

Senate State Affairs Committee

Minutes
2009



MINUTES

SENATE STATE AFFAIRS COMMITTEE

- DATE:** January 16, 2009
- TIME:** 8:00 a.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Davis, Stegner, Fulcher
- MEMBERS ABSENT/ EXCUSED:** Senators Geddes, Kelly, and Stennett (Thorson)
- GUESTS:** 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.
- PRESENTATION:** **Chairman McKenzie** thanked **Major General Larry Lafrenz** for being here today regarding the Idaho Military Division and the Bureau of Homeland Security. He stated he knows that **Senator Darrington** knows a lot about homeland security and the issues on a national level with his involvement with NCSL (National Conference of State Legislators), but not all of us have that knowledge and what we are doing here in Idaho and at Gowen Field.
- Major General Lafrenz** addressed the Committee and said that he is here today to give an overview of the Idaho Military Division. The Idaho Military Division consists of the Idaho Army and Air National Guard and the Bureau of Homeland Security. He provided a status on the Army and Air Guard and an understanding of what they do. The **Major General** stated that he is the Adjutant General for the State of Idaho, **General Alan Gayhart** oversees the Army, **General Gary Saylor** oversees the Air, and **Colonel Bill Shawver** is the Director for the Bureau of Homeland Security.
- Major General Lafrenz** continued and said that the recruiting retention has been a remarkable success. The Army Guard at this time is at 107% strength, and Idaho is number one in the nation for recruiting and retention performance. Additionally, the Army Guard has been over 100% since the brigade returned from Iraq and they continue to maintain that. Even though there is a downturn in the economy and you may hear that it is a big plus for the recruiting effort, it is not necessarily so. The Guard is selective about enlistment to ensure the right formation. For the first time in over ten years the Air Guard is 100% or better in strength. The past few years have been a phenomenal amount of hard work for all to maintain this strength.

Senator Stegner asked **Major General Lafrenz** if this is a reflection of the economic condition of the state and nation, or is it something beyond that. **Major General Lafrenz** responded that probably over six months ago the Air Guard was over 100% and the Army Guard has been well over 100% for the last three plus years. There are more applicants applying now due to the benefits, but this is not reflective of the economy.

Major General Lafrenz stated the 116th Heavy Brigade Combat Team is the major unit in the state on the Army side. It is sourced with full time manpower and funded resources come from the federal government. Sometime in 2010 it is expected that the brigade will be deployed again to Iraq. They are expecting a full spectrum mission, which means a major deployment on the Army side. Another major kudo for the state of Idaho and the brigade **Major General Lafrenz** said, is that the brigade was selected by the National Guard Bureau in Washington D.C. to be a National Guard Brigade. The brigade is made up of units from Idaho, Montana and Oregon, and it will be modernized with the newest equipment in the Army today. On the Air side when BRAC (Base Closure and Realignment Commission) happened in 2006, the recommendation for the state of Idaho increased the A-10 fleet but they lost the C130 aircraft and have only one now. They have continued to work on the ISR (Intelligence Surveillance Reconnaissance) Mission and after two years, due to **General Saylor's** efforts, they have located four C130's. Currently the Air Guard has two in storage, but they are not authorized to fly them. The Air Force is working to make this an ongoing mission and are confident that this mission will come to the state of Idaho.

With regard to construction, **Major General Lafrenz** said the Orchard Training Area is a 138,000 acre facility south of Boise, and is considered one of the best training areas in the United States today. It is equipped with modern computerized ranges, which supports tanks, Bradleys, attack helicopters and heavy artillery. The federal government has put a lot of resources into the training area to support not only their units, but others who come to Boise to train at their facility. The modernization is a 13.5 million dollar project expected to be completed in fiscal year 2009 with railhead, urban training, and range support facilities. In phase 3, a 157 million dollar barracks project is scheduled over the next five years. The National Guard Bureau has submitted to the new administration a request for about 90 million dollars for phase 3, along with improvements to the Mountain Home Armory facility under the economic stimulus package. A unit in Sandpoint was created about two years ago and the unit is now well over 100%. It has a temporary Armory facility and it is on the Federal Military Construction program for fiscal year 2012. There will be some matching state funds, if approved, and the funds will be required in order to build a permanent facility there.

Senator Stegner stated when the 116th brigade returned a few years ago there was discussion regarding the equipment depletion of the Guard. Additionally, there was concern about replacement of the equipment to the Guard. He asked **Major General Lafrenz** what the status is regarding the equipment replacement. **Major General Lafrenz** responded that the Guard is in a healthy position at this time. The Army has committed to the

Army Guard approximately 40 billion dollars over the next five years for equipment modernization. Currently, they are just about full of rolling stock and rapidly approaching that point, as the Guard is sourced for a potential deployment in 2010. Most of the vintage equipment is no longer in the Army inventory because it is hard to get replacement parts.

Vice Chairman Pearce asked **Major General Lafrenz** to explain how the Army Guard, Air Guard and the National Guard along with Homeland Security all intermesh. **Major General Lafrenz** replied that each state and territory has a National Guard that works on a day to day basis with the Governor of its state in a non-federal status. The National Guard is the only military organization in the country that has dual status unless mobilized by the President in support of Iraq or Afghanistan. The Air Guard does this on a continual basis. **Major General Lafrenz** said that he commands and has oversight of the Idaho Army and Air Guard, and he works for the Governor on a day-to-day basis. In the Bureau of Homeland, which is also part of the Idaho Military Division, **Colonel Bill Shawver** is the Director. The Idaho Military Division is made up of the Army and Air Guard and Homeland Security. The Army and Air Guard are both federal and state. The Bureau of Homeland Security is strictly a state organization under the control of the Military Division of the state.

Senator Darrington asked **Major General Lafrenz** if he was suggesting that the state match is different with respect to the armory unit in Sandpoint? In addition to that, as we remodel armories across the state, does it help with recruitment. **Major General Lafrenz** replied that the state of Idaho has been very generous as we modernize and update our facilities. Those facilities are not only used by the Guard, but by local citizens and local groups, as well as city and local governments. What he is referring to in Sandpoint, is brand new construction and building a new armory in a location where it never existed before. The match in all likelihood will not be more than seventy-five percent federal and twenty-five percent state, and they are estimating the project to be about eight million dollars.

The Director of the Idaho Bureau of Homeland Security, **Colonel Bill Shawver** continued the presentation and said that state statute, executive order, and federal law articulate their responsibilities to the citizens of Idaho. The Bureau has seventy-six employees throughout the state in Lewiston, Coeur d'Alene, Meridian, Boise, Twin Falls, Pocatello and Rigby. Their primary core competencies include emergency management, homeland security, grant management and interoperable communications. First and foremost the Bureau is in the business of customer service support and their primary customers are county and local government, five tribal nations, private sector providers and other state agencies. **Colonel Shawver** said, as **Major General Lafrenz** previously stated, they are a separate Bureau established within the Division of the Military under the executive office of the Governor. **Colonel Shawver** stated that there are six area field officers located in the six Idaho Transportation Department Districts around the state and they are the primary link to county government. They provide exercise and training support to all first responder disciplines, and they execute

cost recovery actions during and following declared state and federal emergencies. In addition to that, they assist with funding, training and equipping Idaho's specialized teams. Because of **Governor Otter** and the 2007 legislature, Idaho's new emergency operation center located at Gowen Field will be fully functional by March 2009.

Colonel Shawver stated with regard to special teams, there are seven RRT's (Regional HazMat Response Teams) that are authorized by state statute. These fire department based teams are located within the seven regional health districts around the state. There are five regional bomb squads that are law enforcement based, which are located in Spokane, Nampa, Boise, Twin Falls and the Idaho Falls police departments. The Bureau has three ICSAR (Idaho Collapse Search and Rescue) teams who are fire department based. Team one is located in Coeur d'Alene, team two is a joint venture between Caldwell and Boise, and team three is also a joint venture between Idaho Falls and Pocatello fire departments. Finally, IIMAST (Idaho Incident Management and Support Team) is made up of individuals from fire, law enforcement, emergency medical, public health, public works and other public entities to provide overhead management of large scale state and local emergencies or events. In 2008 **Governor Otter** declared five state emergencies. The state provided additional assistance to Louisiana, California, Texas and Iowa. Shoshone and Kootenai counties and the Coeur d'Alene tribe were supported by a federal presidential major disaster declaration due to severe flooding. The total cost to the state included 6.1 million dollars in expenditures out of the state disaster fund, with 1.3 million dollars in federal reimbursements. The net cost to the state in 2008 was 4.8 million dollars. The Bureau anticipates additional disbursements and reimbursements later this year.

The Plans Director is responsible for the state emergency operation plan, mitigation planning, establishing an inventory data base of critical infrastructure, supporting an organization of volunteers in support of disasters, GIS (Geographic Information Systems) mapping as well as other emergency management activities. **Colonel Shawver** stated in addition to these functions, Executive Order 2006-10 directs the Bureau to lead continuity of operations planning for state government. **Governor Otter** has directed all state agencies to have a completed continuity of operations plan by June 2009. PDM (Pre-Disaster Mitigation Grant Awards) grants in 2008 were awarded in the amount of \$734,000 to the state. These projects will assist Benewah, Clearwater, and Shoshone counties as well as the state, to develop and implement a strategic approach to natural hazards risk reduction. In addition to that, **Congressman Simpson** provided \$573,000 of earmarked projects in support of pre-disaster mitigation. These projects include the Harriman State Park, Public Safety Communications, Adams County Highland Estates, and the University of Idaho McCall Outdoor Science School.

Colonel Shawver said the Administration, Finance & Logistics Directorate is primarily responsible for grants, management and logistical support to county and local jurisdictions during declared emergencies. The Bureau administered approximately 11.5 million dollars in new grant

awards in 2008. Approximately 7.1 million dollars was dispersed to local and travel jurisdictions, and the remaining 4.4 million dollars was held by the state to be used to fund statewide emergency management and homeland security activities. All forty-four counties within the state received grant funding. 120 million dollars have been passed to local government since 2002. These multi-year performance grants are the life blood of emergency management planning at the local level. Some grants require matching dollars, while others require a combination of hard or soft match to leverage the federal funds. **Colonel Shawver** stated that personnel funding for the Bureau is supported by the state general fund, which is 1.4 million out of an annual payroll of 4.9 million dollars. The public safety communications employees are supported by a dedicated fund derived from pay from service operations. Federal grants and dedicated fund operations combine to satisfy sixty-seven percent of the Bureau's total personnel costs. These two revenue streams are vitally important to the current and future success of the Bureau. The Interoperable Communications Directorate provides radio, voice, data and video conferencing communications for public safety state agencies at local, county and tribal emergency operation centers statewide. In addition to that, the Bureau provides logistical and administrative support to the ECC (Emergency Communications Commission) in their mission to provide enhanced E911 services statewide. The Bureau is also an active participant in the SIEC (Statewide Interoperability Executive Council) which is currently coordinating efforts in developing statewide P25 interoperable state radio systems for state and statewide user groups.

Colonel Shawver continued with the accomplishments for 2008 of the PSC (Public Safety Communications), which include (1) integrate state emergency dispatch centers into the statewide trunked system; (2) begin narrowbanding of state agency communications systems to meet federal FCC requirements by 2013; (3) conduct a complete statewide needs assessment, 1.2 million dollars; (4) partner with Bannock, Bingham, Ada, Canyon, and Kootenai counties to provide wide area trunked radio systems communications via the state microwave; (5) install broadband communications to county EOC's partnering with the Idaho Transportation Department; and (6) establish a partnership with the adjacent states of Montana and Wyoming. **Colonel Shawver** stated that the Hazard Materials Program has received renewed emphasis and oversight in 2008. This critical program ensures Idaho's first responders are supported with timely, professional and specialized support in the early hours of a response. There were 348 incidents reported statewide in 2008, and thirty-nine of those incidents were eligible for cost recovery resulting in state expenditures of approximately \$115,000. \$76,000 was recovered from responsible spillers, \$33,000 is in the process of being collected and \$15,000 has been identified as unrecoverable. Unrecoverable costs are defined as those costs where the spiller is not identifiable or where the spill was caused by an act of nature where reasonable precautions were in place. In 2008 the Bureau had a marked increase in recovered state costs, due to a change in policy that requires an aggressive pursuit of those who are responsible for clandestine drug labs. A collaborative effort between the Bureau and the Attorney General's Office, has resulted a significant increase in recovered costs

from those who are responsible.

Senator Davis asked **Colonel Shawver** if these costs were actual recovered costs or billings? **Colonel Shawver** answered that the costs were actual recovered costs. The Bureau has recovered \$67,000 which has been returned to the general fund.

Chairman McKenzie asked what kind of assets are recovered if any. **Colonel Shawver** replied that they are working with prosecutors to make restitution to the state a requirement. It is part of their sentencing that they are required to make the state whole again based on that specific incident. **Chairman McKenzie** asked if they are taking assets or is it part of their restitution order? **Colonel Shawver** responded that is correct and they actually have payment plans established with inmates that are incarcerated.

Senator Davis asked **Colonel Shawver** if it is fair to assume that the \$67,000 that was recovered in 2008, is the sum collected for all three years combined in 2006 through 2008 of the graph, and will it increase next year. **Colonel Shawver** replied that is correct, and in 2006 and 2007 under the previous policy of the Bureau, they did not aggressively pursue clandestine drug labs, because the thought was that they were throwing good money after bad. There was a two-year statute of limitations to work with. So beginning 2008, the policy was changed and the Bureau expects the gap between billings and recoveries to shrink. **Senator Davis** asked **Colonel Shawver** if the amount recovered is from increased efforts in the year, but the sum of prior expenditures over time? **Colonel Shawver** responded that he expects the amount to shrink on a yearly basis, because there might be an unidentifiable spillover or it was caused by an act of nature. **Senator Davis** asked if the amount recovered in 2008 was exclusive to the amount billed, or is it the sum of prior expenditures plus the amount billed in 2008. **Colonel Shawver** answered it is a recovery amount of the expended amount in 2008. **Senator Davis** asked if the amount recovered could be greater than the \$67,000 figure due to the amount recovered from prior years. **Colonel Shawver** replied the \$67,000 amount will increase due to the two year statute of limitations. Next year the 2007 amount will increase because we are capturing costs by annual disbursements, and capturing costs of the recovered costs of the annual by-year disbursement. **Senator Davis** said his understanding is that the limitation of action does not apply in criminal proceedings, and if the Court orders restitution, the two year period doesn't preclude the Court from enforcing its sentencing order. **Colonel Shawver** said the restitution order is good until the restitution is satisfied.

Vice Chairman Pearce asked **Colonel Shawver** what percentage of the graph is drug related. **Colonel Shawver** responded that a ballpark figure is probably ten to fifteen percent of the figure.

Colonel Shawver concluded his presentation and stated that in 2008 the Bureau saw many accomplishments and there is significant work remaining. The men and women of the Bureau are committed to continuing their support to local government and remain focused on

customer service.

ADJOURN: **Chairman McKenzie** advised the Committee that on Monday they will begin the rules review. There being no further business before the committee, **Chairman McKenzie** adjourned the meeting at 8:44 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: January 19, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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. and stated the annual rules review is before the Committee today. At this time he turned the gavel over to **Vice Chairman Pearce** to chair the Committee regarding the pending and pending fee rules.

PENDING RULES: 40-0101-0801 **Michael Faison**, the Executive Director of the Idaho Commission on the Arts presented Pending Rule, Docket No. 40-0101-0801 to the Committee and requested approval of the rule. **Mr. Faison** stated that the Arts Commission is Idaho's principal cultural agency that is in charge of making arts programs available to all Idahoans. Administratively they are under the Office of the Governor. The Commission has thirteen volunteer commissioners appointed by the Governor, five at-large citizen advisors selected by the Chair, and eleven dedicated staff members. **Mr. Faison** said the reason for the request for this rule change is to implement the programs and services, that support the newly adopted Fiscal Year 2010-14 Long Range Plan. If approved, the rules will increase access to public resources by significantly reducing the administration and paperwork to apply for grants from the Commission, and make the funds more reliable. The Commission engaged in a year-long, statewide long range planning process, that resulted in the newly adopted plan that incorporates fundamental improvements in grant making. The planning included public input throughout the process. With the assistance of public policy faculty at Boise State University, the Commission developed a series of focus questions for citizen feedback. The Commission asked what the citizens valued most about Idaho, what role creativity plays in their future, what value they believe arts and cultural activities serve in their hometowns, and how the Commission may assist them to achieve their vision for their community. The Commission held twelve regional planning meetings in Coeur d'Alene, Post Falls, Sandpoint, Grangeville, Moscow, Twin Falls, Hailey, Caldwell, Mountain Home, Boise, Idaho Falls, and Pocatello. Valuable input was provided by over two hundred thirty citizens with four

common themes which are: (1) simplify and improve the grant making of the Commission to enhance access to public programs in the arts; (2) reach out to communities across the state to reduce their expressed sense of isolation; (3) provide practical arts-business management and arts-learning information to Idahoans; and (4) provide professional services enhancing the growth and stability of Idaho arts.

