would work for bus lines that are extended out and approved by cities and counties. But if the region wanted to fund a light rail system sometime in the future, and they needed the funding source and it doesn't pass, he presumes the tax would be imposed on those who approved it. **Mr. Eiguren** said it would not proceed in that situation. In Utah there are four counties in the Salt Lake area that currently have light rail. When the vote was before the people to fund it, one county chose not to fund it, so it did not proceed until the voters did approve it. **Chairman McKenzie** asked if the tax was being raised in the other counties until it was approved in the fourth county? **Mr. Eiguren** answered yes, and it proceeded in two counties until the final county approved the tax.

Senator Kelly asked **Mr. Eiguren** what was the required vote in Utah?

Mr. Eiguren said it was a simple majority. It was approved initially by three of the four counties and ultimately the fourth county approved it. In the last five years research shows that all transportation funding measures placed on the ballot in jurisdictions within the fifty states, have required a sixty-six and two thirds majority vote. Three out of ten have passed. **Senator Kelly** asked if only Ada County supported this in the Treasure Valley, how will it be funded? **Mr. Eiguren** responded the plan is already there by the Metropolitan Planning Organization, and presuming this legislation is enacted, there would be a funding mechanism to do this. Both counties would have to vote separately on it, but if one county didn't approve it then it would only extend to the county line. In order to fund a light rail system, debt will be incurred and the Constitution already requires a sixty-six and two thirds vote to incur debt. **Senator Kelly** asked **Mr. Eiguren** if he is representing that Valley Transit Board did not support this, and now they do? **Mr. Eiguren** replied that is correct, the majority. She asked who makes up that Board, and did they meet and change the vote? **Mr. Eiguren** said he is not sure precisely the mechanism that was used. He left that to the management and as he understands this, the directors of the Board met and the majority decided that they wanted to proceed.

Senator Stennett asked **Mr. Eiguren** when the states voted were they all on in a November election? **Mr. Eiguren** said they were not, they were in a variety of elections.

Chairman McKenzie said before we continue, he asked **Representative Bedke** if he had additional testimony? **Representative Bedke** said he will stand for questions or wrap up. **Chairman McKenzie** said he will let others testify and then he can wrap up. **Senator Stennett** requested that he could ask a question of **Representative Bedke**. **Senator Stennett** said the Constitutional Amendment as he reads it, doesn't provide for cities today the authority to do this. He said if the enabling legislation will give resort cities the authority to implement local taxes based on local needs and the best way to do that is to have a sunset provision, there isn't anything in the Constitutional Amendment that requires a sunset provision going forward, is it in the enabling legislation? **Representative Bedke** said he isn't sure he understands the question. **Senator Stennett** said there is local option tax exemptions in Sun Valley that has a sunset. He doesn't see that kind of sideboard in the Constitutional Amendment, so if the tax expires in Sun Valley in 2013, is there an expiration date if it is voted on again? Will the enabling legislation have that sideboard? **Representative Bedke** responded it is his understanding that in that case after a local option sunsets, that the sun will rise again. It is based on a plan that would come forward from the Sun Valley Council and with a two thirds vote it would pass. The last one in Ketchum passed with an eighty-two percent threshold. This will not be a sticking point for cities, that some will sunset and others will not. This was not deemed as a hurdle in those areas. **Senator Stennett** said some sunset and some do not is not the question. **Representative Bedke** said if they don't sunset they are grandfathered in, that is the intent.

Senator Kelly said presuming this provision does not change, she asked

will the tax rate not exceed one percent of the sales tax? **Representative Bedke** replied it would be in addition to that so some areas who are under the old tax would have an additional tax via this mechanism for another purpose. **Senator Kelly** asked once they expire and a different city or county wanted to adopt a tax could it be increased beyond the one percent? **Representative Bedke** said she may be right. **Senator Kelly** asked if the auditorium districts would be prohibited from adopting a local option tax after the Constitutional Amendment is passed? **Representative Bedke** said the auditorium district is for a specific purpose, and when the purpose is accomplished then there may need to be an amendment to the trailer bill. He isn't sure, so he doesn't have a definitive answer for that.

Senator Stennett said as he recalls there is a specific provision in the trailer legislation, that does not allow a local option sales tax to be used for the property tax reduction. **Representative Bedke** responded that he doesn't believe that is in the copy that he has. The C2 version has a tighter language on that very subject addressing the issue that was brought up yesterday. If you are a regional retail hub like the mall is then a local option tax would go for a property tax relief, is like when you shop at Twin Falls, that tax would be used for their property tax.

Senator Kelly asked **Representative Bedke** what about the auditorium district issue? **Representative Bedke** said he will have to get an answer for that. **Senator Kelly** stated the Constitutional Amendment limits it to cities and counties, it doesn't address other jurisdictions.

Fred Tillman, an Ada County Commissioner, and a member of the Idaho Association of Counties Legislative Committee testified in support of **HJR4**. **Mr. Tillman** said the biggest reason they support **HJR4** because it is an opportunity for counties to have an ability for another revenue source other than relying on property tax, in providing services they are required to provide. For decades the Association has been supportive of this concept and it will get the Association closer to that. The enabling legislation that will outline how they can utilize some of the mechanisms. Their purpose is to encourage the legislation and relieve some of the pressure on property taxes. This issue is not just for transit for Ada and Canyon County. It will apply to all cities and counties as well as all regions of Idaho. This is a tool that local governments need and to allow the citizens to decide how it should be funded.

Senator Stennett said the testimony of **Representative Bedke** indicated that regional sites would not be able to use any money raised from the local sales tax to relieve local property taxes. Given that testimony, he asked **Mr. Tillman** if that differs from what he sees? **Mr. Tillman** replied the difference is that the counties would love to have this option as opposed to bonding for a jail to the property tax. If the counties could ask the citizens to use this revenue instead of the property tax to pay back the bonds. He does not believe that the language in the Constitutional Amendment prohibits that from happening. The language **Senator Stennett** is talking about is in the enabling legislation. **Senator Stennett** said if the enabling legislation does not allow the use of sales tax to lower

property taxes, he asked **Mr. Tillman** if he would still be in favor of this? **Mr. Tillman stated** if the enabling legislation allows the counties to bond to build a specific facility, they would be insistent on having it. If they would be allowed to go to the voters and request a local option sales tax, and then apply it directly back to an old across the board property tax, they want a course that would be for a specific project.

Senator Little said he is looking at the Ada County budget, and you indicated that your only source of revenue was from property taxes. The chart shows that property taxes are forty-four percent of your total revenue. **Mr. Tillman** responded that Ada County is the only county for the past two years that has not taken the three percent they are allowed by law on property tax. The reason being there is a robust economy, a healthy new construction, and the new construction dollars have been relied on to provide for the services to keep up with the growth, as opposed to going back to property taxes. He wasn't trying to represent that property tax is their only source of revenue.

Ken Burgess, who represented Community Planning Association of Southwest Idaho (COMPASS) addressed the committee regarding **HJR4**. **Mr. Burgess** stated that COMPASS is the Metropolitan Planning Organization (MPO) for Ada and Canyon County, and they are responsible for the transportation and land use planning for the future of the region. The board of directors consist of elected officials who represent the various municipalities and transportation implementing agencies in those two counties. There are thirty nine members involved in COMPASS including the two most populous counties, and the three most populous cities in the state, that represent nearly one third of the population in the state of Idaho.

Mr. Burgess said MPO is required to receive federal transportation dollars once an urban area reaches a fifty thousand population level. The logic is that once an area reaches that level, then a regional transportation planning process must be engaged to ensure consistent planning across municipal and county boundaries. It is an effort to ensure that each entity is not building transportation systems independent of each other, that would result in a fractured inconsistent system. Currently there are five MPO's in the state. **Mr. Burgess** said the COMPASS board is undecided on **HJR4**. They are actively involved in the push for local option tax authority for transportation, however, they view the local option authority as a method for local communities to be able to help themselves in a climate of growing costs, and dwindling state and federal transportation funding sources.

The Treasure Valley continues to face transportation challenges due to the continuing rapid growth of this valley. It has put a strain on our roadways, our air quality, and our quality of life. The concept of local option authority was born from a realization that we cannot continue to rely on federal and state transportation funding to meet our critical needs. This option provides an opportunity for local citizens to decide what kind of local systems they want and how much they are willing to pay for them. COMPASS believes that a Constitutional Amendment is not needed for

the implementation of this authority, but politically it is required. **Mr. Burgess** said his client, COMPASS is decidedly split on **HJR4**. The Board neither supports, nor opposes this amendment. COMPASS recognizes the needs and challenges of urban areas differ from the needs and challenges of the rural parts of Idaho. Granting the local option authority is a significant political step for this Legislature. Additionally, it is a significant step toward true local control in that the local citizens themselves can decide if and how they want to deal with their own backyard issues.

Senator Little asked **Mr. Burgess** if the Board talked about the vote requirement of sixty-six and two thirds? **Mr. Burgess** replied yes they did discuss that at length. Ultimately the decision was that from a Constitutional perspective on a local option, they felt sixty percent was a better place to be. **Senator Little** said then they advocate amending the Constitution to move the bond indebtedness down from what it is now. **Mr. Burgess** said he did not say that.