Mr. Faison continued and stated that after the approval of the newly drafted plan, the Commission staff traveled the state to meet with past and potential grant applicants to review the new plan, to explain the new application procedures, and to answer questions. These pending rules represent the core of the improved granting processes of the Commission by combining the three previous grant programs into one, and reducing paperwork and effort for both the applicants and the agency. The new grant program provides matching grants explicitly to support ongoing public programs in the arts for Idahoans, which are delivered by Idaho arts organizations. The program is called Public Programs in the Arts. The Commission has an *Entry Track* program for organizations that are new to the agency to determine whether they provide ongoing, quality public programs in the arts for people and, if they do, to transition them into program funding. The Commission bases the grant review on past performance. This process does not require them to create a future picture, so the grantee has flexibility to tell the Commission how they need to use the funds to support their public programs. To ensure reliability, the funding formula includes a three year rolling average of budget, assessment score from prior performance, and prior funding history. **Mr. Faison** said that the existing QuickFund\$ program has quarterly deadlines. That program targets public projects that have arts activities that may not be ongoing or may be all-volunteer, but provide valued arts activities in small towns across Idaho. Lastly, the Pending Rules include simplification of the Arts Education grant program by merging two previous categories into one, making it easier for schools and community organizations to apply for grants that enhance learning in the arts in and out of school. By combining multiple grant programs into one and reducing paperwork, the Commission increases the value of the resources without increasing costs.

Senator Darrington commented that he was pleased to hear **Mr. Faison** talk about his relationship with schools, because it is becoming more and more difficult for students to take art, music and drama, which leads to creativity. There is a void that the Commission can help fill to develop talent. **Mr. Faison** said the Commission is very committed to working with schools and the Department of Education. The education grants were simplified specifically for that purpose. The previous processes were becoming too complicated. The Commission has summer workshops for teachers, generalists, and arts specialists, so they can work together to design effective curriculum around the creative process.

Senator Davis said he noticed that the language in the Entry Track Grant was changed to remove the cap. He asked **Mr. Faison** if the grant will cover up to 100% of the event, and what is the reason for removing the cap? **Mr. Faison** answered that language was removed because multiple grant programs were pulled into one. This is not about a project. Entry

Track is the way into on-going support for public programs. The applicant tells us how they will spend the money for their public program as a whole and not for a project. The funds are still one to one matching, it isn't for a specific defined project. **Senator Davis** said his understanding is that he will find that one to one match somewhere else in the rules. **Mr. Faison** responded that is correct.

Senator Davis said the population requirement for Writer in Residence has been increased to 50,000 from 25,000. This suggests to him that some smaller communities could be excluded. **Senator Davis** asked **Mr. Faison** if this will disadvantage smaller communities. **Mr. Faison** replied that the intent is not to move out of small communities. The 50,000 number was set due to the increase in size of given communities. Some communities would not even be allowed to request a Writer in Residence if we left it at 25,000. Communities are growing and we did not want them to be excluded. **Senator Davis** said it does not preclude them from going to larger communities. On page 48 he reads that Writers in Residence appointment will give twelve public readings throughout the state. Eight of them had to be in communities previously of 25,000 or less and at least four could be in larger communities. **Senator Davis** asked **Mr. Faison** if the Commission is encouraging the Writer in Residence program to be in the smaller communities of the state? **Mr. Faison** responded there is definitely no intent to move outside of smaller communities and he is not sure why the language was increased to 50,000 from 25,000. **Senator Davis** said he would like to know the answer and have a better understanding of the intent and reasoning behind it.

Senator Davis asked **Mr. Faison** why the language on page 43 in 203.03 regarding ownership and return of applications is being removed? **Mr. Faison** stated the intent is that the Commission will simply return all the work and not wait for the applicant to request that it be returned. **Senator Davis** asked why not just strike the phrase "at the request of the applicant", and retain the language that the Commission will return work samples? **Mr. Faison** replied we could do that.

Chairman McKenzie asked **Mr. Faison** if March was meant to be stricken on page 50 instead of January. **Mr. Faison** replied yes. **Chairman McKenzie** asked **Mr. Faison** if he knows the history of the 2005 version. **Mr. Faison** replied only vaguely. He understands that the Commission was operating long ago under rather vague rules. So in 2005, they were tightened up substantially. **Chairman McKenzie** said he appreciates the Commission doing this to simplify the process and the reduction of paperwork on your end.

Vice Chairman Pearce asked the Committee if there is a motion. **Senator Davis** said the rule on page 43 changes what the Commission is proposing and it is inconsistent of what was intended. If that is the case, I think the Committee should reject 203.03. On page 48, **Mr. Faison** cannot answer in full regarding 303.01. There may be a very legitimate reason for the language as proposed and he would like to have greater confidence in the definition of "community." Smaller communities should not be excluded. **Senator Davis** stated that he would prefer to give the

Commission an opportunity to defend this before voting on the rule. **Vice Chairman Pearce** asked **Mr. Faison** if he could return with a response. **Mr. Faison** responded that he would do so.

**PENDING
RULES:
52-0102-0801
52-0103-0801**

Jeff Anderson the Director of the Idaho Lottery addressed the Committee regarding the Pending Rules. **Mr. Anderson** said the Lottery conducts lottery games and oversees charitable gaming in Idaho with the objective of protecting the security and the integrity of the games. There are two pending rules and one pending fee rule before the Committee, which were published in the Idaho Administrative Bulletin without any adverse comments. **Mr. Anderson** asked the Committee to approve them as presented. The gaming rules are necessary housekeeping measures to reflect amendments made last year, to the charitable gaming statutes of Idaho Code, Sections 67-7702 and 67-7709, as well as to prevent restating statute in rules. The rule changes clarify language to ensure that organizations that participate in charitable gaming are in fact legitimate charitable non-profit organizations, and that the profits from the games are used for charitable purposes. It will also limit a for-profit business to use a legitimate charity for personal gain, and require bingo vendors to supply detailed information on invoices to improve tracking and accountability of the games.

Senator Darrington asked **Mr. Anderson** which rule strikes the language of 5% commission to the retailer, and is it transferred to another section or rule. **Mr. Anderson** replied the rule **Senator Darrington** is referring to is in the pending fee rule.

Senator Stegner said it appears that the key change is adding a reporting form. **Senator Stegner** asked **Mr. Anderson** if the form is subject to public review. **Mr. Anderson** answered 10.08 applies to individuals or organizations that receive charitable funds. They would fill out the form and it would be kept on file with the charitable gaming licensee. It would be available should the Lottery do an audit. **Senator Stegner** asked **Mr. Anderson** if it would be kept on the premises and subject to review in an audit. **Mr. Anderson** responded that is correct.

MOTION:

Chairman McKenzie made the motion to approve docket 52-0102-0801. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

Mr. Anderson continued and said the next rule deals with rules governing operations of the Lottery, 52-0103-0801. The proposed rule change is a necessary housekeeping measure to maintain and ensure consistency between the rules and the Lottery's operations and business practices, and to eliminate unnecessary rules that simply restate statute. Rule 100.22 deals with payment for the sale of lottery tickets. **Mr. Anderson** said this same language is in the payment procedures for other state agencies. This is how retailers accept payment for lottery tickets. Lottery tickets are sold for cash only because the commission that is paid to retailers is 5%. Credit cards can eat up most of that commission so many retailers do not accept credit cards for payment, but some do. This will ensure that the practice they use is okay with the Lottery and based on the rules. A retailer may accept payment with a credit card if a customer

purchased a large amount of fuel, food items and other things. The customer may add on lottery tickets and some retailers may not deny that.

Senator Geddes said retailers in his district generally require cash payments. **Senator Geddes** asked **Mr. Anderson** if credit and debit cards are a new provision. **Mr. Anderson** responded it is a new provision for our rule, and it reflects what is happening in the market place. **Senator Geddes** asked if the retailer was in compliance in the past where a credit card was accepted as payment for a lottery ticket? **Mr. Anderson** replied he was because it was not defined.

Senator Stegner asked **Mr. Anderson** if the practice of the Lottery is to allow the retailer to accept payment with a credit card at their option. **Mr. Anderson** answered that is correct. **Senator Stegner** asked if this rule could be interpreted as insistent that they do that, or is it optional in terms to the retailer, and is it somewhere in the rule. **Mr. Anderson** said he did not believe it is anywhere else in the rule, and retailers do have the freedom to accept any type of payment. The retailer may not be willing to accept money orders as an example, or an electronic funds transfer. **Senator Stegner** said he is not against the rule and it does make sense, but it may need more clarity. A citizen may interpret this that they have the right to purchase a lottery ticket with a credit card. **Mr. Anderson** responded that someone may interpret it that way, but that is why the word "may" is in there. Retailers have a variety of ways to accept payment. Costco does not accept credit cards to reduce the expense of the retail transaction. "May" leaves it up to the retailer in how they want to conduct their business. **Senator Stegner** said he understands that, but the difference between Costco making that determination and a lottery ticket is significantly different. A lottery ticket is a specific state operation that is covered by statute and rule. This rule says that a ticket "may" be sold, and a citizen may read the rule and determine that they have the right to purchase a lottery ticket with a credit card. **Mr. Anderson** replied that the rules were published with no adverse comments. He has had discussions with retailers and this topic never came up.

Senator Geddes said that throughout this rule, retailer compensation has been deleted. **Senator Geddes** asked **Mr. Anderson** if it is somewhere else, so that a retailer knows exactly what their compensation is. **Mr. Anderson** said yes, these rules just restate statute.

MOTION:

Senator Kelly made the motion to approve docket 52-0103-0801 and **Senator Davis** seconded the motion. The motion carried by **voice vote**.

**PENDING FEE
RULES:
52-0103-0802**

Mr. Anderson continued and said the last rule before the Committee today is a pending fee rule. **Mr. Anderson** said this allows the Lottery Commission the ability to charge a cost recovery fee for the use of pin protected credit cards. The absence of credit cards promotes responsible play. Currently, credit card transactions on lottery machines are limited to one hundred dollars per transaction. The next generation of vending machines have been introduced. The machines are on line at all time and this will give us the opportunity to accept pin protected debit cards. The

use of pin protected debit cards has increased 77% since 2003. Cash withdrawals have decreased, so the purpose of this rule is an attempt to meet the market, and customers and the nature in which they pay for transactions, and limiting them to pin protected only. This is responsible. The Lottery processes these transactions not the retailers. The money will be deposited directly into the lottery fund, less the fee. The commission will be paid direct to the retailer. The initial fee will be set at fifty cents, which is less than an ATM (Automated Teller Machine) fee. This will not be a revenue stream for the Lottery, it is just a recovery fee to cover the cost of transactions. Each year they will evaluate the fee and it could be reduced.

Senator Davis asked **Mr. Anderson** to walk him through the process of buying a lottery ticket with a debit card. Will a screen tell him that he will be charged a fee for using the card? **Mr. Anderson** responded yes that is correct for the convenience of using your card you will be charged an additional fifty cents. **Senator Davis** asked if he would be required to confirm this? **Mr. Anderson** said yes. **Senator Davis** said the biggest problem he has is that a fee rule usually defines an amount. The Lottery is asking us to approve a rule without setting the amount and then asking the Legislature to trust them. **Senator Davis** asked **Mr. Anderson** if this is tied to a specific amount? **Mr. Anderson** replied that he is not exactly sure how this entire process will work. When it was proposed, the intent was outlined in the description. Putting something in rule prevents the Lottery from changing it at the end of any fiscal year. If the average cost is determined to be only thirty-seven cents, the Lottery can change it from fifty to forty cents immediately, without coming back and having another rule approved. The intent is in the fee summary and the descriptive summary, as well as the record of the minutes of the Commission. **Mr. Anderson** said that he is asking the Legislature to trust the Lottery. **Senator Davis** said this argument could be made for everyone. There is a reason for fee review. **Senator Davis** stated that personally he could not vote for a rule that says "trust me."

Senator Stegner asked **Vice Chairman Pearce** if **Dennis Stevenson**, the Rules Coordinator from the Department of Administration could respond to some questions? **Senator Stegner** asked **Mr. Stevenson** if there is precedent for this, and has there ever been a fee rule where the amount can be determined later. **Mr. Stevenson** responded that there isn't a rule for this type of blanket generality. Fee rules usually are very specific regarding what the fee is. **Senator Stegner** asked **Mr. Stevenson** if it would make more sense to put this in statute rather than a fee rule. **Mr. Stevenson** replied fee authority is in statute, however, in cases like this the flexibility is needed to determine the amount of fees. **Senator Stegner** stated he would have more comfort with this rule if it had a range in fees that the Commission could charge. **Mr. Stevenson** stated that is exactly how it is handled in the APA (Administrative Procedure Act). There is a maximum amount that can be charged. In the event that the fee needed to be lowered, it would go through rulemaking. It is not an uncommon way to do this.

Senator Geddes stated the way he reads this is that the fee will only be

evaluated on an annual basis. **Senator Geddes** asked **Mr. Anderson** if that was correct. **Mr. Anderson** replied that is correct. At close out of fiscal year, they can determine the number of transactions and networks being used to determine that cost.

Senator Darrington said rather than kill the rule, he would prefer to put in the record the intent of the Lottery Commission. Next year the Commission could return with a range as **Senator Stegner** suggested.

Senator Kelly asked for clarification regarding the approval of the rule. **Senator Darrington** responded that the intent is for the Lottery to return next session for an approval of a range in fees. One year is not an unreasonable amount of time to determine the amount of the fee. The minutes would reflect that. **Senator Kelly** said she is unclear about this. Testimony from **Mr. Anderson** indicates that fifty cents seems okay for now, and **Mr. Stevenson** testified that this would be an appropriate area for a temporary rule that could be done relatively quickly. We could direct the agency to adopt a temporary rule that specifies a more specific amount. The precedent of approving an open fee would not be in place. **Senator Darrington** said the Lottery has plenty of time to return next session with a temporary or pending rule. The intent will be reflected in the minutes and this would work.

Chairman McKenzie asked if a temporary fee rule was in place would it be approved while we are in session. **Mr. Stevenson** responded that it could be done as a temporary rule and it can be approved during the Legislative session. The fee rule has more of an urgent requirement that needs to be met in order to do a fee, and the Governor would have to sign off on it.

Senator Fulcher said it seems appropriate to request the Commission to consider returning in a few days with a revised pending fee rule, with a limit to not exceed, then it could be evaluated next session. **Senator Darrington** commented it would be a multi-month process that would have to occur in the interim. The Lottery could return next session with a pending rule if the emergency does not work. This would give the Legislature some certainty.

Senator Stegner said he understands the angst of the Committee, but other agencies might see this as a new option to set rules themselves with blanket authority. The Committee could reject the rule now and start over, or we could give the Lottery some latitude for one year. **Senator Stegner** said he is comfortable with that.

MOTION:

Senator Stegner made the motion to approve the pending fee rule, 52-0103.0802. **Senator Darrington** seconded the motion.

Chairman McKenzie said the language refers to lottery tickets with a lower case "l", and then the descriptive summary states the intent is to sell lotto and scratch tickets. **Chairman McKenzie** asked **Mr. Anderson** if there is a definition of lottery tickets that includes all tickets the Lottery sells. **Mr. Anderson** replied that lottery tickets is a catch all phrase for

the products the Lottery sells.

Senator Davis stated that he will be voting against the motion because he has concerns with this rule.

Vice Chairman Pearce requested a roll call vote. **Vice Chairman Pearce** said before we vote he wants to know if there is a better option. **Mr. Anderson** replied we are plowing new ground with the new generation of vending technology. Based on what he knows today, **Mr. Anderson** said that he believes that the Lottery will have to charge no more than fifty cents per transaction. The actual cost can be determined over the year. Returning next year with an amended rule and with a range of up to one dollar is probably all that is necessary. The banking industry has indicated to the Lottery that the fee could be between thirty-seven and sixty-nine cents, so a range up to one dollar would be adequate.

Vice Chairman Pearce requested that the **Committee Secretary** read the motion. **Deborah Riddle** stated the motion is to approve the rule. **Vice Chairman Pearce** asked if there was a provision in the motion. **Senator Stegner** replied there was no provision in the motion, just a side bar understanding that the rule will be modified next year.

Senator Darrington - Aye
Senator Geddes - Aye
Senator Davis - Nay
Senator Stegner - Aye
Senator Fulcher - Nay
Senator Thorson - Aye
Senator Kelly - Aye
Chairman McKenzie - Aye
Vice Chairman Pearce - Nay

The motion **carried** to approve the pending fee rule.