Senator Kelly asked **Mr. Burgess** if the members of COMPASS talked about the implications for light rail? **Mr. Burgess** stated the biggest discussion centered around Canyon County, and that they may not pass a local option tax at sixty-six and two thirds. Another concern centered on the public transit side and given the current regional public transit system, it doesn't work between the two counties. It will stop at the county line in that case. The broader issue is accomplishing a way to gain control of that corridor for future use. There are other highway issues that need to be addressed like 20/26 or Chinden Boulevard. This is an alternative and on plan to be widened and extended, but it is not funded.

Senator Stennett said his question is similar to what **Senator Little** talked about. If we use the sales tax as a pledge for a debt instrument that differs from property tax, he asked **Mr. Burgess** could it be done without a two thirds vote? **Mr. Burgess** said he is not an expert in bonding, but it is his understanding that in order to incur bond indebtedness it requires a sixty-six and two thirds vote.

Kelly Buckland, the Director for the Idaho Independent Living Council said the Council is appointed by the Governor and they focus on issues that deal with people with disabilities. **Mr. Buckland** stated last year the Council visited people throughout the state with disabilities, and asked them what the number one issue is for them in order to live independently. Their response was transportation. To get from one county to another and from city to city it is virtually impossible, unless they can drive or use a rail system. A year ago the Council supported the local option tax for public transit. This year they would have opposed that because it would have only funded transportation and roads. This legislation will increase property taxes and not help a person with disability. **Mr. Buckland** said he believes that none of the money will go to public transportation and help people with disabilities. If this passes it isn't for transportation and dialog needs to continue on how to provide transportation for people with disabilities.

John Watts said he is with Veritas Advisors and today he represents the Idaho Chamber Alliance. **Mr. Watts** stated that yesterday he provided a statement from the Alliance and in that statement they took an encouraging view to the measure in front of you. He is here to report that for many of the same reasons that were articulated by **Ken Burgess**, the chambers that he represents have gone back and forth on this issue. As late as yesterday he received new instructions from his client that the original statement provided is no longer applicable. They will go along with the will of the committee and the Legislature in order to get to the point where chambers can work with better local governments, county or city, and help implement that revenue raising mechanism that is needed to help recruit businesses to their areas and to develop the communities.

Senator Kelly asked **Mr. Watts** if he looked at the auditorium district question, and will a Constitutional Amendment limit local option to the cities and counties, which could disallow auditorium districts? **Mr. Watts** answered that question did not come up. Their focus was on cities and counties having that flexibility and the concern was jurisdiction by jurisdiction never filtered down to include a highway district or an auditorium district. **Senator Kelly** said on the list for existing local option sales tax, the only nine city or counties on the list include two auditorium districts, one in Boise and one in Pocatello. **Mr. Watts** responded they did not have that specific conversation. His understanding is that the auditorium districts are funded through an occupancy tax as opposed to a sales tax.

Senator Stennett asked **Mr. Watts** can an occupancy tax be considered a use tax? **Mr. Watts** replied that he is not an expert in that area, but it could be a bed tax. **Senator Stennett** said occupancy or bed tax is based on the value of the product that is being sold, and that is a sales tax. **Mr. Watts** said he needs to step out of that pool, and again they did not have that conversation, they dealt only with the cities and counties.

Chairman McKenzie said there is no one else signed up to testify so he will give **Representative Bedke** an opportunity to wrap up.

Representative Bedke stated the committee should be able to see why this issue has been such a struggle for decades. **HJR4** offers a clear path out of this dilemma and the enabling legislation will provide the authority. This is simple, it is a two thirds threshold and it will not use extra votes in one jurisdiction to pass a measure in another. The November date is there because of the most turn out. **Representative Bedke** said with that, he leaves it to the wisdom of the committee.

Senator Stennett said in Ketchum and Sun Valley they have a local option sales tax in place. The net effect for providing for a local option sales tax is the tax from tourists. It has always been sold as a way to not have property taxes to pay for it. When the tax in Sun Valley and Ketchum expires and there isn't a specific prohibition, the effect is we are reducing property taxes. He asked **Representative Bedke** what is his position on that? **Representative Bedke** responded there is another committee who is going round and round on this, and he will have an

answer before the enabling legislation goes forward. The part of the code is intact and can go forward for resort cities as it has in the past. In a hurried conversation in the hall regarding resort taxes, the answer was that they are unaffected by this. The auditorium district however is another issue and they would be grandfathered in. This is a clear path forward and what we have now does not allow for a local option to proceed. This is a Constitutional Amendment, it will be on the ballot in November, and the citizens of Idaho will decide. **Senator Stennett** said if the monies used as a local option sales tax in certain communities were used to enhance the services in that community, how will that impact local property taxes, and would it be prohibited? Will the trailer bill call out the specific uses for sales tax? **Representative Bedke** said as he understands the C2 version it will be measures specifically for property tax relief. The enabling legislation is meant to empower at the local level and not be restrictive, so they can come up with options as another source of revenue.

Senator Kelly asked if there is a difference between a sales tax and a use tax? **Representative Bedke** said he believes a sales tax is what you pay at the grocery store, and the use tax is what you don't pay for at the WalMart in Ontario. **Senator Little** said he is looking through the Constitution now and use tax is not in the Constitution. **Senator Stegner** said a use tax is the same tax that is imposed on items you use or consume that you are not being taxed on in the first place. For instance, if you were to purchase food items in Ontario and bring them back to Idaho, you have an obligation to pay the same value in sales tax which is called the use tax. You pay that when you file an Idaho tax return.

MOTION:

Vice Chairman Jorgenson made the motion to send **HJR4** to the floor with a **do pass** recommendation. **Senator Geddes** seconded the motion.

Senator Davis said should this come out of committee it is his intent to hold it in the thirteenth order of business until the trailer bill is received for consideration in a germane committee, and if appropriate he would recommend an additional amendment. Once it comes out of the amending order or it goes straight to a committee, at that time **HJR4** will be picked up.

Senator Little said he would have drafted this a little different. A lot of what is envisioned with this and the other bill is long term debt and the two thirds hurdle is pretty high. The Constitution is clear on that, so reluctantly he will support the motion.

Senator Darrington stated that he supports the motion and he can handle the two thirds vote, it is something we have lived with for a long time. His only problem is the November election date and consolidating everything on that date. That is the reason behind this, but he will support this to give an opportunity to do some things locally if they have enough support to do it.

Senator Stennett said he agrees with **Senator Little** and the issue on the sales tax. There is an instrument out there where the sales tax can be

pledged. He is not sure if the two thirds super majority is necessary in order to get there. Whoever the holder of the bond is has no guarantee that there won't be a property tax. The fact that there is so much going on here at the end and it is not multi jurisdictional, and if there was a May date along with the November one he would be more inclined to support it.

Senator Stegner said he will vote against the motion. The whole concept of allowing local option determinations is to put trust in the local people and allow them to make decisions on their own. The Constitutional Amendment is an attempt to deny them that option of deciding their own fate. He finds no justification for the two thirds majority for a sales tax.

Chairman McKenzie said he will take the chairmans prerogative to explain his vote. He has been an advocate of this as a funding mechanism for public transportation for a long time on interim committees that he has served on. It is important for his district and the state but he is divided on using this mechanism for the same reasons as **Senators Stegner and Stennett**. We are getting something but it is kind of a poison pill if it is such a high standard in the Constitution that we won't be able to change later. **Chairman McKenzie** stated that he may change his vote on the floor, but right now he doesn't believe this is the right way to do this.

A roll call vote was taken on the motion to send **HJR4** to the floor with a **do pass** recommendation.

Senator Darrington - Aye
Senator Geddes - Aye
Senator Davis - Aye
Senator Stegner - Nay
Senator Little - Aye
Senator Stennett - Nay
Senator Kelly - Nay
Vice Chairman Jorgenson - Aye
Chairman McKenzie - Nay
The motion **carried**.

RECOGNITION: **Chairman McKenzie** said our committees cannot get our business done without the hard work of the pages. The committee appreciates **Kristen's** work. A letter of acknowledgment signed by the committee members and a Senate watch were given to her in appreciation. He asked her what her plans are after graduation. **Kristen** said she plans to attend the University of Idaho and study civil engineering.

H654a **Chairman McKenzie** said there are six individuals signed up to testify on this, so testimony will be limited. **Representative Nonini** presented **H654a** to the committee. He stated after two years of work on this he is before the committee with **H654a**. Upon passage of this it will add a new section to Chapter 6, Title 18 of Idaho Code to make it a criminal act to coerce or attempt to coerce a woman to obtain an abortion.

Senator Kelly said she does not have the engrossed version of the bill.

Chairman McKenzie said we have the bill and the amendments and it is a little tricky to go back and forth. **Senator Stegner** said he will have the page go and get the engrossed version of the bill. **Representative Nonini** said the question was raised to him as to whether or not this is a problem. He provided the committee with letters from several organizations who support **H654a**. It is interesting to note that in Idaho Code there are sixteen areas where coercion is listed as a crime. But no where in code does this issue come up and it is a serious situation.