ADJOURN: There being no further business before the Committee, **Chairman McKenzie** adjourned the meeting at 9:03 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: January 21, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Stegner, Fulcher, Stennett (Thorson), and Kelly

MEMBERS ABSENT/ EXCUSED: 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 8:03 a.m. **Chairman McKenzie** said before we go on to the new rules before the Committee today, we do have a clarification on the Commission on the Arts rules.

PENDING RULES: 40-0101-0801 **Michael Faison**, the Executive Director of the Idaho Commission on the Arts, stated he is here today by request of the Committee to answer questions from Monday regarding docket 40-0101-0801. **Mr. Faison** said that **Senator Davis** had a question regarding the return of work samples to artists. **Mr. Faison** said he believed we were talking about art work on Monday, but in actuality it is documentation for a grant application. The Commission does not accept original art work for review. There is a policy against accepting original work because the Commission cannot take responsibility for returning it. Work samples are slides, which are duplicates and not originals, for the simple reason that the Commission does not want anyone to lose their original work. **Mr. Faison** explained the reason for striking "at the request of the applicant, the Commission will return work samples ." It is because it is no longer relevant. Ninety-eight percent of submissions today are in digital format. Slides are going by the wayside so this is really about digital media today. That statement is no longer relevant.

Chairman McKenzie said for the Committee's reference, **Mr. Faison** is referring to 203.03 on page 43 is the rule that is being struck regarding the return of work samples.

Mr. Faison continued and said there was a question regarding changing the definition of a rural community in the Writer in Residence Program. The concern was that the Commission would move away from some of these smaller communities. The establishment of the 25,000 cap was done twenty-six years ago. At that time there was only one community in Idaho that was over 25,000. Today there are five communities over

25,000, which would potentially exclude some of them. That is the reason the cap has been raised to 50,000 due to the growth within the state. Twenty-six years ago the state of Idaho had a population of approximately 940,000. Today it is 1.5 million.

Chairman McKenzie asked if there is a process or guideline in place, or does the Writer in Residence make that decision as to where they will make the readings? **Mr. Faison** deferred that question to **Cort Conley**, the Director of Literature for the Commission. **Mr. Conley** said as a clarification, there was only one town with more than 50,000 twenty-six years ago, and now there are five communities. Below that there are another five that have a population between 25,000 and 50,000. There is no intent to exclude the Writer in Residence from going to any of the smaller communities. Out of the top five, only four will be allowed to host a Writer in Residence, because four of the appearances are in a community above 50,000, and eight are below 50,000.

Chairman McKenzie asked the Committee if there are any more questions regarding the clarification on the two issues. There were no questions, so **Chairman McKenzie** turned the gavel over to **Vice Chairman Pearce** to continue with rules from the PUC (Public Utilities Commission).

**PENDING
RULES:
31-0101-0801**

Mack Redford, the President of the PUC, addressed the Committee and stated that most of the amendments that are proposed are to the rules and procedural rules. They are clarifications to keep the PUC in line with some of the Federal rules, such as railroad safety. **Mr. Redford** stated the Commission is proposing to amend Rules 12, 61, 63, and 229 to increase the use of electronic filing for discovery related documents and documents requiring immediate action by the Commission. Federal courts across the nation are utilizing electronic filing. In an effort to reduce printing costs and save resources, the Commission is proposing that printing on both sides of a page be allowed, which are in Rules 62 and 231. Rule 114 codifies the information that competitive local exchange carriers must file in the applications to provide local exchange service in Idaho. This rule was previously contained in the Commission's Procedural Order, and it is simply to move it back to the Rules and Regulations of the PUC. **Mr. Redford** said the next amendment is to move two customer notice rules to the Rules of Procedures as Rules 125 and 260. The PUC is always updating and attempting to increase circulation and notification to the public. Rules 202 and 204 will allow an applicant to file reply comments in cases processed under Modified Procedure, which is a more informal procedure that entail a hearing. The PUC believes it is important for an applicant to have an opportunity to file a reply brief or rebut. In Rule 241, the Commission is proposing to delineate two types of formal hearings, technical and customer hearings. In a customer hearing, the public has an opportunity to provide comments regarding the rule or rate, etc. with no company representatives present. A technical hearing is a hearing on the merits of the application filed by a party. For example in a rate case, the staff would provide testimony and there would be rebuttal testimony.

Senator Geddes asked **Mr. Redford** if the Commission is allowed to offer any opinions or ask questions in formal hearings. **Mr. Redford** said that is partially true. Sometimes the public will ask questions. The Commission has technical staff and they are not very strict in that regard. **Senator Geddes** stated in the hearings that he has attended it is frustrating, but he understands the position the Commission is in. If they comment it could be interpreted that they are siding with the party. The PUC and other interveners are represented at those hearings. **Senator Geddes** asked if those parties are allowed to comment or to answer questions. **Mr. Redford** replied that they are authorized to ask questions of the public. Sometimes the questions do not add anything or it makes the public angry, so they try to keep questions to a minimum.

Vice Chairman Pearce asked **Mr. Redford** who are the two parties in part B at the customer hearings? **Mr. Redford** replied at technical hearings there is pre-filed testimony by the utility to support the case. At the hearing everyone has an opportunity to cross examine witnesses on their written testimony. At customer hearings there is a court reporter and testimony becomes part of the record. Sometimes staff or interveners ask questions at those hearings. **Mr. Redford** said he doesn't believe these hearings are as positive as they could be. Giving customers the opportunity to gain benefit from the hearing by allowing questions and dialogue is important. On the other hand **Mr. Redford** said, the other side believes it could potentially open up an area the Commission may not want to venture into. But it is important for the public to understand.

Mr. Redford continued and said the next amendment is to rule 67, 233 and 267 that requires trade secrets and other documents are exempt from public inspection be printed on yellow paper for easy identification.

Senator Geddes asked **Mr. Redford** for an example of what type information would be deemed confidential by a public utility? **Mr. Redford** responded it could be financial information that could be used by a competitor, or technology such as automated metering devices.

Mr. Redford stated the last amendment proposes to improve readability, eliminate ambiguities, correct citations and cross-references, and to make other housekeeping changes.

31-7103-0801

Mr. Redford said this pending rule relates to Railroad Safety and Accident Reporting Rules. The Commission sponsored Operation Lifesaver. This organization, along with the state police and other local law enforcement officials, help prevent railroad crossing accidents. They are volunteers who go to schools and other community organizations to educate them on the hazards of railroad crossing. Rule 103.02 will update and adopt the federal hazardous material regulations found in Title 49, CFR (Code of Federal Regulations) dated October 1, 2007. The Commission is proposing to update this rule with the October 1, 2008 edition of the CFR. Major revisions to be included are: 1) adding 30 new substances to the list of hazardous substances; 2) requiring hazardous material shippers to provide emergency response telephone numbers on the material shipping documents; 3) adding new entries to the hazardous material listing and new rail car placarding requirements; and 4)

developing alternate emergency response actions for various concentrations of ethanol and alcohol in gasoline mixtures. **Mr. Redford** stated the last change proposes to adopt changes to 49 CFR, parts 172 and 174. This requires railroads to compile annual data on certain shipments of explosives, "toxic by inhalation," and radioactive materials. Rail carriers are to use the data to analyze safety and security risks along rail routes and assess alternative routing options. Railroads must also inspect placarded hazardous material rail cars for signs of tampering or suspicious activities. These new safety rules implement the recommendations of the 9/11 Commission Act of 2007.

Senator Geddes commented that in one of the communities that he represents, there was a tragic pedestrian railroad accident. The family was very distraught and even more so when they learned of the protocol for reporting an accident. The protocol of the railroad was to first contact the dispatch in Omaha and report that an accident occurred. Several minutes later, they contacted the local emergency responder. It probably would not have changed the outcome, but **Senator Geddes** said it seems to him that before the railroad is contacted an attempt should be made to contact the local emergency responder. **Senator Geddes** asked **Mr. Redford** if the protocol is accepted by rule or railroad standards? **Mr. Redford** replied the reason for this is due to traffic on the line. They contact Omaha first because they direct all traffic on the lines. It is not to report the accident, but to get the warning through the system. **Mr. Redford** said he would get more information on this and send it to **Senator Geddes**.

Chairman McKenzie said he has a question regarding formal complaints on page 15, rule 54. **Chairman McKenzie** asked what is the process regarding how a formal complaint is processed? **Mr. Redford** deferred this question to **Don Howell**, the Lead Deputy Attorney General for the PUC. **Mr. Howell** responded the reason it states "shall determine how a formal complaint shall be processed" is because the Commission prefers to open an investigation rather than filing a summons and complaint. It does not mean that a formal complaint will not be issued. This rule also refers to rules 21 through 26. The Commission has six consumer investigators whose primary goal is to resolve informally all the complaints. This rule deals mainly with formal complaints. **Chairman McKenzie** asked **Mr. Howell** if there is a set process in place, or is it up to the commissioners and staff to decide how to proceed? **Mr. Howell** said when a formal complaint is filed, it is brought to the attention of the full three member Commission, who decide after looking at the complaint how it should be handled. It could be an investigation or a complaint, it really is determined by the sophistication of the parties. If it is an informal complaint, the staff is available to assist them in preparing a formal complaint.

MOTION:

Senator Geddes made the motion to adopt the rules as presented. **Senator Darrington** seconded the motion. **Vice Chairman Pearce** asked **Senator Geddes** if the motion was to adopt both dockets. **Senator Geddes** answered yes., 31-0101-0801 and 31-7103-0801. The motion carried by **voice vote**.

MOTION:

Chairman McKenzie said he did not believe that the rules for the Idaho Commission on the Arts had been adopted. **Chairman McKenzie** made the motion to approve docket no. 40-0101-0801 and **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

**PENDING
RULES:
11-0413-0801**

Dennis Jackson, Executive Director of the Idaho State Racing Commission said the pending rules before the Committee are the result of a project that started one year ago. The Commission recognized that the existing rules were out of date, some were poorly written, and in all cases they were disorganized. A task force consisting of racing commissioners, staff, racing association members, horse owners and trainers, deputy attorney generals and veterinarians met, to update the rules and organize them into clear concise chapters with specific topics to mirror the Racing Commissioners International Model Rules. The new rules, thirteen chapters in all, will benefit all members of the horse racing industry because they clarify in an organized manner how horse racing and simulcasting will be regulated. **Mr. Jackson** stated the rules will not expand or enlarge the types of races or wagering allowed. For the most part, the changes are procedural and regulatory.

Vice Chairman Pearce asked **Mr. Jackson** to go through each rule and explain the changes. **Mr. Jackson** continued and said there were four rules that existed. Chapter one of the original rules was Rules of Racing and some of the changes date back to 1993. The industry has changed considerably since then. There was a rule on simulcasting, disciplinary hearings and a rule dealing with licensing. As part of the process the existing rules are being repealed and replaced with new and existing chapters. The new chapters will clarify the requirements for anyone interested in the horse racing industry. In the past, the rules that applied specifically to a horse owner or a trainer, the applicant would have to look in as many as ten or fifteen places for the rules that applied. Now there is a chapter that is specifically dedicated to owners, trainers, jockeys and jockey agents. The major chapter is chapter 10, which is the rule that governs live horse racing. This rule will probably be used the most and it describes how a race will be run.

Senator Kelly said it looks like some rules are being repealed, and you are adding about one hundred additional pages. **Senator Kelly** asked **Mr. Jackson** if the Committee has all of the repeals? **Mr. Jackson** replied the Committee does have them. **Senator Kelly** asked if these temporary rules are currently in effect? **Mr. Jackson** responded in some instances that is correct. Some are temporary that are currently in effect and some are pending rules. Some of the rules were approved last session by the Legislature. **Senator Kelly** asked **Mr. Jackson** what is the justification for adopting the temporary rules, and was there an emergency? **Mr. Jackson** answered that there wasn't an emergency, just a need to rewrite the rules. **Chairman McKenzie** said that he believes the rules are justified under the catchall, "confers a benefit," under 67-5226(1)(c) Idaho Code. **Senator Kelly** said what **Mr. Jackson** is describing is very confusing procedurally. Some were adopted last year and now they are back before the Committee. Additionally, it looks like there were public hearings.

John Chatburn, a retired member of the Racing Commission addressed the Committee. **Mr. Chatburn** explained that he told the committee last year, that the Commission's rules did not allow for the fees that were being charged for a number of years. A temporary rule was approved to allow a fee rule so the Commission could charge the fee. That rule is a pending rule this year, with some corrections that were made over the summer, as a result of hearings and public comments. The Commission found a number of places where there were conflicts. There were a series of work shops over the summer to redo the rules. They were not completed in time for submission in August, so they are temporary and proposed rules. If the Legislature chooses to extend the temporary rules, they will then be codified as pending rules after the rule moratorium and the Legislature Sine Dies. The reason for doing it this way is because the Racing Commission licensing and regulation runs on a calendar year. There would be conflicts if all the rules were not completed by January 1. All the rules have been submitted as either pending, temporary and proposed to avoid the potential conflict. The Commission believes the rules will protect the public, owners, trainers and participants, so they will know what their responsibilities are.

Mr. Jackson continued with the changes to the rules. **Mr. Jackson** stated that prior to the rewrite of the rules, there were no specific chapters that governed how the Commission would function and operate. The Commission is a three member Commission appointed by the Governor, who promulgate rules and regulate racing. This particular chapter was part of a public hearing held in October. At the hearing there was no testimony submitted in opposition to this rule. The rule describes the process under which the Commission will operate and it clearly defines their relationship with the Racing Commission staff as well as the requirements for a commissioner. In the old chapter this was not clearly defined.

**TEMPORARY
RULES:**

11-0401-0901
11-0404-0901
11-0404-0902
11-0405-0901
11-0406-0901
11-0407-0901
11-0408-0901
11-0409-0901
11-0410-0901
11-0411-0901
11-0414-0901
11-0415-0901

Mr. Jackson said that 0401-0901 was the original racing chapter. It was poorly written and some of the rules that existed were no longer effective. This is a repeal of the chapter and it is being replaced by thirteen other chapters. Docket 0404-0901 is the rule governing Disciplinary Hearings. The old chapter was entitled Disciplinary Hearings and is now it is called Disciplinary Hearings and Appeals, docket 0404-0902. While this chapter described disciplinary hearings, it was weak in the description of the appeals process. **Mr. Jackson** stated the next docket, 0405-0901 relates to advanced deposit wagering. This is a process through which a wager may be made on races that occur at race tracks in various parts of the country. An operator of advanced wagering describes the process for an operator to be licensed in the state of Idaho. In the old chapter this was part of the old simulcast chapter. The Commission felt strongly that this needed to be a separate chapter.

Chairman McKenzie said when he looked through the chapters, he noticed that you could not see how closely the rules were modeled after the International Model Rules and what the rules were before. **Chairman McKenzie** stated that he would like to know where the deviations are specific to Idaho regarding to racing and wagering. Senator Kelly said

that is part of her confusion as well. We do not have the deleted language, line by line, to compare it with. **Mr. Jackson** stated that in most instances the rules closely mirror the model rules of the International Racing Commission. There are some instances where they are changed to specifically apply to the state of Idaho. Those rules are in the chapters regarding "claiming" and "live" horse races.

Senator Stegner added that part of the confusion here is that normally when there is a rule change it is a strike and insert, so we can compare as we go through the rules, and **Senator Kelly** makes a good point about that because we do not have that language before us to make the comparison. The key points that **Mr. Jackson** can provide from prior years would be the essence of what the Committee is concerned with. **Mr. Jackson** responded that in the advanced deposit wagering the only real change is the removal of the rules from the old chapter, that was the simulcast chapter and put into a separate chapter.

Mr. Jackson continued with docket 0406-0901 and said this rule covers the rules governing racing officials. Racing officials officiate or supervise the race. These rules specify exactly how the official is licensed and what his duties are on the race day. They are not dramatically different from the existing rules that were in the old chapter, with the exception that they were rewritten for clarity to the applicant. The rule also specifically outlines the process for lodging a complaint. Docket 0407-0901 are rules governing racing associations. **Mr. Jackson** stated that the association is the group that is licensed by the Commission to conduct a racing meet. There are two large racing associations in Idaho, the simulcast facility at Post Falls and the live meet and simulcast at Les Bois in Boise. Other fair commissions are licensed throughout the state in Emmett, Jerome, Rupert, Burley, and Idaho Falls. This chapter, which again was taken from the old chapter that was repealed, describes what the process is for applying for a license, the condition of the facility, protection of the public, and insurance binders. They are dramatically different from what was in the old rule. They are just reorganized into their own chapter. **Mr. Jackson** said docket 0408-0901 covers the rules governing pari-mutuel wagering and are almost an exact reprint of the IRC (International Racing Commission) rules. This chapter describes the types of wagers that may be made in a racing event. It describes the payoff, and the take out percentage for the racing association. Pari-mutuel wagering means the wagers in the pool are betting against one another. The house, or the racing association, is not a party to that bet. This chapter also explains what happens in a dead heat and the calculations for a winning ticket are all in this chapter.