TESTIMONY:

Bryan Fischer, the Executive Director for the Idaho Values Alliance testified in support of **H654a**. **Mr. Fischer** said coercion is a bigger problem than many people realize. According to the medical science monitors sixty-four percent of all abortions involve some form of coercion. The Journal of Obstetrics and Gynecology stated that pregnancy itself places a woman at a higher risk for physical assault, and the Journal of the American Medical Association murder is actually the leading cause of death in the United States of pregnant women. In St. Louis a pregnant sixteen year old girl telephoned 911 from a Planned Parenthood facility to prevent a coerced abortion. The London Times on March 16 reported that the Royal College of Psychiatry notified members of Parliament that they concluded abortion results in an increased risk of mental health breakdowns for women. **Mr. Fischer** stated that the risk of continuing a pregnancy is greater than the risk of terminating one. The mental health profession now recognizes that and has shifted in the direction that abortion does involve significant long term risks for women. This is a pro choice bill and it will protect the rights of a woman to choose life. He urged the committee to support **H654a**.

Jason Herring, the legislative coordinator from the Right to Life of Idaho testified in support of **H654a**. **Mr. Herring** said in February 2005, ABC news ran a report entitled "Why Pregnant Women Are Targeted". As mentioned, the leading cause of death among pregnant women is homicide. It is estimated that three hundred twenty four thousand pregnant women are hurt by intimate or a former partner of every single year. In 2001 a study published by the Journal of the American Medical Association stated that twenty percent of women in Maryland, who died during pregnancy were murdered. Men who kill pregnant women are most likely romantically involved with their victims, and view the pregnancy and unborn child as obstacles and burdens to their lives. The recent story that made national news of a marine corporal serves as proof that these statements and testimonies are true. **Mr. Herring** stated that the American College of Obstetricians and Gynecologists have said that domestic violence is a pervasive health problem particularly among abortion patients. Statistics alone make an overwhelming case for anti abortion laws. Behind these percentage points there is a life of someone who is in crisis situation and vulnerable. This conclusive evidence makes an argument that Idaho needs an anti abortion law in code.

Julie Lynde, the Legislator Coordinator for Cornerstone Institute of Idaho said she will keep her remarks brief. The Institute is in support of **H654a** and it emphasizes the tremendous value that the state of Idaho places on the lives of pregnant mothers and their babies. **Ms. Lynde** stated it is a

pleasure for her to stand in support of this legislation and the Institute commends **Representative Nonini** who has worked so hard on this. She urged the committee to support **H654a**.

David Ripley, the Executive Director of Idaho Chooses Life testified in support of **H654a**. **Mr. Ripley** stated he has taken many phone calls at the center regarding this issue. On numerous occasions he has been asked what protections are available to protect a woman from being coerced into having abortion. Over the years the center has made an argument on behalf of women who are coerced. The current law of Idaho implies that if a woman submits to an abortion against her will, it is an illegal abortion. The problem with the current code is that it isn't defined and there isn't a penalty for it. **Mr. Ripley** provided a copy of a newspaper article to the committee regarding a high school student who was coerced into having an abortion. He had hoped the legislation would have been more broad, but this is a solid beginning and it will codify for the first time a criminal provision for coercion.

Fairy Hitchcock, a concerned citizen testified in opposition to the bill. **Ms. Hitchcock** said she is against this bill for personal reasons, as her family has been affected in many ways. This bill is in error and it threatens families if they take this bill as it is worded, that the law would be beneficial to them to address. Her daughter was raped and abused by a home schooled student when she was an under aged patron at the YMCA.

Chairman McKenzie asked **Ms. Hitchcock** to speak to the bill.

Ms. Hitchcock told the committee of her personal experiences related to the rape of her daughter and her own charges of stalking. **Senator Davis** said he apologizes to the witness, but the committee is short on time. He asked the witness to focus on the legislation. **Ms. Hitchcock** said this bill talks about inflicting injury or death on the pregnant woman, and she believes that abortion is not an answer, and this bill will cause more harm than good.

Christ Troupis, legal counsel for Idaho Chooses Life stated he would like to make a few brief comments regarding **H654a**. This bill is simply an implementation of a woman's fundamental rights. The Supreme Court in *Roe v. Wade* stated that a woman has a constitutional right to choose an abortion, and a personal right to be free in whatever choice she made to do with her body. That includes the right to be free from assault and the choice to preserve the life of her unborn child. Based on that fundamental constitutional right, **H654a** implements that by empowering a woman to refuse to be coerced into having an abortion. This bill has been narrowed from previous bills in order to ensure that it is constitutional and that it has a strong presumption of constitutionality in support of it. **H654a** addresses physical injury, threats and conspiracy to commit physical injury or death on a woman. The Idaho Supreme Court has already ruled that true threats are not encompassed or protected by the First Amendment. True threats include the expressions of intent to inflict serious injury upon a person. **Mr. Troupis** said this bill is narrow in

scope, but it is an important first step in protecting women from forced abortions.