Mr. Jackson said the rules governing claiming races in docket 0409-0901, are an interesting part of horse racing. On any given race day there are as many as eight races and a number of the races are called "claiming races." This chapter describes the process through which this is done, and who may claim a horse. There is one change in this rule to modify it so that if a horse is claimed, the horse could race at another meet. This rule is specific to Idaho to help fill the gap in small towns.

Senator Stegner said this has nothing to do with rules, but he would like to know and understand the logic behind this practice. **Mr. Jackson** deferred this question to **Tawnya Elison**, who is a horse owner and trainer.

Ms. Elison explained that a “claiming race” is used as a way to equalize. For example, if you owned a horse that was worth \$10,000 the owner would have an option of running it in a \$5,000 claim race. This is considered cheating if the owner tries to win the purse for this race. In a claiming race someone can place \$5,000 in an envelope, and then they would own your \$10,000 horse for \$5,000 at the end of the race. **Ms. Elison** said there is also allowance races with no claim price attached to it. Stake races are in the races such as the Kentucky Derby. It is really the different levels that the owner chooses to run his horse. A good trainer will try to pick a spot at the highest level, where your horse can be competitive. In racing, claiming is considered the handicap to make everyone equal.

Mr. Jackson said the next docket is 0410-0901, which is the rule that governs live horse races. It describes how a race will be run, how animals must be entered, who can enter a horse, how the stewards will judge a race, under what circumstances the steward may call a foul, and races held on straightaways and corners. What is different from the model rule is, if you are the owner or trainer of more than one horse, the horses need to be coupled for wagering interest. So this change will allow for horses on a straightaway race to be uncoupled. The rules governing 0411-0901 are the rules governing equine veterinary practices, permitted medications, banned substances and drug testing of horses. **Mr. Jackson** stated the basic change from the old rule is that it listed medications that are no longer available or no longer used. This rule describes the medications that can be administered, when they may be administered and the level to be administered. The winner of every race is tested. These rules are very close to the model rules with the exception to steroids. In Idaho the use of steroids are considered illegal.

Senator Geddes asked **Mr. Jackson** what the time frame is for testing the urine sample of the horse after the race, and what happens in the meantime? **Mr. Jackson** responded that the horse is taken immediately to the test barn after the race, where the urine sample is taken. In some instances a blood sample is drawn. The samples are sent to a testing lab in California and the purse is held by the bookkeeper until the test results are received. If there isn't a violation the stewards authorize the bookkeeper to make the purse distributions to the winners. If there is a violation, two things will happen. The purse will be redistributed and the owner or trainer may be called in for a hearing in front of the stewards. The owner or trainer will most likely be fined or in some instances their license may be suspended. **Senator Geddes** said this sounds great as far as the purse is concerned, but what about the wagering public if the horse is disqualified. **Mr. Jackson** explained the wagers are calculated and paid out based upon the finish, and they are not changed if the test results come back with a violation.

Senator Kelly asked **Mr. Jackson** if there have been any problems here in Idaho? **Mr. Jackson** replied that this year there were probably thirty or forty instances where a horse was found to have a drug above the level of what is allowed. This is not an inordinate amount and they were clearly not an attempt to violate the rules.

Ms. Elison commented that there are two different tests. One test will take the purse away due to a drug that is prohibited. Other drugs are permitted at certain levels. For the quality of races this is for the protection of horses that physically should not run. There is a certain tolerance level that is acceptable. Out of those thirty or forty races, the purse was probably not taken away, and the trainer or owner were not fined or suspended. These violations are usually due to a tolerance level in the horse. **Mr. Jackson** added that the Commission protects the public, but they also must protect the animal. There is also a penalty added now for anyone who commits a crime of cruelty to an animal.

Chairman McKenzie said that actually appears in the pending fee rule. The pending fee rule sets out all the fees. He asked **Mr. Jackson** why the penalty for cruelty to animals appears in a separate fee rule? **Mr. Jackson** responded at the time it was probably not brought up or perceived as an issue. It became an issue as the rules were reworked and because of an incident at Les Bois Park. It was put under the licensing rule but it is the responsibility of everyone who is licensed in the state.

Vice Chairman Pearce asked why does the Commission not allow any practicing veterinarian to wager on a race, if he has treated that horse within the past thirty days. Additionally, it seems that it would be difficult to enforce. **Mr. Jackson** answered that a racing veterinarian is someone who is employed by the owner or trainer of the horse. The reason is to prevent the veterinarian from administering a drug that might affect the outcome of the race, in an attempt to benefit from the wager that is placed. It is difficult to enforce, but hopefully our stewards are watchful, and there is a process in place to take action.

Mr. Jackson said that rule 0414-0901 was pulled from the old rule and compared closely with the model rules. The owners, trainers, authorized agents, jockeys, apprentice jockeys, and jockey agents are governed by this rule. An apprentice jockey is someone who has not run a sufficient amount of races to qualify as a jockey, a journeyman is an apprentice, and jockey agents negotiate with owners for rides that they represent. The agents are directly involved in the running of each race and how it is run. This rule outlines their specific responsibilities and requirements. The last rule, docket 0415-0901 governs controlled substances and alcohol testing of licensees, employees, and applicants. **Mr. Jackson** stated this is a new rule. The old rule basically stated if you had a racing commission license you could not drink, which is an overstatement. This rule explains in detail what is expected of everyone who is licensed by the Commission, what is expected of them, and whether or not alcohol is allowed. The old rule makes no mention of any controlled substance. It also sets forth the process for random testing of alcohol or drugs, and what would happen if there is a positive result. This would not apply if an

owner should choose to enjoy a beer as his horse runs a race.

Senator Kelly asked **Mr. Jackson** where the language for this came from? **Mr. Jackson** answered that this was looked over by the attorney generals for the ISP (Idaho State Police) and closely modeled after the IRC rules.

Senator Fulcher commented that he is not an expert on racing, the rules look fine to him, but he would feel more comfortable before voting to approve the rules if he could see what was deleted. In every rule process that he has done before, the deletions were provided. **Senator Fulcher** said that he would like to see and understand what was taken out.

Chairman McKenzie said he likes to do a comparison as well, but it will not be easy to look through and see the changes. It is time consuming and hard to follow.

Ms. Elison stated maybe this is the time for her to offer her testimony. She took the test for her first trainers license in the early eighties, and the old rules are the rules she was provided. They were very confusing. She had to flip back and forth between six or seven different chapters and there were things that did not apply to a trainer. When she was asked to sit on the committee, she was happy to learn that finally something was being done. To go through and read, strike, delete and insert is difficult. The committee started over several times because of that. To follow the IRC rules was impossible and to intermix the Idaho rules was not possible. That is why this became a rewrite and they have passed the Idaho Thoroughbred Board, Quarter Horse, Horsemen's Benevolent and Protection Boards, and there aren't any major changes. This is easier and better organized.

Vice Chairman Pearce commented that he took these rules to some friends of his. There are some major changes, but they did not have a problem with them. **Senator Darrington** added this is not the first time that he has seen large sections of rules that are repealed and rewritten. This is not extraordinary at all. It would be impossible to take the rules and repeals and line them up line by line and look at the changes.

Senator Darrington said that he is prepared to approve the rules. **Vice Chairman Pearce** stated there have been some major battles and differences in the last ten years, which should give the Committee some confidence. We will hear about if there is something wrong with these rules. **Senator Darrington** said if that were true this room would be packed. **Mr. Jackson** said public hearings were held on all the chapters and there wasn't any opposition to any of these chapters. **Senator Geddes** stated if something has been overlooked the Committee will hear about it. He has been personally involved with one of the racing commissioners. We should compliment the Commission and those involved with this rewrite, and their effort for a better way to organize the rules so that they are understandable. This is good and time will be the test.

MOTION:

Senator Darrington made the motion to approve the rules. **Chairman McKenzie** asked for clarification on the motion. **Senator Darrington** said

the motion is to approve the temporary rules, and we will go on to the pending fee rules in a minute. **Chairman McKenzie** seconded the motion. The motion carried by **voice vote**.

**PENDING FEE
RULES:
11-0402-0801
11-0402-0802
11-0403-0801**

Mr. Jackson said 11-0402-0801 is the repeal of the existing chapter, chapter two. This chapter was written by the Commission when simulcasting was authorized by the Legislature. In order to do a rewrite, this needs to be repealed. Docket 11-0402-0802 is basically the same chapter and the difference is that the rules regarding advanced deposit wagering were included in the old chapter. They have been removed in the rewritten chapter. It is a fee rule because there is a requirement to pay a fee for simulcasting, and a percentage of the simulcast handle is also sent to the State.

Vice Chairman Pearce asked if **Mr. Jackson** was talking about the fee rule? **Mr. Jackson** answered both, a repeal and a rewrite. The last docket, 11-0403-0801 is the chapter for the rules governing licensing and fees. Prior to last January when this rule was presented to the Committee, there wasn't anything in the rule that addressed the fee for an owner or jockey's license. That was passed last January as a temporary rule and some additions have been added, as discussed earlier. This chapter is unchanged except for the rules regarding cruelty to animals.

Vice Chairman Pearce stated he believes the way that simulcasting works in the state of Idaho, is that a certain percentage of the purse is applied to other races, and that it was negotiated at 3.75 percent while other states use six percent. **Ms. Elison** commented that the percentage is 3.65. **Vice Chairman Pearce** said Idaho is about the lowest in the nation. He asked if there was a reason for that? **Mr. Jackson** replied that he cannot answer that. It is part of the statute and maybe **Ms. Elison** can answer that. **Ms. Elison** responded that she was not involved in that negotiation. It is one of the lowest in the nation, and most purses are based on five percent nationwide, with ranges of four to ten percent. The people involved have told her it is because the handle fee is lower in Idaho and due to the cost they cannot afford to give anymore than that. The horsemen often bring up that they would like a higher percentage. **Vice Chairman Pearce** asked **Ms. Elison** who does the negotiations and who sets the fee? **Ms. Elison** answered that there is a contract for any simulcasting center in Idaho, and they have to have an agreement with the Horsemen's Organization. **Vice Chairman Pearce** asked if that figure is in the fee rules? **Ms. Elison** said that it isn't. **Mr. Jackson** added that the percentage of the simulcast handle, which the operator's are required to submit to the state, are in the statute. The amount is agreed to by the Racing Association. In order to be a part of the Association they must have a contract with a recognized horsemen's group. Statute dictates that process and that number is a result of that negotiation. **Ms. Elison** stated the 3.65 percentage was negotiated with the operator at Les Bois Park. The operator in northern Idaho pays 3.25 percent. Both agreements end this year, she believes on March 31, and it will be renegotiated.

Senator Kelly inquired about the issue regarding virtual simulcasting.

Mr. Jackson responded that the rule was withdrawn and it is not a part of these rules. **Senator Kelly** asked if the issue has been dropped? **Mr. Jackson** stated it has and there is no indication that it will be brought forward at any time. The operator that requested it does have the opportunity to bring forth legislation. At this time it has not been approved and will not be at this point in time. **Senator Kelly** asked if we could change the statute to ensure that? **Chairman McKenzie** explained that when the sub-committee met, the conclusion was that it went beyond the authorization of rulemaking under the current statutory scheme to broaden virtual simulcasting. It would have to be a statutory change.

MOTION: **Senator Stegner** made the motion to approve the pending fee rules. **Chairman McKenzie** seconded the motion. The motion carried by **voice vote**.

ADJOURN: There was no other business before the Committee. **Chairman McKenzie** adjourned the meeting at 9:44 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

- DATE:** January 23, 2009
- TIME:** 8:00 a.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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:** Due to the late arrival of the Chairman and Vice Chairman because of weather conditions, **Senator Geddes** called the meeting to order at 8:03 a.m.
- RS18174** **Dave Fulkerson**, from the Division of Financial Management, presented **RS18174** to the Committee. **Mr. Fulkerson** stated this will change statute to provide for the calculation for compensation when the President Pro Tem and the Speaker fill in as acting Governor. There is a current reference in 67-809 for compensation to the Lieutenant Governor, but there is currently no citation for the other calculations. This will also make the change to provide for pay when the President Pro Tem acts as the Lieutenant Governor. In some instances when the Governor may be out of the state, the Lieutenant Governor would also be out of the state and the Pro Tem would serve as Governor. The President Pro Tem's position would not be filled during this interim.
- Senator Davis** stated that as he understands the order of succession, it goes beyond the Speaker. He asked **Mr. Fulkerson** why language wasn't included to pick up the additional succession order, or just reference the succession order? **Mr. Fulkerson** asked if **Senator Davis** was referring to the constitutional reference? **Senator Davis** replied for the Governor, it is in the first section of the bill. **Mr. Fulkerson** said that he believes the constitution speaks only to the Lieutenant Governor as well as the President Pro Tem and the Speaker. **Senator Geddes** commented that he believes **Senator Davis** is correct. The constitution has a code section that clarifies that. At one time when Governor Batt was in office, **Pete Cenarrusa** orchestrated it so that he could be Acting Governor, so he believes that it is in code or some section where the succession does continue beyond the Speaker.
- MOTION:** **Senator Davis** made the motion to print **RS18174** and **Senator**

Darrington seconded the motion. The motion carried by **voice vote**.

RS18196

Mr. Fulkerson addressed the Committee regarding **RS18196** which proposes to change Idaho Code 18-2507. It is the expense of prosecution for the counties when they are prosecuting an inmate. This is a follow up to Legislation from last year regarding payment to counties when they transport state inmates. Both pieces of code tend to work the same way. Claims were forwarded to the examiners for approval and the board had to wait for the next legislative session to seek an appropriation. To be consistent, this needed to be changed, thus reimbursing the counties a little quicker.

Senator Davis said the fiscal note indicates the cost to be \$30,000, which really isn't an increase, only an estimate. He asked **Mr. Fulkerson** if they would just be administered differently? **Mr. Fulkerson** replied that is true. The payment history reflects that it is not over \$30,000 a year between the two items.

MOTION:

Senator Stegner made the motion to print **RS18196**. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

RS18337

Jeff Youtz, Director of Legislative Services, presented **RS18337** and stated that the RS comes from Legislative Council. It is a recommendation to upgrade and modernize the statutes relative to the Idaho Legislature. Some statutes are fifty or sixty years old. A sub-committee of the Legislative Council was chaired by **Senator Davis**. **Representative Jaquet**, **Senator Kelly** and **Representative Moyle** met several times and attempted to identify the statutes that simply no longer apply. In addition to eliminating archaic statutes, it puts the Legislative Service Office in code. Some of the statutes were redone to include the Agency. It does not expand authority or power or provide new functions for the Legislature, nor is there any fiscal impact.

MOTION:

Senator Darrington made the motion to print **RS18337**. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

PRESENTATION:

The Chair of the SIEC (Statewide Interoperability Executive Council), **Mark Lockwood**, addressed the Committee regarding their annual report. **Chair Lockwood** stated over the last year the SIEC has had many accomplishments. The statewide assessment was recently completed, the PSIC (Public Safety Interoperable Communications) projects are at the halfway point, the Regional Governance information is underway in that area. The assessment covered an evaluation of forty-four counties, three tribes, and all state agencies within the state of Idaho. They reviewed operations environment, communication requirements, interoperability analysis, communications environment, radio site information, inventory & projections, improvements, and a description of problems. **Chair Lockwood** said the operations environment means where does the communication take place. When we are out in the field what is the terrain, what is the geographical challenges, and what are the climatic issues that might be faced. Communication requirements mean that someone needs to be able to pick something up, press it and talk, release and listen. It needs to work each time, every time, and one

hundred percent of the time. The SIEC never knows when there could be a catastrophic incident. Whether it is man made, terrorist, or naturally, they absolutely have to have those communications.

Chair Lockwood continued and said with regard to the state's Interoperability capabilities today, most groups and agencies are at level three, or they have the ability to patch through to dispatch centers. Radio site information did a complete inventory of mountain top repeater sites and dispatch centers and did a complete inventory as to which sites might need improvements, and which ones could be included in a statewide project. Inventory and projections were completed regarding what is on the ground today, what type of radio communications are out there, the frequencies available, the number of channels, and the subscriber units, which are the portables and mobile radios. The improvements that are necessary are not just for radios, but for the governance and structure, and how the system would be managed, including maintenance and operations. The types of radios that are needed were discussed, as well as towers, grounding and power requirements for rural sites. **Chair Lockwood** stated the areas where they can communicate or not communicate were also reviewed. An interoperable analysis was provided by which they could move in state in phases across the state to become more interoperable and to form a system that is reliable all the time. The data from this analysis is currently being utilized by the forty-four counties, and the three tribes and state agencies as they move forward into the next phases. PSIC, which the Legislature helps fund for the match, has distributed 8.5 million dollars to develop strategic infrastructure. There are nine sites across the state that the funding was applied to. Several of the sites are operational and the remaining ones are at a halfway point and due to be completed by September 30, 2010. Some are being utilized today in day-to-day communications, which have improved coverage in those areas significantly.