Senator Darrington said in the penalty section of this bill spells out the penalty for a misdemeanor and a felony. Both of which is simply the standard misdemeanor penalty in Idaho Code and the standard felony penalty. The standard felony is five and five, and the standard misdemeanor is six and one. He asked **Mr. Troupis** why is the specific penalty spelled out as a misdemeanor and then it is a felony? It seems unnecessary. **Mr. Troupis** responded the language is the final language that resulted. He tends to agree with **Senator Darrington's** comments, but since the description of the penalties is standard in code, it will be defensible and that it won't raise some other constitutional challenge. It is the safe route to take. **Senator Darrington** stated he accepts that explanation as totally unnecessary. There are so many different penalties for a misdemeanor or a felony spelled out in Idaho Code, that when you put a specific penalty in along with a misdemeanor or felony, it sends a message that it is different in the standard penalty.

Representative Nonini stated that research has found that over half of the women who undergo abortion do so because of coercion. In Idaho it is a crime to coerce a women into giving you money, but using those same threats for an abortion are not even ticketed. **Representative Nonini** said he could go on and on and mention there are sixteen places in Idaho Code where coercion is a crime, but in this particular case it isn't. This rises to the level of seriousness that needs to be added.

Senator Little said aggravated battery has a maximum of fifteen years, this sets it at five years. He asked **Representative Nonini** if this will lower the penalty if it is aggravated battery? **Representative Nonini** said no we are adding another crime to the person who is charged.

Senator Stennett asked **Representative Nonini** are there other provisions in Idaho Code that carry the same penalty provisions? **Representative Nonini** replied he has the code sections, but he does not have what the crimes are, so he cannot speak to that.

MOTION:

Senator Davis made the motion to send **H654a** to the floor with a do pass recommendation. Vice **Chairman Jorgenson** seconded the motion.

Senator Kelly said we all know about domestic violence and it is a serious problem in our society. This Legislature has recognized that. There is very specific language for battery and aggravated assault with robust penalties. **Senator Kelly** stated she acknowledges the problem, but this is on top of existing laws which are more stringent than what is here. This is unnecessary legislation that complicates the situation.

The motion carried by **voice vote**.

ADJOURN:

Chairman McKenzie said there will not be additional meetings scheduled at this point. He adjourned the meeting at 9:48 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

- DATE:** March 28, 2008
- TIME:** 8:00 a.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Vice Chairman Jorgenson, Senators Geddes, Davis, Stegner, Stennett, and Kelly
- MEMBERS ABSENT/ EXCUSED:** Chairman McKenzie, Senators Darrington and Little
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- CONVENE:** **Vice Chairman Jorgenson** called the meeting to order at 12:24 p.m.
- S1507** The Secretary of State, **Ben Ysursa** presented **S1507** to the committee. **Mr. Ysursa** stated **S1507** as he calls it, is the one party call for ballot. It does not meet the actual party rule in totality, but it is different and the operative section is 904(a), in section 3, page 2 of the bill. If in fact a party has a rule which restricts voters from that party's primary election, to publicly declare party affiliation, this will provide for the voter to check in the poll book the ballot of the party they wish to vote for in the primary. If the party does not have a rule there wouldn't be a check box and the voter would be given the other party's ballot.
- Mr. Ysursa** said in 1960 and 1962 the state of Idaho had a call for ballot. It was only used for those two election years. The reason he brought this bill forward is that it does not have party registration in it. The other bills have party registration and the voter registration system would be changed. Idaho has never had party registration. This is a call for ballot for the party who has the rule that wants it restricted, and it will be public record. **Mr. Ysursa** stated this will meet most of the rule, not completely and it maintains the tradition of not having party registration. There could be an amendment for an alternative process if the party so chooses. It would be paid for by the party and no expenditure of public funds. **Mr. Ysursa** said that **Kirk Sullivan** is in favor of this legislation and he wanted him to convey that to the committee.
- Senator Kelly** asked **Mr. Ysursa** how will this work for absentee voters? **Mr. Ysursa** responded in section 5 it deals with that. The voter will request the ballot for the party they wish to vote for, if that party has a rule. **Senator Kelly** said this is not a party registration, but the voter will just have to indicate that. She asked what happens to those absentee ballots? **Mr. Ysursa** answered the absentee applications are public