The master site, which is the brain or the traffic cop that runs the State, is housed in Meridian. Between January 2008, through December 1, 2008, the system operated utilizing 17,246 hours, 31 minutes and 48 seconds, which is the actual time across that network in that time period. Push to talk minutes were 16.2 million and the average call length was 12 seconds to make that happen. It is important to note that the percentage of usage for the system is only 15% for the volume of calls, so there is a lot of capacity and room to grow. **Chair Lockwood** said one of the accomplishments was to move into a governance system. Through the assistance of Homeland Security and the Office of Emergency Communications they were given a grant, to develop a statewide governance structure. The goal is to have something up and running by summer. The six districts of the ITD (Idaho Transportation Department) have been compressed into three regions for the purpose of defining decision making processes, to make them uniform, create and adopt policies and procedures that will be used in making communications, and to protect the integrity of the system, which will give uniformity across the board. The regional governance structures operate in partnership with the SIEC and the Idaho Public Safety and Education Communications

Governance Council who represent the State agencies.

At this time, **Chair Lockwood** did a demonstration for the Committee, so they could see and hear first hand how they communicate day-to-day with a hand held radio. He contacted Chief Hoyle in Driggs, Captain Bunderson in Idaho Falls, Sheriff Johnson who was located in Blackfoot, Eric Clark in Pocatello, Sheriff Gary Raney in Boise, Darby Weston who was in the Ada County Paramedics Office, Chief Mark Windeldorf in Caldwell, and finally Melissa Stroh in Coeur d'Alene. All transmissions were transmitted with clarity. **Chair Lockwood** summed up and stated that this concluded his presentation and report to the Committee.

Senator Fulcher asked **Chair Lockwood** if the system has insulation for electromagnetic pulses? **Chair Lockwood** asked if **Senator Fulcher** meant in case of a nuclear strike. **Senator Fulcher** responded no, an EMP (electromagnetic pulse) type of terrorist. **Chair Lockwood** said they have grounding capabilities, but he was not sure if it had that level of insulation to the system. A more technical individual could possibly answer that, but he would get back to him with that information. **Senator Fulcher** asked what does P25 (Project 25) compliance mean? **Chair Lockwood** responded it is standards established by the FCC to gain uniformity across the industry, which provides the capability to operate in analog in today's world and in digital as they move forward.

Senator Darrington asked **Chair Lockwood** if their system plays a role or is it a part of the system developed at ISP (Idaho State Police)? **Chair Lockwood** answered yes it is through bridging or gateways, so they are able to touch base with them. Right now they are tied to the Bureau of Homeland Security and they do recognize that they have to have communications with all state, federal, and tribal agencies as well as the county municipalities or it is not a statewide system.

PRESENTATION:

Garrett Nancolas, Chairman of the Idaho ECC (Emergency Communications Commission) addressed the Committee regarding its annual report. **Chair Nancolas** stated first he would like to acknowledge their partnership with the SIEC and the work that they do. He would also like to give the same type of demonstration from the ECC side of things, just as the SIEC just did, but those capabilities do not exist statewide like they do for the emergency responders side. The goal of the ECC in the near future, is if you are traveling in the state of Idaho and you have a problem, you will be able to contact a public safety answering point. Your information will be transmitted appropriately and effectively, and you will be able to receive an immediate response to take care of your emergency needs. That is why the ECC was formed. The Commission was formed in 2004, under Legislative directive, to assess the needs throughout the State and also to assess where we are as a State, with regard to public safety answering points and their ability to respond to emergency needs of our citizens. The Commission has determined that there is an urgent need for additional funding at the local level, based on their assessment. The funding will help meet the expectations of our citizens, and ensure that they are at the same level throughout the State. The mission of the ECC 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 communications systems.

Chair Nancoles continued and stated that the full report of the Commission has been provided to the Committee. He will touch on some of the highlights and answer any questions that the Committee may have. Since the original enactment of the ECC Act in 1988, many of Idaho's communities have found that they are lacking in resources to fully fund emergency communication systems. Changes in technology are rapidly moving forward. The advancements in technology have also created difficulty for the PSAP's (Public Safety Answering Points), because some believe that they can contact a PSAP in an emergency situation and get a response. Many of these systems are not capable of handling that new technology. There is a need to enhance funding for the initiation and enhancement of consolidated emergency communications throughout the State. With the utilization of cellular phones and VOIP (Voice Over Internet Protocol) it will display where the call was initiated from, but not necessarily where the incident actually is. ECC is aware of this issue and dealing with it. In order to protect and promote public health and safety, and to keep pace with advances in telecommunications technology and the various choices of telecommunications technology available to the public, there is a need to plan and develop a statewide coordinated policy and program to ensure that Enhanced 9-1-1 services are available to all citizens of the state and in all areas of the State. The need to implement planning for the migration to the Next Generation 9-1-1 is equally as important.

With Legislative directives, **Chair Nancoles** said, the Commission has continued to strive to fulfill its purpose and responsibilities. They are: 1) determine the status and operability of consolidated emergency communications systems statewide; 2) determine the needs for the upgrade of consolidated emergency communications systems; 3) determine the costs for the upgrades; 4) recommend guidelines and standards for operation of consolidated emergency communications systems; 5) recommend funding mechanisms for future implementation of upgrades; 6) serve as a conduit for the future allocation of federal grant funds to support the delivery of consolidated emergency communications systems; 7) report annually to the Legislature on the planned expenditures for the next fiscal year, the collected revenues and moneys disbursed from the fund and the programs or projects in progress, completed or anticipated; 8) enter into contracts with experts, agents employees or consultants as may be necessary; and 9) to promulgate rules for the purpose of carrying out the Commission's duties. The next phase, due to the enactment of the ECC grant fee, is funding the first grant cycle. This is exciting to the Commission because they can now assist in the funding from basic 911 to phase one or two, to those entities that are under funded and do not have the population to fund it. Thirty-three of the forty-four counties have enacted the additional twenty-five cent fee. With the money collected from the fee over the next two years, the Commission believes they will be able to make available up to 3.4 million dollars to agencies to help them move to where they need to be.

Chair Nancolas stated the Commission is also in the process of working on the Idaho State Plan that meets the requirements of the NET 911 Act (National Association of State 9-1-1 Administrators). With regard to the status of E9-1-1 in Idaho, the Commission has continued to assess the needs of local governments throughout Idaho. In that process, one issue that came to their attention is the need to work with those individuals who work at the PSAP's, to be consistent in training and information systems throughout the State in order to assist our citizens. A PSAP committee was formed and they identified four things they would like to implement. One, to establish standard entry level training for dispatchers to be at the same standards as POST (Peace Officer Standards & Training); two, to prepare seminars for PSAP development for supervisors and managers to cover a range of topics; three, to develop a process for POST certification for all dispatchers and call takers; and four, to establish a community awareness and public education campaign that centers on the importance of the role of 9-1-1 dispatchers. Finally, **Chair Nancolas** said, the Commission is actively engaged in associations and being represented at national conferences to make sure they understand how the money will be distributed, and to make sure they understand national issues so the state of Idaho can keep up with those issues.

Chairman McKenzie asked **Chair Nancolas** how far is the coverage for cell phone service for 911 emergency calls? **Chair Nancolas** responded that there is a map provided in one of the handouts indicating coverage for basic, enhanced and phase 11 statewide 9-1-1 services. Hopefully the Commission will be able to help those communities in the basic, or red area first, with the granting process.

Senator Fulcher asked **Chair Nancolas** what level of dependence do we have on analog, or the old system? **Chair Nancolas** deferred this question to **Eddie Goldsmith**, the Project Manager. **Mr. Goldsmith** said that he would estimate that about 99% of all cell phones are digital. Analog has gone by the wayside for the 9-1-1 system. The reason being that in the planning and moving into the next generation it really just works better. **Senator Fulcher** said that is his understanding as well except for data. Voice transmissions used digital and data channels used analog. **Mr. Goldsmith** stated it is all digital now. The states that are implementing next generation 9-1-1 all have to be digital.

MINUTES: **Senator Darrington** made the motion to approve the minutes from January 16, 2009. **Senator Davis** stated he has a few suggestions for changes, so he would move to approve them as corrected. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

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

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: January 26, 2009

TIME: 8:00 a.m.

PLACE: Room 204

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

MEMBERS ABSENT/ EXCUSED: Senator Fulcher

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.

RS18382 **Ron Williams** presented **RS18382** to the Committee. **Mr. Williams** said that he is here today representing the Idaho Cable Telecommunications Association. This legislation deals with franchising video service in Idaho. **RS18382** establishes the franchising framework that will provide an easier path for new competitors to enter into the wireline video business. The framework establishes that new video providers apply for and receive a certificate of franchising authority from the Idaho Secretary of State. An existing cable television provider or an incumbent remains franchised at the local level, until there is actual competition that has emerged in the local market, or until their existing franchise agreement expires. All Video providers will continue to pay local units of government a video service fee, which is the franchise fee. **Mr. Williams** stated that the act acknowledges and preserves the rights and powers of local government to control access to and to use the public rights-of-way. If there is not a local ordinance to this effect, then the act sets minimum standards for use of the public rights-of-way. It will also establish both standards and obligations for providing customer access to government programs, which is referred to as PEG channels or Public Education and Government. The act prohibits local government from discriminating against providers for access to the rights-of-way. Additionally, it will prohibit discrimination by video providers against groups of customers based on income, and it empowers the Attorney General to investigate and enforce consumer discrimination provisions.

Mr. Williams stated that he would like to acknowledge and thank **Bill Roden** on behalf of Qwest, **Ken Harward** and **Jerry Mason** on behalf of the Association of Idaho Cities, and **Ken McClure** on behalf of the Independent Telephone Companies who assisted in drafting this legislation.

Senator Davis asked **Mr. Williams** when a competitor wants to come in and there already is an existing provider, will the local jurisdiction lose control over how they would proceed as a franchiser? **Mr. Williams** responded that there are several components to that answer. First of all, if a new competitor comes in and the existing cable provider has the option, it is not required to seek a state franchise to provide video service in that local area. However, the two most important local rights remain intact. First, the right of the city and the obligation of the provider to provide a franchise fee. Secondly, there is no giving up or relaxation from the local authority over control of its local rights. These two issues appear to be the biggest issues for the cities. **Senator Davis** said the Statement of Purpose states there is no fiscal impact. But if the franchiser is going to seek a State solution, who will administer it? If the State doesn't provide it currently, will there be a potential for a fiscal impact to the State? **Mr. Williams** answered that the fiscal impact to the State is diminamous, in that the Secretary of State reviews an application and determines if it is sufficient. Then it grants the certificate. There really isn't any oversight by the State once the certificate of franchising authority is granted. **Senator Davis** said that he wanted to know if the State currently participates in video franchising. **Mr. Williams** replied that the State does not participate in video franchising at this point, only that the Secretary of State reviews an application and issues a certificate.

Senator Kelly asked why not go through the Public Utilities Commission? **Mr. Williams** answered that other states have selected the PUC to do this, but it was the consensus of some of the new competitors in Idaho that it wasn't their preferred choice.

MOTION: **Senator Davis** made the motion to print **RS18382**. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

RS18268 **Mike Nugent**, the Manager of Research and Legislation, presented **RS18268** to the Committee. **Mr. Nugent** said this RS is the codifier's correction bill. There is some difference this year compared to previous years. The codifier, Lexus Nexus, indicated that in a few sections there are references that no longer make sense. As an example, Section 7, 32-413 of Idaho Code is being repealed. It is in the marriage license law. Section 32-412 was repealed about thirteen years ago. This provision required that a blood test must be taken in order to obtain a marriage license. The law was repealed in the mid 1990's, but the reference was still here. The code doesn't exist any longer.

MOTION: **Senator Davis** made the motion to print **RS18268**. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

ADJOURN: There being no further business before the Committee, **Chairman McKenzie** adjourned the meeting at 8:10 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: January 28, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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.

GUBERNATORIAL APPOINTMENT: **Vaughn Heinrich** who was appointed to the Idaho Endowment Fund Investment Board addressed the Committee regarding his appointment. **Mr. Heinrich** stated that he is a retired school superintendent and that he has served one term with the Board. The Chair, **Dean Buffington**, has done a tremendous job.

Senator Davis asked **Mr. Heinrich** if he has attended all the meetings during his term of service? **Mr. Heinrich** responded all but one, an emergency meeting, due to the death of his father. **Senator Davis** asked **Mr. Heinrich** if there was anything that might preclude him from continuing to serve on the Board. **Mr. Heinrich** said the only thing he could foresee would not be in his hands, such as an illness. He does not believe that anything would prevent him from serving at this time. **Senator Davis** asked **Mr. Heinrich** to speak to the issue of conflicts, such as personal assets or investments. **Mr. Heinrich** replied he did not believe there are any conflicts. Even though he is a retired superintendent and a representative of public schools, so to speak, he feels very strongly regarding decisions to benefit all beneficiaries. **Senator Davis** said that he really appreciates his service and willingness to serve on the Board.

Senator Kelly asked **Mr. Heinrich** what does the Board do, and did he have to learn a lot about finance? **Mr. Heinrich** answered the best answer is that he has learned a lot and he has a lot more to learn. Investments on that scale are complex. The day-to-day operations are not something the Board deals with. **Larry Johnson**, Investment Manager of the Fund, keeps the Board well informed and provides recommendations for prudent investments of State monies. **Senator**

Kelly asked **Mr. Heinrich** what has he done to educate himself? **Mr. Heinrich** said mostly what he has done is to attend the meetings along with individual meetings with **Mr. Johnson**.

Chairman McKenzie thanked **Mr. Heinrich** and advised him that the Committee would be voting on his appointment at the next meeting.

William Deal, Director of Insurance and former member of the House, said he is pleased to be here today. **Mr. Deal** added that he served twelve years on the Endowment Fund Investment Board. He has been a trustee on the PERSI (Public Employee Retirement System of Idaho) Board for two years. The first year was probably the best of times, when the fund balance was about 10.5 billion dollars with a return of 20.1 percent. It was in the highest percentile of all investment funds for retirement. This year was rougher and the fund balance is about 8 billion dollars, with a return that is almost upside down. It was minus 20.2 percent. If you take a look at the market and other funds, PERSI is still in a higher percentile outcome. The fund is down, but not as much as other funds. **Mr. Deal** said that the Board and management is relatively happy, but depressed. PERSI is losing less because of the way the market is today. One real advantage that PERSI has is the management of **Bob Maynard**. He is the dean of investment managers in the country. His investment policy is to keep it simple, transparent, and remain focused. That philosophy has proven to be very good. PERSI keeps their funds independent and not mingled with other funds, so that the investment group can price the funds daily and independently check them. In the down markets PERSI loses less, and in the up markets is when they can build.

Mr. Deal continued and said that the balance of the PERSI fund varies. At times the investment market fund is down about nineteen to twenty-five percent. Today it is at twenty-three percent off the benchmark, which means they are funded at about sixty-six to sixty-eight percent. In December the Board made a decision on COLA (Cost-of-Living Adjustment). The Board sent a recommendation to the Legislature to not increase COLA. One percent is already built in by statute. Since the fund is down, there have been questions regarding the contribution amount. The Board made the decision to not increase contributions and wait until the end of this fiscal year before making a decision. At that time, the Board will evaluate the fund and decide if there is a need to increase contributions. Contributions are approximately 16.6 percent, with ten percent from employers and the remainder from employees. **Mr. Deal** said that based on the current monthly contributions from active members, the fund is just about meeting the mark on payouts to retirees. The amount is close between collections and payout, so it is not diminishing the purpose of the fund. **Don Drum** is the new Director of PERSI, who replaced **Alan Winkle**. **Mr. Deal** summed up and stated that we are in this for the long haul, and that is how PERSI is investing.

Chairman McKenzie commented that he shares that opinion of PERSI as well, and how they do relative to other funds.

Senator Davis commented that **Mr. Deal** has a great deal of influence due to his service in the House, and now as the Director for the Department of Insurance. It is important to address the same questions regarding performance and attendance of meetings, and the issue of conflicts. **Senator Davis** asked **Mr. Deal** to speak to that. **Mr. Deal** responded that he does not have any conflicts. As to attendance, he has not missed a meeting in the two years he has been a trustee of PERSI.