record. **Senator Kelly** asked what about non partisan judges, everyone would be able to vote for them, will there be three different ballots? **Mr. Ysursa** said right now the Republican ballot would include the non partisan and the Democrat ballot would also. That is done now, however based on the number of candidates it may not be possible. It is different in counties depending on the voting system that is used. Paper ballot counties use a pencil. Judicial ballots are separate, they are green. Punch card ballots are in the back. The ballots we are talking about are the optical scan ballots, and there may be two. **Senator Kelly** asked what about third party ballots? **Mr. Ysursa** said a few years ago it was necessary to have three, and there is a statute for that and minor party ballots are not printed in the primary. It could be possible to have a separate libertarian ballot.

Senator Stennett asked if a libertarian party passed a rule, wouldn't it be required to have a ballot for them? **Mr. Ysursa** replied you are correct that situation could happen. The situation of trying to adapt the state law to individual party rules can be a situation that the state will fund, that is why the alternative about a party nomination process completely outside the state is an alternative that is there. **Senator Stennett** said there are four different parties and if you are an independent, how will that be handled? **Mr. Ysursa** said independents file a petition and they do not appear on the primary only in the general election. An independent in Idaho means no party affiliation. The primary nominates only party candidates. **Senator Stennett** said as a public policy question, is it fair to ask the taxpayers in Idaho to fund an intra party primary? **Mr. Ysursa** said he is not extolling the virtues of this bill, he does not believe the system is broken. The courts and party rules and decisions have the state in this situation. The Legislature does not want to deal with this issue anymore than he does. It is in front of us and it is going to hit us over the head. **Mr. Ysursa** said at what point does the state have the right to say a few things if the state is funding it, the state i.e. through the county, versus the right of the party and their associational freedoms to conduct their own primary. That is the reason for **S1506** and **S1507**. It is a poison pill that should not be used. The Democrat party does it in the presidential, they are completely outside by their rules. **Senator Stennett** asked if the state could pass a public policy that requires the Democrats and Republicans to go in their separate corners and get out of the primary selection business entirely? **Mr. Ysursa** said it should be required and allow for it, but the courts have already allowed for it in some areas. You can't be forced to associate. There has to be alternatives available and public policy of this state is to have an open primary. **Senator Stennett** stated we could pass in this Legislature a piece of legislation that would determine the public policy of the state, and allow the parties to select their own candidate, privately fund it, and have no state involvement. He asked **Mr. Ysursa** if that was correct? **Mr. Ysursa** responded yes.

TESTIMONY:

Vice Chairman Jorgenson stated there are two people signed up who wish to testify. **Rod Beck** testified in opposition to **S1507**. **Mr. Beck** said he discussed the merits of the bill with **Mr. Ysursa** and he supported **S1244** last year. He was told it would pass and become law, but it was introduced and never heard from again. The other day he suggested that

maybe **S1506** was not consistent with the rules of the Idaho Republican party and every Republican in here voted the opposite of what he suggested. **Mr. Beck** said this bill just like **S1506**, is not consistent with the Republican Party's rule, and therefore could be subject to challenges. However, he was intrigued by the discussion and he has prepared and written a bill that could have been introduced. He provided that to **Senator Davis** which essentially does what **Senator Stennett** is asking. It takes the state out of the business of deciding these matters and if the political party were to choose to register it would require party registration.

Senator Davis said **Mr. Beck** did provide a copy of that bill to him before the meeting, but he has not looked at it.

Senator Kelly asked if it would change the non partisan elections to only the November election? **Mr. Beck** said the bill before **Senator Davis** would comply with the state party rules. No member of the Idaho Legislature would ever have to say that they voted for a closed primary bill because that is not what the bill will do. That bill establishes that it is not the domain of the state to be making these decisions, but the domain of the political parties. Once the party makes that decision it sets up a mechanism for party registration and it leaves an out for the chief collection officer to say it is not in the states compelling interest to pay for this. The chief election officer will have the sole discretion to decide that.

Senator Stennett asked **Mr. Beck** what about the privacy issues, will it become public knowledge and published on a website or in the newspaper.

Senator Davis said he hates to cut off the minority leader, but we are now debating a bill that is not even before us. **Senator Stennett** said he will withdraw his question. **Mr. Beck** said he interjected that bill simply to say that he did have something else to propose. **Vice Chairman Jorgenson** said that is so noted and we are staying with the agenda. **Mr. Beck** said he has nothing further to add.