Senator Kelly commented that it appears that **Mr. Deal** is currently the Director of the Department of Insurance, which is a full time job with responsibilities of managing staff and budgets. **Senator Kelly** asked **Mr. Deal** how he balances his responsibilities at the Department and PERSI, and how much time do they take? **Mr. Deal** replied that PERSI has an investment side made up of **Bob Maynard** and **Richelle Sugiyama**. On the administrative side there is a director, **Don Drum**, who has the same responsibilities like he does at the Department of Insurance to manage the staff. As a member of the PERSI Board they meet monthly, where he receives the investment reports and updates. So actual time spent is one half day a month. He is not in the management of the department, but the Board does have the responsibility of hiring the investment people and the director. **Senator Kelly** asked if conflicts ever arise between the two? **Mr. Deal** responded no. They are separate departments and from the standpoint of being a trustee, they only look at the management of investments, not the operations of PERSI.

Senator Geddes stated that he has been curious during the downturn in our economy. Employees have an opportunity to invest additional funds in PERSI. **Senator Geddes** asked **Mr. Deal** if he has monitored that and what trends is he seeing with regard to investments. **Mr. Deal** replied that there are a multitude of options. The 401K type of investment outside of PERSI is well invested in, and he will get the statistics for that as well as other funds performance. **Senator Geddes** commented that he has directed several of his constituents over the years to **Mr. Deal**. He is someone that he relishes the opportunity to work with. Additionally, he is cordial, diligent with his responsibilities with PERSI, and he has full confidence in him. He is a valuable contributor, which is the real focus as to what we need to have with respect to PERSI investments. This is an outstanding appointment that **Governor Otter** has made. **Mr. Deal** thanked **Senator Geddes** for his comments.

HCR6

At this time **Chairman McKenzie** turned the gavel over to **Vice Chairman Pearce**. **Senator Geddes** presented **HCR6** to the Committee and stated that this is something that he does not relish doing, but it is important that we consider **HCR6**. The purpose of this Resolution is to reject all the changes in compensation for members of the Idaho Legislature, as recommended by the Idaho Citizen's Committee on Legislative compensation. **Rich Jackson** chairs that Committee. They do a fine job evaluating what is important and needed with respect to compensation. **Senator Geddes** said he visited with **Mr. Jackson** recently. A lot of things have changed since the meeting they held in June when they made this recommendation. **Mr. Jackson** told **Senator Geddes** if the committee were to convene now, knowing what has happened with the

economy, obviously the recommendation would be substantially different. **HCR6** will reject all the recommendations that were made and the Legislature salary will be rejected in full, with respect to any increase that was proposed.

MOTION:

Senator Davis made the motion to send **HCR6** to the floor with a **Do Pass** recommendation. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

S1009

David Brasuell, Administrator of the Division of Veteran Services presented **S1009** to the Committee. **Mr. Brasuell** said this bill will provide for the relocation of the Veteran's Education Program from the Professional Technical Education Department to the Division of Veteran Services. The Division sees this as a positive move for the veterans. The program is funded federally by an annual veteran's education grant, and it supports two full time employees to administer it.

Senator Davis said that he would like someone from the State Board of Education to speak to the change briefly, so that he will have confidence that this is a solid move from their point of view.

Mike Rush, Executive Director of the State Board of Education addressed the Committee and said that he is here to answer questions and provide assurance. **Mr. Rush** stated that this is part of a package of bills that the Governor and the Board worked on to streamline operations. It will refocus activities and this particular one is the State's responsibility for veterans to participate in educational opportunities. Before a veteran can get education benefits, they have to have the institution or a company has to be vetted through this process. This grant was originally in the Department of Education. When **Tom Luna** took over, he reviewed this and concluded that veteran's education didn't fit with K-12 education activity. For the past year this has been in the Division of Technical Education. The Board took another look and the Division of Veterans already provides veterans services to veterans in a variety of other venues. After speaking with **Mr. Brasuell** the Board decided this was a much better home for this particular operation.

Senator Davis asked **Mr. Rush** how many years has the program been administered by the Department of Education? **Mr. Rush** responded that he could not answer that question. He has been with the Department since 1986. This last year it was moved to the Division of Professional Technical Education. **Senator Davis** asked **Mr. Rush** if there will be a duplication of services by running it through the Division of Veterans Services? **Mr. Rush** answered that it will reduce the duplication. **Senator Davis** said that he does not see any language that will formally remove the Veteran's Education Program from the Department of Education or the Division of Professional Technical Education. If it doesn't require any devolution language, how did it end up with the Department of Education? **Mr. Rush** replied that is the mystery that has not been figured out. It is one of those things that occurred a long time ago, they needed a place to put it, and it was placed within the Department of Education. To his knowledge there isn't a code that directs where the operation should be.

This is the first time the Department has taken an objective look to figure out where this belongs in State government and put it there. **Senator Davis** asked **Mr. Rush** if he looked at the administrative code or rule, would he find a rule that attempts to place it with the Department? **Mr. Rush** answered that is correct.

MOTION:

Senator Fulcher made the motion to send **S1009** to the floor with a **Do Pass** recommendation. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

S1011

Janet Gallimore, the Executive Director of the Idaho State Historical Society addressed the Committee regarding **S1011**. **Ms. Gallimore** stated that pursuant to Governor Otter's request the Society is being moved from the State Board of Education to the Department of Self Governing Agencies. The Society completed a detailed review, provided an indepth report to revise statutes to the Governor's Office, and then prepared a recommendation to the Board of Trustees for policies that need to be changed as a result of this move. **Dr. Rush** consulted with the trustees, who were encouraged to provide feedback to the Governor. The Society believes this is a positive move.

Senator Davis said that he has some questions for **Jesse Walters**, a Trustee of the Society. **Senator Davis** stated that he trusts him. He asked **Mr. Walters** if this is a good move? **Mr. Walters** responded that it is. In 2004 he was appointed to a vacancy on the Board of Trustees. Before that he was a District Judge, and thirty years ago this room was his courtroom, so this room has a history of making good decisions. **Mr. Walters** said there was a problem a few years ago with the management of the Society and the Director was replaced by **Ms. Gallimore**, who has done an excellent job. The move to make the Society an independent agency is timely. There will be no changes in personnel or management, they will just no longer report to the State Board of Education. The Trustees will not be appointed by them as well. The State Historical Society is ready to be on their own, and the Society has done a lot of work over the past year in preparation for this.

Senator Kelly asked what does the Bureau of Occupational Licenses think about this move? **Ms. Gallimore** responded that the Society is being moved to the Department of Self Governing Agencies so she does not know. The Self Governing Agencies are an assembly of a number of agencies that have their own boards. The key rationale for moving the Society is that they already have their own board and the resources to make decisions on their behalf. It would be a duplication of efforts to report to the Society's board of trustees as well as the Department of Education.

Senator Kelly asked **Vice Chairman Pearce** if she could direct a question to **Wayne Hammon**, Administrator for the Division of Financial Management. **Senator Kelly** asked **Mr. Hammon** what does the Department of Self Governing Agencies do? **Mr. Hammon** responded the Bureau of Occupational Licenses is part of the Department. The Department of Self Governing Agencies does not have a director, it is a

collection of independent boards, commissions and organizations. The Bureau of Occupational Licenses is part of that, and the Bureau does not administer it. The Department itself only exists on paper.

Senator Stegner commented if there was any apprehension regarding this move, we would have heard about it. Based on testimony he believes this is embraced and it is a major step. **Senator Stegner** asked **Ms. Gallimore** what does she think this move will hold for the future? **Ms. Gallimore** replied that one of the great things that happened as a result of this, is that it allowed her the opportunity to look at all their statutes in detail. When the statutory analysis was done, there wasn't a lot of input because they already have a governing board, who has a lot of authority already by statute. For the future, the Board of Trustees has been terrific working with the staff and leadership team. They have a new mission and strategic plan and this process helps prepare them for budgeting. The Society is very well placed to preserve the history of the State, but also to promote it and engage the statewide community in a way they have never done before. **Ms. Gallimore** added that she has a great relationship with **Mr. Rush**. He has been her mentor, and that will continue. Both organizations will still be aligned and work together as part of the educational part of the State.

Senator Davis asked **Ms. Gallimore** if the State Board of Education provides administrative functions will that require additional FTE's (full time employees) after this devolution? **Ms. Gallimore** replied no.

Senator Kelly said this is an observation, and maybe **Ms. Gallimore** could respond. There isn't any mention of "by consent of the Senate" to move the Society. This is an appointment by a bigger board to an appointment to basically one executive. **Senator Kelly** asked **Ms. Gallimore** to explain how this will work? **Ms. Gallimore** said that they have worked closely with the Governor's Office to talk through the issues. The Board policies are clear and it is important that the Board is qualified in a number of areas. Not just at history and preservation, but education, business, and people who are astute in market development and fund raising. **Ms. Gallimore** added that the Society is a fairly complicated organization. They are about fifty percent funded by the General Fund, so they put forth a lot of effort statewide in the development side. They do need people who are knowledgeable not only on the history side of the business, but also the promotional and developmental side. The Governor's Office is very aware of that and understands that it is a concern.

MOTION:

Senator Stegner made the motion to send **S1011** to the floor with a **do pass** recommendation. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

S1013

Ann Joslin, State Librarian and head of the Idaho Commission for Libraries, addressed the Committee regarding **S1013**. **Ms. Joslin** stated that **S1013** would move the Commission for Libraries out from under the oversight of the State Board of Education into the Department of Self Governing Agencies. The Board of Commissioners is in support of this move. During the time she has been with the agency, **Ms. Joslin** said the

question of the best place in State government for our agency has been discussed by the Board periodically. Up until this point, there was never a place identified as clearly more beneficial than where they have been since the last State government organization under the State Board of Education. In that place, the Commission has been under the radar in many ways that have impacted them both positively and negatively. Although this may be a risk having the Board members appointed by the Governor, all in all, the Commission feels strongly that this may give them more visibility. The Commission still believes that it is an educational agency and there is nothing to prevent them from continuing to work with the State Board of Education, as they continue to improve library services in public and academic libraries.

Ms. Joslin summed up and stated that with the Board and its rulemaking authority, and along with the personnel that is in place, she does not foresee anything to change the way the Commission does business on a daily basis. The only change will involve budget proposals and strategic planning. They would deal with the Governor's Office and DFM (Department of Financial Management) instead of going first to the State Board of Education. This will save time for her staff as well as staff at the State Board of Education.

Senator Geddes said that he is looking at the changes in how the Board is selected and appointed. It appears that the Commission is losing one Board member. **Senator Geddes** asked **Ms. Joslin** if that was correct? **Ms. Joslin** answered that it was. The Commission has a five member Board now, and they are appointed by the Governor instead of the State Board of Education. Two members come from congressional delegations, and then the other three are from a geographical distribution for a total of five members.

Senator Davis asked **Ms. Joslin** to speak to the administrative functions. Does the State Board of Education currently provide any functions that will be duplicated by this devolution? **Ms. Joslin** replied "no." There is nothing the Commission is dependent upon from the State Board of Education. The process now for budgeting and strategic planning is through the Board. If the Commission is no longer under the Board they will go direct to the Governor's Office and DFM. The Board has rulemaking authority, and a fiscal and human resources person. The Commission has not identified anything that is currently or that historically has been dependent upon from the Board of Education. **Senator Davis** asked will there be an increase to DFM? **Ms. Joslin** answered that she is not in a position to answer that.

Wayne Hammon, from DFM, responded that currently DFM and the LSO staff report to JFAC for budgeting. All three of these agencies are separate from the State Board of Education, and have their own budgets that pass through DFM. It will create no additional work for DFM because each agency is already treated separately.

Senator Stegner said as an observation, this bill along with the previous one use the same paragraph to modify statute 67-2601. Obviously if they

both pass that cannot happen and it will be taken care of in the codification process. It could be an error.

MOTION: **Senator Kelly** made the motion to send **S1013** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

RS18124 **Jeff Anderson**, Director of the Idaho State Lottery presented **RS18124** to the Committee. **Mr. Anderson** said that the Lottery relies on nearly nine hundred retail partners to sell their products to the public. Their mission is to responsibly maximize the dividend for beneficiaries, Idaho public schools and buildings. This RS will increase the bonus incentive amount from one percent to two percent. This section of code has not been changed in twenty years, since the inception of the Lottery. The current five percent commission, which is the selling commission, plus a bonus of one percent, totals six percent. This puts Idaho in the bottom fifty percent of jurisdictions that sell lottery products in North America. Seven of forty-three lotteries offer less than six percent. Twenty-two offer more than six percent. The proposed five percent commission plus a two percent incentive, for a total of seven percent, would put Idaho in the top forty percent of jurisdictions selling lottery products. **Mr. Anderson** stated that his goal for the last two years, as Director of the Lottery, has been to focus on promoting the games responsibly, protecting the integrity of the games, and working to develop a high performance organization. This goes beyond Lottery employees to include all vendor partners.

Right now, lottery products are among the lowest margin products that are offered at most retail locations, with the exception of fuel and convenience stores. Lottery products tend to be one of the most labor intensive products that retailers offer. The current one percent incentive is paid out in a selling and cashing bonus. The selling bonus is for retailers who sell a high tier prize on a scratch ticket or powerball ticket, as well as cashing bonuses for the labor that is required to validate and payout winnings for low tier prizes. The additional bonus will provide for changes in the market place. **Mr. Anderson** continued and said that in April 2008, the bonus program was suspended for the final ninety days of the fiscal year. The reason is that in statute they are limited to six percent. There was an inordinate number of high tier winners in Idaho. They had fifteen winners by the end of March at \$200,000 or better. By April, the Lottery had paid out approximately 6.2 percent of commissions to retailers. To ensure that the Lottery did not break the law, the program was suspended. The additional amount requested will provide some head room in the event this happens again, but more importantly it will give the Lottery another tool to offer an incentive. Any amount paid above the current six percent that is authorized will not be paid, unless there is a corresponding increase in sales. This legislation is supported by the Northwest Grocer's Association, Idaho Retailers Association, and the Idaho Petroleum Marketers and Convenience Store Association.

Senator Davis asked **Mr. Anderson** when the bonus was suspended for ninety days, was there a decline in sales of lottery tickets? **Mr. Anderson** answered "no." Ninety days was too short of a period to see if there was a decline in sales. The retail network realized that the bonus incentive

would be reinstated. Actually, the Lottery came in under six percent. **Senator Davis** asked **Mr. Anderson** if there will be an increase in sales if this were to pass? **Mr. Anderson** replied the goal of the Lottery is to responsibly increase sales. The purpose of this is to allow for the ability each year, to develop an incentive program that is based on increased sales, and it will be based on same store sales. In the coming year the Lottery expects to end at 140 million dollars in sales, which would be the base for the coming year. In order to qualify for the additional incentive, the Lottery would have to have an increase in sales, and the individual retailer on a same store basis would have to have an increase as well. The additional incentive would be pooled. As the percentage of sales increase a larger amount of the incentive pool will be released to the retailers. **Senator Davis** stated that he is not sure in tough economic times that the right policy for the State of Idaho is to encourage participation in lotteries. He knows that **Mr. Anderson** is doing his job and he respects that, but **Senator Davis** added that he is not sure this is the right direction to take in public policy.

Mr. Anderson said that he appreciates **Senator Davis'** concern. He reiterated that the goal of the Lottery is to manage this enterprise in a responsible manner. The real purpose of this is not to just increase sales, but to work with the retail partners in addressing a policy that has not been changed in twenty years. The market place has changed and when you look at a convenience store, lottery tickets are the lowest margin product offered.

Senator Stegner said it is logical to assume the reason for doing this is to increase sales. **Mr. Anderson** has testified that a big incentive is not necessarily that, but an administrative flexibility to maneuver within the economic conditions. This is an administrative change. **Mr. Anderson** responded that is a benefit, but not the reason for initially proposing this idea. It would prevent the Lottery from having to suspend bonus programs in the future.

Senator Kelly asked **Mr. Anderson** if the bonus incentive is codified, and how does the Lottery decide who gets the bonus? **Mr. Anderson** replied that the bonus is at the discretion of the director, including consultation from the team at the Lottery, and the Idaho Lottery Commission. **Senator Kelly** asked if it is a written policy. **Mr. Anderson** said that it is published, the retailers are aware of it, and they agree to it. **Senator Kelly** asked if it changes every year. **Mr. Anderson** said the cashing and selling bonus has not been changed in a decade or more. After what happened last year, the program was modified for the current fiscal year to hopefully prevent what happened last year.

MOTION: **Senator Stegner** made the motion to print **RS18124**. For lack of a second on the motion, the motion **died**.

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

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: January 30, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), and Kelly

MEMBERS ABSENT/ EXCUSED: Senator Darrington

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.

GUBERNATORIAL APPOINTMENT: **Megan Ronk**, who was appointed to the Commission on Human Rights, stated that in her professional capacity she serves as the Executive Director of the Idaho Meth Project. **Ms. Ronk** added that she serves on the Board of Dress for Success, and the Alumni Board for the College of Idaho. With this appointment she believes that she has both business and personal qualifications to serve on the Commission. As a member of the Commission, she has a good sense when reviewing cases to look at each unbiased and to understand the concerns of sexual harassment, age or ethnic discrimination. It is very rewarding for her to serve on the Commission.