Keith Allred, from the Common Interest Group testified in opposition to **S1507**. **Mr. Allred** said this is a long standing discussion about what to do with the primary election system. He had many discussions with the Secretary of State and his deputy, as well as **Mr. Beck**. **Mr. Allred** stated **Senator Stennett's** questions were good and it is a curious area of law that we have entered into. As he understands this, before 1930 this was an informal party affair. There was lots of mischief that went on that no one liked. One problem is that it narrowed participation. If you have a state conducted election process more people will vote. You tend to get more participation in the general election, but the majority of the voters are not particularly pleased on either side. **Mr. Allred** said the original reasons are still compelling, but there needs to be some accommodation that will allow both parties to live with each other comfortably. When we talk about primary elections there needs to be a balance. There are the interests of the political parties, constitutional rights and freedom of association, and the rights of the state and its voters and taxpayers to be considered. **Mr. Allred** stated his approach in all of this has been to

understand the different interests of all involved, and find some policy with a reasonable balance. This bill does not do a particularly good job of striking a balance between those interests.

For the voters of the state of Idaho this approach is quite a bit more intrusive on the voters than other approaches that have been talked about, including **S1506**. Even though there isn't voter registration, there are a lot of voters who are independent who want to retain their independence from any party, vote in primaries, and have their choice be confidential. The taxpayers help fund our election system and with this bill they have no where to go. They are faced with the choice of checking off the Republican Party to be a way of indicating association, or not. The "or not" does not leave any room, because the only other alternative in primary elections is the Democratic Party. It is a public declaration of affiliation with a record of it. **Mr. Allred** said he views that as far more intrusive on the voters. Last year **S1244** provided something very close to this, which provided public declaration and there was room for an independent. State and public employees have reacted to this bill. They believe it will put them in a bad spot if there isn't a safe harbor for them. Members of the press as well expressed their concern over the public declaration. The members of the Common Interest do not like this bill because it is more intrusive. In 1960 and 1962 the state did this and there is a reason it only lasted for two years. It is not a good balance and it will not implement the party rule.

MOTION: **Senator Davis** moved to send **S1507** to the floor without recommendation. **Senator Geddes** seconded the motion.

SUBSTITUTE MOTION: **Senator Stennett** made the motion to hold **S1507** in committee. **Senator Kelly** seconded the motion.

Senator Stennett stated this bill does not differ from the other floor that is on the Senate floor. He objects to asking members of the public who are not members of the Republican Party to fund this kind of operation. He also objects to the privacy concerns that are valid and they will have a chilling affect on the election process. If the Republicans want to have a private primary, then they should pay for it themselves.

Senator Stennett requested a roll call vote be taken.

A roll call vote on the substitute motion to hold **S1507** in committee was taken.

Senator Darrington - Absent
Senator Geddes - Nay
Senator Davis - Nay
Senator Stegner - Nay
Senator Little - Absent
Senator Stennett - Aye
Senator Kelly - Aye
Vice Chairman Jorgenson - Nay
Chairman McKenzie - Absent
The motion **failed**.

The roll call vote on the motion to send **S1507** to the floor **without recommendation** was taken.

Senator Darrington - Absent

Senator Geddes - Aye

Senator Davis - Aye

Senator Stegner - Aye

Senator Little - Absent

Senator Stennett - Nay

Senator Kelly - Nay

Vice Chairman Jorgenson - Aye

Chairman McKenzie - Absent

The motion **carried**.

ADJOURN: **Vice Chairman Jorgenson** stated further committee meetings will be at the call of the chair. He adjourned the meeting at 12:58 p.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

BUCK SLIP

DATE: April 2, 2008
FROM: CHAIRMAN MCKENZIE
TO: MEMBERS OF THE STATE AFFAIRS COMMITTEE
SUBJECT: BUCK SLIP – HJR5

Please indicate your desires on this buck slip.

Name	Do Pass	Hold in Committee	Without Recommendation	14th Order	Hold	Sign	Object to Buckslip
Senator Curt McKenzie, Chairman							
Senator Michael Jorgenson, Vice Chairman	X					<i>Michael Jorgenson</i>	
Senator Denton Darrington	X					<i>Denton Darrington</i>	
Senator Robert Geddes	X					<i>Robert Geddes</i>	
Senator Bart Davis	X					<i>Bart Davis</i>	
Senator Joe Stegner	✓					<i>Joe Stegner</i>	
Senator Brad Little	X					<i>Brad Little</i>	
Senator Clint Stennett	X		X			<i>Clint Stennett</i>	
Senator Kate Kelly			X			<i>Kate Kelly</i>	

When complete, please return (along with the attached bill) to the Secretary of the STATE AFFAIRS Committee – Room 205 . THANK YOU!