Senator Davis thanked **Ms. Ronk** for her service. He asked **Ms. Ronk** to speak regarding her attendance to date and to her confidence that she can participate in meetings on a regular basis. **Ms. Ronk** responded that to date she has participated in all the meetings, with the exception of an off site meeting in Pocatello. She has participated on several panels outside of normal meetings, due to a backlog of cases. Although she has a full plate she is committed to serve and keep up with the work load. **Senator Davis** asked **Ms. Ronk** if she has any conflicts that would prevent her from fulfilling her duties on the Commission, and if there are, how she plans to deal with it? **Ms. Ronk** replied it is very clear when they receive cases to review, who the complaint involves in terms of a corporate entity or an organization. Knowing that, she is cognitive to make sure there aren't any conflicts of interest. She did have a personal contact once who worked for one of the agencies, who had multiple claims filed against them, so she did excuse herself from that particular case.

Senator Kelly asked **Ms. Ronk** how much time is involved for her to

serve on the Commission? **Ms. Ronk** answered more than she had anticipated. Every other month she receives twenty to thirty cases to review. She undertakes a thorough analysis of each, which takes a solid five or six hours to review. At the meetings where decisions are made, it is quick because everyone is prepared and well versed on the cases. **Senator Kelly** asked if the Commission's meetings are regularly scheduled? **Ms. Ronk** replied that she believes the official meetings are quarterly, but when there are a large number of cases to review they have special panels who meet when it is necessary.

Senator Kelly said the Commission on Human Rights is a substantial Commission with the capacity to affect people's lives. She asked **Ms. Ronk** to speak to her personal attitude towards discrimination laws. **Ms. Ronk** responded that when she was first appointed by the Governor, she met with the Commission's staff and their deputy attorney general to understand discrimination laws in Idaho. Personally she believes discrimination does happen in the work place and it needs to be taken very seriously, whether it is a charge of sexual harassment, age or race discrimination. Idaho citizens have the right to raise those types of complaints without fear of retaliation. Every complaint is taken seriously knowing that a person's job as well as their personal and emotional well being is dependent on the decision of the Commission. It is good to know that there is a process in place where grievances can be heard before a neutral panel to determine if they were treated unfairly.

Chairman McKenzie asked **Brian Scigliano** to speak to the Committee regarding his appointment and how he views his role on the Commission on Human Rights. **Mr. Scigliano** stated that he has been a stock broker for ten years in Boise, and that he has been in the financial services industry since 1981. He is very active in several civic groups, he serves on the board of directors for the Children's Home Society, and every year he is involved in fund raising for the YMCA. Since leaving business school in 1978, **Mr. Scigliano** said that he has been in business so he believes that he has a little different background from others who are on the Commission. Most of them work in the public sector. Additionally, his perspective is different because he has managed a corporation, so he has seen discrimination issues first hand.

Senator Geddes said that he appreciates **Mr. Scigliano's** service. He asked **Mr. Scigliano** why he was nominated and why he decided to accept this appointment by the Governor? **Mr. Scigliano** responded that his background and service in the community, and that he believes the Governor's office thought he would be a positive attribute to the Commission.

Senator Davis asked **Mr. Scigliano** to address the same issues that were asked of **Ms. Ronk** regarding participation and conflicts. **Mr. Scigliano** responded if there are any conflicts he would recuse himself. There are enough members on the Commission so he would have the ability to do that if it became necessary. As far as his participation at meetings, they are usually every other month which does not interfere with his participation or time.

Senator Fulcher commented that **Mr. Scigliano** has done some financial consulting for his mother, and when someone takes care of your mother you are thankful for that.

Senator Kelly asked **Mr. Scigliano** to speak to the duties and mission of the Commission, his thoughts on discrimination, and his experience in business. **Mr. Scigliano** replied that the role of the Commission is to provide an impartial professional investigation to those who feel that they have been mistreated in the work place. Before going forward, each party is interviewed and then the Commission determines if there is cause for the complaint. He has observed that everyone who serves on the Commission takes this very seriously. With regard to discrimination in the work place, **Mr. Scigliano** stated that as a manager he has hired and terminated employees. When he worked at a major corporation in the northeast there was a major sexual harassment case filed against them. The person that filed the complaint was his assistant and the complaint was filed against a co-worker, so he saw the whole process firsthand. That was twenty years ago, so things have changed since then. It is important for the individual to feel they can continue working without being harassed and discriminated against.

Chairman McKenzie thanked **Ms. Ronk** and **Mr. Scigliano** and advised them that the Committee would vote on their appointment at the next meeting.

MOTION:

Chairman McKenzie stated the appointments of **Vaughn Heinrich** and **William Deal** are before the Committee. **Senator Davis** made the motion to confirm the appointment of **Vaughn Heinrich** to the Idaho Endowment Fund Investment Board. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

Senator Geddes made the motion to confirm the appointment of **William Deal** to the Board of the Public Employee Retirement System of Idaho. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote**.

S1041

Dave Fulkerson, from the Division of Financial Management, said that **S1041** will provide compensation for the Pro Tem and the Speaker when they serve as Acting Governor when the Lieutenant Governor is unable to fulfill that duty. The current Lieutenant Governor statute, 67-809 has the calculation that states the Lieutenant Governor will be paid the difference between his daily rate and the Governor's. **Mr. Fulkerson** stated that there is no mention in code providing for the calculation of the Pro Tem and the Speaker. The difference between the daily rate of the Lieutenant Governor and the Pro Tem or Speaker will be paid to them. This will make it consistent in code. The other change will provide who can act as the Governor when he cannot perform his duties.

Senator Kelly commented that she actually had a constituent call her regarding this bill. She asked **Mr. Fulkerson** why isn't there a fiscal impact, and is this just confirming what is already done? **Mr. Fulkerson** responded the Governor's Office is given a yearly appropriation to pay for

acting Governor pay, so this change will incur no additional cost.

Senator Geddes added occasionally he does have the opportunity to serve as Acting Governor. This recently happened and the fiscal assistant calculated the reimbursement but she had a difficult time determining the amount. When he or the Speaker or anyone else in the line of succession serves as acting Governor, the pay was always based on the difference between the Governor's salary and the Lieutenant Governor's usual salary. This seemed bizarre to him because he believed it should have been the difference between his salary versus the Governor's salary. This is the genesis for this bill because there is nothing in State code as to how the calculation should be made. Additionally, if the succession ever reaches the Secretary of State, the difference is huge. **Senator Geddes** said that in his opinion this may not go quite far enough because it does not take into account the full opportunity for succession.

Senator Davis asked **Mr. Fulkerson** why this will only apply to the Pro Tem and the Speaker, and not to others in succession? **Mr. Fulkerson** replied that when he reviewed the code and had the AG's (Attorney General) office review it as well, they did not find any citation in the constitution or state code. It addressed everyone in succession except for the Speaker and Pro tem, there isn't any reference to the Secretary of State, so the calculation was added for those who were referenced. **Senator Davis** said that he had always understood this differently, but he had not researched it.

MOTION:

Senator Davis made the motion to send **S1041** to the floor with a **do pass** recommendation. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote**.

S1043

Jeff Youtz, the Director of the Legislative Services Office addressed the Committee regarding **S1043**. **Mr. Youtz** said that **S1043** is truly a housekeeping bill. Approximately a year ago **Senator Davis** brought to his attention that there was a reference to legislative "counsel." After some research, that reference was over fifty years old and referred to the bill drafters position that the Legislature authorized. There are other archaic sections that needed to be cleaned up as many no longer apply today. Legislative Council appointed a subcommittee of **Senators Davis** and **Kelly** and **Representatives Moyle** and **Jaquet** to work with the staff to clean up the old statutory references. **Mr. Youtz** continued and said that there were references dealing with reapportionment and legislative compensation in sections 1, 3, 4, 7, 12 and 13, which has been deleted. Section 2 deletes the reference to Legislative Counsel. Section 6 had redundant language regarding authority of Legislative Council, and is now repackaged for setting up the Legislative Services Office in Idaho code. Legislative Services wasn't even in statute, so this provides for the duties and functions in code as well. The audit process had not been looked at or updated in fifteen years. The process is clarified for releasing audits with JFAC (Joint Finance Appropriations Committee).

Senator Davis said **S1043** comes to the Committee with a

recommendation from Legislative Council. **Senator Kelly** added that there was a lot of discussion regarding audits with JFAC. There are some changes to the statutory provision with regard to that.

Chairman McKenzie asked if this clarifies the audit process on page 6, line 31? **Mr. Youtz** responded that is correct. JFAC had a process and procedure that was never defined. It is important particularly when there is a controversial audit release. This will not necessarily change the procedure but it will provide protection and clarity on how the process works.

Senator Davis added that the language was negotiated between the co-chairs, the audit division and the sub-committee, which **Senator Kelly** was trying to emphasize.

MOTION:

Senator Fulcher made the motion to send **S1043** to the floor with a **do pass** recommendation. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT:

Sheila Olson addressed the Committee regarding her appointment on the Commission for Human Rights. **Ms. Olson** stated that she has had many roles in her life, but none that she has enjoyed more. She was a charter member in Idaho Falls for fourteen years under the Mayor's Human Rights Commission. This Commission has been a real eye opener for her because it is not about the feel good things. She is very impressed with how the Commission investigates and handles the cases that come before them. Because it deals with people's lives it has serious ramifications. Recommendations are made by the commissioners as to whether or not a complaint has validity or not.

Senator Davis commented that he has known **Ms. Olson** since he was a small boy. Other family members of **Ms. Olson** have been confirmed by the Legislature. Her late husband was an attorney in Idaho Falls and her son Steve is in the Attorney General's Office. **Senator Davis** asked **Ms. Olson** to speak to the issue of conflicts or the appearance of it? In addition to that, does she have associations or friendships that would interfere with her performance on the Commission. **Ms. Olson** responded none that she can think of. At her very first meeting the recommendation that she made was not what the Attorney General had recommended. It was a tie vote that she broke, so she does not feel any loyalty to family in this regard. **Senator Davis** asked **Ms. Olson** to address attendance and if it is a problem for her given her health. **Ms. Olson** replied that she drives herself for the most part. Today was a little more of an adventure as she had to fly to Boise, so she is confident in her abilities. **Senator Davis** asked **Ms. Olson** if the issue of her health provides a unique perspective to some of the issues that the Commission deals with? **Ms. Olson** said absolutely and it goes both ways. It has been a great education for her, and she considers this to be one of the great blessings in her life.

Senator Geddes thanked **Ms. Olson** for her service. Because she has a lot of experience at the local level and now at the state level, he asked

Ms. Olson if she has any suggestions for efficiency, or confidentiality. **Ms. Olson** stated that these are closed sessions, so confidentiality is there.

Chairman McKenzie thanked **Ms. Olson** and advised her that the Committee will vote on her appointment at the next meeting.

S1044 **Chairman McKenzie** stated that **S1044** is the codifier corrections bill. **Senator Davis** asked **Chairman McKenzie** if a motion was in order. **Chairman McKenzie** responded that a motion is always in order.

MOTION: **Senator Davis** made the motion to send **S1044** to the floor with a **do pass** recommendation. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Kelly** made the motion to approve the minutes from January 19, 2009. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Pearce made the motion to approve the minutes from January 21, 2009 as written. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

Senator Fulcher stated that he has read the minutes from January 23, 2009 and suggested changes to the Committee Secretary. He moved to approve the minutes, as amended, and **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

Senator Thorson made the motion to approve the minutes from January 26, 2009. He stated that they were accurate and well executed. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

ADJOURN: There was no other business before the Committee. **Chairman McKenzie** adjourned the meeting at 8:50 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 2, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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 8:01 a.m.

RS18485 **David Leroy**, Chairman of the Idaho Abraham Lincoln Bicentennial Commission, presented **RS18485** to the Committee. **Mr. Leroy** stated the Commission has nineteen members that are gubernatorial appointments, which includes **Senator Davis**. This concept of legislative involvement in the upcoming celebration of Abraham Lincoln's 200th birthday was actually born in Oregon. The territory of Oregon, in 1849, encompassed portions of the states of Oregon, Washington, Idaho and Montana. Each state has a governor's representative to the United States Abraham Lincoln Bicentennial Commission. **Mr. Leroy** said that he is the chairman of that nationwide, and his counter part in Oregon is **Mike Burton**. **Mr. Burton** contemplated that each of the four states, formerly within Oregon territory, should recognize the fact that in 1849 Lincoln was offered as a retiring U.S. Congressman, the opportunity to be Secretary first and then Governor of Oregon. Lincoln was modestly excited about this proposition, but his wife, Mary, nixed the idea. Our nation and Lincoln's life might have been different had he accepted that position.

Mr. Leroy stated that the idea behind this Concurrent Resolution, and with **Senator Davis**' encouragement, is for our Legislature, along with Oregon, Washington and Montana to adopt this on February 12, 2009. This is the 200th anniversary of Abraham Lincoln's birthday. It would provide that all four states in the region concur, and designate Lincoln the honorary governor for the former territory of Idaho for the day.

MOTION: **Senator Davis** made the motion to print **RS18485**. **Senator Darrington** seconded the motion. The motion carried by **voice vote**. **Senator Davis** requested that the RS be printed and go direct to the floor of the Senate.

RS18436 **Senator Broadsword** presented **RS18436** to the Committee. **Senator**

Broadsword stated that this will repeal Chapter 47, Title 33 of Idaho Code, which established the Youth Education Account Advisory Committee. It was established in 1992 and since that time the account has never been funded. The committee was to put in place radio and television advertising to combat the negative influence of alcohol and drug abuse. There are already a number of programs in place in the State including the Idaho Meth Project. Since this committee is no longer needed, that is why this is before you today.

Senator Davis asked **Senator Broadsword** if she knows who originally brought forward this legislation. **Senator Broadsword** answered she believes that it was introduced by **Representative Robison**. At the time no contact information was added to the Statement of Purpose, so there isn't any way to track it unless you read the minutes of the committee.

Senator Kelly asked **Senator Broadsword** who is behind this legislation? **Senator Broadsword** replied that there were several discussions regarding commissions, committees and task forces that were no longer needed due to the economic conditions we are facing today. A representative on the Governor's staff sat down with her to go over a list. They found ten different committees and commissions that were instituted by executive order, and they will be removed in the same way. Two were done by statute, **RS18436** and **RS18437**. **Senator Kelly** asked **Senator Broadsword** if by virtue of being in statute, is there a cost to the State for this committee? **Senator Broadsword** responded not at this point. The committee members term expired in 2007 and no one has been appointed to replace them.

MOTION:

Senator Fulcher made the motion to print **RS18436**. **Senator Geddes** seconded the motion.

Vice Chairman Pearce asked **Senator Broadsword** if prior to 2007, did the committee accomplish anything that we know of? **Senator Broadsword** stated that the library researched this and there hasn't been any action taken at a legislative level since 1992. If a report was submitted, there isn't any history of it.

Senator Kelly requested a roll call vote on **RS18436**.

Senator Davis said although there hasn't been a report, he asked **Senator Broadsword** if there has been any activity? **Senator Broadsword** replied that she could not find any history of activity and she does not know who the board members were at that time.

Senator Stegner stated that he is looking at the statute right now, and it calls for four members to be appointed by the Governor and two by the Superintendent of Public Instruction. **Senator Stegner** asked **Senator Broadsword** if the appointments have been made, and if this is printed could she request that some members attend the hearing. **Senator Broadsword** responded that she will follow up on that. There have not been any appointments since the term expired.

Senator Davis commented that he does not have a problem printing the RS, but answers to this discussion is what he would like to hear before he is prepared to vote on the motion. **Senator Kelly** expressed that she shares the same reservations.

A roll call vote was taken on the motion to print **RS18436**.

Senator Darrington - Aye

Senator Geddes - Aye

Senator Davis - Aye

Senator Stegner - Aye

Senator Fulcher - Aye

Senator Thorson - Aye

Senator Kelly - Aye

Vice Chairman Pearce - Aye

Chairman McKenzie - Aye

The motion **carried**.

RS18437

Senator Broadsword presented **RS18437** and stated that this will repeal Chapter 60, Title 67 Idaho Code to eliminate The Women's Commission. The Commission was originally formed in 1970 when the move toward full employment out of the household for Idaho's women had begun. The purpose of the Commission was to encourage participation in the social, political and economic progress of local communities. Times have changed and women have taken their place at the political and corporate table. The Commission's efforts while they have been important in decades past, are now duplications of other services offered. Women have become leaders in their communities. This would save the general fund \$31,000.

Senator Kelly asked **Senator Broadsword** if the Governor's Office supports this and is it included in his budget? **Senator Broadsword** replied that she believes the Governor does not fund the Commission, but she has not looked at his budget so she is not certain. The Governor's staff asked for her help in resolving this situation.

Senator Davis stated that it is his understanding that the executive budget does include the continuation of this appropriation from prior years. **Senator Davis** asked **Senator Broadsword** to explain what her understanding is with regard to resolving this, based on what she was told. **Senator Broadsword** responded that it is her understanding that the Governor feels that this Commission is no longer needed, and that he would be happy if it went away.

MOTION:

Senator Stegner stated that this is not the first time that this particular Commission has been under scrutiny by the Legislature. He would like more information and to hear some evidence from members who currently serve on the Commission, before he is willing to discontinue it. **Senator Stegner** made the motion to print **RS18437**. **Vice Chairman Pearce** seconded the motion.

Senator Davis added that he will support the motion to print the RS, but he needs a great deal more information before he is prepared to support this legislation. Additionally, he would like to know what objectives the

Women's Commission is trying to achieve today. The challenges that women faced in 1970 may be substantially different from what they are dealing with in 2009. It is conceivable that what they are trying to address today may be just as valuable.

Senator Kelly commented that the intent language and the mission statement of the Commission may not be matching the needs of the current generation. What is being proposed here versus changing the mission statement is something that should be considered. **Senator Kelly** requested a roll call vote. This bill is more than just a motion to eliminate a Commission that is not funded or no longer needed.

Senator Darrington stated that he will support the motion to print, but that is probably about as far as he can go for a lot of good reasons.

Chairman McKenzie said that he usually doesn't take testimony at a print hearing, but the Director and two other representatives from the Women's Commission are here. They have provided a pamphlet to the Committee which is a product of the Commission.

Senator Davis stated that he believes there is a program in Eastern Idaho put on by the treasurer, and it is very popular. He asked if the Women's Commission plays an active role in that program? **Chairman McKenzie** asked **Kitty Kunz**, the Director of the Commission, if she could answer that question? **Ms. Kunz** stated that the Commission has been a sponsor of that event for the past two years. This past year, **Representative Jaquet** put the Commission in touch with the Heinz Foundation, who provided them with five hundred books on how women face retirement. Those books were passed out at that event. **Senator Davis** added that the event in Idaho Falls has been historically very popular, this is an additional hurdle that needs to be cleared for him.

Chairman McKenzie stated that he shares **Senator Darrington's** feelings regarding the print hearing and returning on the merits of this legislation. **Chairman McKenzie** requested the Committee Secretary to take the roll call vote on the motion to print **RS18437**.

Senator Darrington - Aye
Senator Geddes - Aye
Senator Davis - Aye
Senator Stegner - Aye
Senator Fulcher - Aye
Senator Thorson - Nay
Senator Kelly - Nay
Vice Chairman Pearce - Aye
Chairman McKenzie - Aye
The motion **carried**.

RS18124

Chairman McKenzie stated that this RS is before the Committee again because some of the Committee members were absent at the original print hearing. **RS18124** is the incentive bonus that is proposed by the Idaho State Lottery to lottery game retailers.

MOTION: **Senator Davis** stated as a courtesy to the **Chairman** he will move to print **RS18124**. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENTS: **Chairman McKenzie** stated there are confirmation votes before the Committee.

MOTION: **Senator Geddes** made the motion to confirm the appointment of **Megan Ronk** to the Idaho Commission on Human Rights. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

The motion to confirm the appointment of **Brian Scigliano** to the Idaho Commission on Human Rights was made by **Senator Fulcher**. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

Senator Davis made the motion to confirm **Sheila Olson** to the Idaho Commission on Human Rights. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Norm Semanko**, Chairman of ICIE (Idaho Council on Industry and the Environment) addressed the Committee. **Mr. Semanko** stated that his everyday job is with the Idaho Water Users Association, who is a member of the ICIE. The ICIE was formed in 1989 with the mission to facilitate the use of science and facts in shaping public policy on environmental issues. The past few years the Council has provided a presentation with regard to some aspects of the rulemaking process and the legislative review process. **Mr. Semanko** said that **Roy Eiguren**, who represents Eiguren Public Law & Policy will discuss the aspects of the rulemaking process, particularly how it relates to the process here in the Legislature. **Jack Lyman** from the Idaho Mining Association will discuss stringency. **Joan Cloonan**, a member of the DEQ (Department of Environmental Quality) Board and an environmental consultant, will touch some on stringency, but will spend more time on guidance and rules.

Roy Eiguren addressed the Committee and stated that the part he is discussing relates to the APA (Idaho Administrative Procedures Act). In 1923, **Mr. Eiguren** said, the Supreme Court specifically recognized that executive branch agencies of state government have the authority to implement rules for the purpose of interpreting or implementing specific statutory law. The Legislature adopted the APA that is currently in place in 1965. It was revised in 1983, but essentially the existing act is a result of compiling both the American Bar Association's model APA, as well as the model APA issued by the Commission on Uniform State Laws.

Mr. Eiguren stated the definition of a "rule" is simple. A "rule" means the whole or part of an agency statement of general applicability that has been promulgated in compliance with the provisions of the APA, and that implements, interprets or prescribes: 1) law or policy; or 2) the procedure or practice requirements of an agency. A Supreme Court case in Idaho that talked about the APA, Asarco v. Idaho DEQ in 2003, was a case brought by the mining industry in northern Idaho over a TMDL (Total Maximum Daily Load). The question was whether or not a TMDL had to

be promulgated as a rule or a policy. The decision was in fact that it needed to be promulgated as a rule. The Supreme Court provided a number of criteria or definition characteristics that help to further define what a rule is. The six characteristics are: 1) have wide coverage; 2) are applied generally and uniformly; 3) operate only in future cases; 4) prescribe legal standards or directives not otherwise provided by the enabling statutes; 5) express agency policy not previously expressed; and 6) is an interpretation of law or general policy.

Mr. Eiguren continued and said that another Idaho Supreme Court case in 1989, *Mead v. Arnell*, provided explicit authority to the Legislature to have the ability to reject rules on the basis that they do not meet legislative intent. This case involved septic tank regulations promulgated by the Board of Health and Welfare. The action was against the President Pro Tem, Senator Crapo and the Speaker of the House. The contention was that the ability of the Legislature to reject a rule was unconstitutional, and that it was a violation of separation of powers. The Supreme Court ruled that the Legislature did have the authority to reject rules. It does not violate the Constitutional doctrine of Separation of Powers, provided that legislative rejections of rules are based upon a rule being "Contrary to Legislative Intent." It did, however, leave open the question as to whether or not the Legislature has the ability to amend or modify a rule. **Mr. Eiguren** stated that his view is that it would be unlikely for the court to allow the Legislature to have that authority, even though it is contained in the APA. Legislation from last year would have stricken the provision to amend or modify rulemaking. It went through the Senate, but was held in the House, due to some last minute concerns expressed by some of the agencies. This has been resolved and the intent is to bring that legislation back this session.

Senator Darrington commented that he doesn't believe that everyone has a full understanding of this. In order for a rule to be rejected there has to be some finding of fact by the body as a reason to reject, rather than just a whim that politically the Legislature does not like the rule. **Mr. Eiguren** said that he fully agrees with **Senator Darrington**. Idaho is in a very small minority of states that allows the Legislature to reject rules along with West Virginia and Wisconsin.

Senator Kelly asked **Mr. Eiguren** to expound a little on the legislation that he referred to. **Mr. Eiguren** responded the legislation provided three things. One, it deleted the language from APA that allowed the modification or alteration of a rule; two, it provided and expanded the definition of guidance; and three, it also included in the definition of a rule the six factors that came from the *Asarco* case. In discussions last year, the conclusion was that it is best to not codify those six criteria, so the bill was held in the House with the understanding that it would be introduced this session. **Senator Kelly** asked **Mr. Eiguren** if the legislation will apply to all executive branches for administrative rulemaking and not just to the issues he is discussing today regarding environmental law? **Mr. Eiguren** answered that is correct, although there isn't any function or difference. The APA governs the DEQ as well as other agencies, so it is all related to the APA. **Senator Kelly** said with that understanding, does **Mr. Eiguren**

have examples of the problems that exist in other agencies. **Mr. Eiguren** responded that he is not asserting that there are problems in any agency. The most recent definition of guidance under the model act is the better definition, and it is appropriate to delete the language to amend or modify rules to keep it in line with the *Mead* case.

Senator Davis asked **Mr. Eiguren** what problems will be created by not eliminating the language? **Mr. Eiguren** said in his view the Legislature does not have that authority. If the Legislature should try to seek to use that authority it will run into a constitutional problem. The best practice is to conform the APA with the *Mead* case. **Senator Davis** said that is his understanding of the parameters that they have to work within, but he is having a hard time understanding what the real problem is. What are the concerns regarding deleting the language? **Mr. Eiguren** responded that there isn't a problem. The issue is whether or not the Legislature wants the APA conforming to what the Supreme Court said is the Legislature's authority. The Legislature's authority is very clear. The Legislature may reject a rule. However, you cannot amend or otherwise alter a rule, so why keep it in statute. **Senator Davis** said that he buys off on that and it is probably the reason he voted for it last year. Since we cannot do it now, what is the best argument for doing this. **Mr. Eiguren** said that the opposition that arose in the House last year, did not deal with that particular section of the bill. It dealt with the application or incorporation of the *Asarco* case's six criteria of the definition of rules into that section. It is the view of several State practitioners, that you don't want to codify that particular case authority. It is meant to be more illustrative or use as guidance, rather than the actual six requirements that have to be included in the definition of a rule.

Jack Lyman commenced his portion of the presentation. **Mr. Lyman** said that he is going to talk about stringency. The definition of stringency is to impose rigorous standards of performance or severe. Stringency was first introduced into Idaho Code in 1983 with the passage of the Idaho Hazardous Waste Management Act, and since then similar provisions have been added in five other statutes. They are: 1) The Toxic Substance Control Act; 2) The Idaho Solid Waste Facilities Act; 3) The Idaho Clean Air Act; 4) The Idaho Clean Water Act; and 5) The Idaho Land Remediation Act. In 2002, stringency amendments were made to the EPHA (Environmental Protection and Health Act). The basic premise of stringency provisions is, that the Federal Government is generally in a better position to determine the level and intensity of a regulation that is needed in a particular aspect of an environmental regulation. These provisions will always ensure that Idaho will be in compliance with Federal law, and that we will not exceed Federal regulation without specific legislative authorization. **Mr. Lyman** stated that stringency is primarily a separation of power. It assures that any effort to exceed the Federal requirements cannot be imposed solely by the executive branch in contradiction to legislative intent. There isn't anything in the current stringency provision that prohibits the Legislature's ability to impose more stringent rules. That decision would require a different approach than would happen in rulemaking.

Mr. Lyman continued and said that The Hazardous Waste Management Act specifically states that the agency, in this case DEQ, is prohibited from promulgating any rule that would impose conditions that are more stringent or broader in scope than Federal law. It is also prohibited in the Toxic Substance Waste Disposal Act and the Municipal Solid Waste Act. In the Air Quality Act, Idaho decided to do it differently by stating that the agency can promulgate a rule that would be more stringent than is required by the Federal Clean Act. The rule cannot take effect unless it is specifically approved by statute. In order to do something tougher than what the Federal Government does, a statute would need to be passed authorizing the agency to proceed with rulemaking in that specific area. It has to be adopted statutorily. There are other provisions in Idaho Code that require statutory authorization of rulemaking. An agency would proceed like they normally do under rulemaking, present the docket, a bill would be considered for approval by the Senate and the House, and then signed by the Governor.

Vice Chairman Pearce asked **Mr. Lyman** if the EPA is now allowing states to set their own standards? **Mr. Lyman** responded that as he understands, it specifically relates to some prohibitions that relate to air emissions, auto and mileage standards. It is pretty much restricted to automobiles and that it is not different in the areas of environmental regulations. Idaho already has the ability to do things more stringent under a lot of the provisions. The big issue is the regulation of carbon dioxide as well as fuel mileage standards. There is a Federal preemption for states taking action in those narrow areas. **Mr. Lyman** said he is not aware of any Federal preemption in the other areas of the environmental regulations. **Vice Chairman Pearce** asked **Mr. Lyman** if the regulations apply to water or other issues? **Mr. Lyman** answered that he is not aware of any Federal preemption that prohibits a state from imposing more stringent standards than the Federal Government in those areas of regulation. The only one that he is aware of deals with auto emissions and fuel mileage.

Senator Geddes asked **Mr. Lyman** if changes were made recently to drinking or surface water standards on reservation lands, and the ability for tribes to set those standards? **Mr. Lyman** responded EPA has a rule that the tribal lands in Idaho are now certified to regulate under the Clean Water Act. The tribes as a state will be able to impose regulations. The DEQ and EPA will have to work with the tribes. The difficulty is that water flows into the tribal lands and the tribes can impose whatever standards they want. This will require people upstream to meet tougher requirements, and the water would then flow back onto state, federal, and private lands in Idaho. This has a potential to be a problem and the tribes may be able to do this with air as well.

Joan Cloonan, a member of the Board of Environmental Quality, commenced with her portion of the presentation to the Committee. **Ms. Cloonan** said that she will be talking about guidance and rulemaking. As to the issue of stringency, she was involved in 1983 with the first hazardous waste bill. She has been working over the years on

stringency, and in 1984 the Legislature did pass a change to the hazardous waste rules that were more stringent than Federal rules. **Ms. Cloonan** stated that she will be talking about guidance and rulemaking from the perspective of DEQ, because that is what she knows best. At the DEQ the Board promulgates rules.

Senator Kelly asked **Ms. Cloonan** if she is speaking in her capacity as a member of the Board, and is she being paid to be here today as an environment consultant? **Ms. Cloonan** responded that she is not being paid by anyone and she is speaking as a member of ICIE. She cannot separate the fact that she is a member of the Board.

Ms. Cloonan continued and stated that the rules come before the Board for a number of reasons, such as statutory requirements. This year the Board reviewed wastewater treatment standards that were for municipalities and were the result of legislation from a couple of years ago. **Ms. Cloonan** stated that legislative approved or temporary rules have the force and effect of law. Guidance is a concern and that perhaps agencies are using guidance as a rule. It can be written documentation of how an agency interprets a rule, policy, checklists, background information, handbooks, procedures, and treatment method alternatives. A treatment method alternative is the wastewater land application of guidance, or wastewater reuse. The implementation of a permit system for land application treatment of wastewater provides protection of ground water and avoidance of nuisance. Permits are issued under rules as operational requirements to meet standards. The rule sets the standard and guidance describes and suggests ways to get there. Over the years concerns have been expressed over the use of guidance as a rule. DEQ's guidance policy is: 1) that guidance is guidance, not law; 2) consult with the AG's office on whether it is guidance or rule; 3) obtain directors approval for a guidance document; 4) seek public input on guidance; 5) publish draft guidance; 6) publish final guidance; and 7) avoid mandatory language.

Senator Davis stated that he does not practice law in this area and he cannot begin to understand the complexities. The code for guidance is in the APA. In his experience, guidance documents are not considered to be guidance, but edicts from agency directors. **Senator Davis** asked **Ms. Cloonan** for an example of a guidance document that can easily be understood? **Ms. Cloonan** responded that the place where guidance documents are helpful is in highly technical areas. The application of wastewater guidance is a document that assists the permittee to understand how the agency thinks about land application of wastewater. It provides information to the agency to meet standards that are necessary for regulation. Technology has changed considerably over the years. Guidance is meant to help the agency and the permittee. **Ms. Cloonan** added that the ones she has worked on have removed the mandatory language. It is very technical and she does not know if anyone wants to see this type of information or requirement set in rules, so that it is mandatory. Risk-based corrective action was very controversial and this year there are regulations before the Legislature. The concern was that guidance set standards for clean up that were being used by the

agency as a regulation, which is **Senator Davis'** concern. Part of that, through negotiated rulemaking, has been put into rules. There is flexibility, and direction for interpretation. The rules set the standard, the guidance documents assist with how to do it. **Senator Davis** asked **Ms. Cloonan** if the promulgated rule will reference the guidance document and adopt the guidance document as the standard in the rule? **Ms. Cloonan** answered that it is contemplated that guidance documents will be indexed and published. Rules will reference where there should be a guidance document, but the guidance document will not be incorporated into the rule as a rule. Most of the regulated entities do not want that rigidity. They want flexibility particularly in technical areas.

Senator Darrington commented that in rules review he believes that the concern of **Senator Davis** is that the agency will use policy instead of rules. He does not believe that has happened inappropriately, but **Ms. Cloonan** has raised this concern of guidance to a higher level. **Senator Darrington** added that he believes this has not occurred in the formal rule review at the Legislature. **Ms. Cloonan** replied what has happened over the years, is that clarification of what is a rule, what policy and guidance are, and how they are used. Guidance and policy need to be consistent with the rule, but it really is how the agency interprets the rule. It is open to the public and they have an opportunity to be involved in the development of rules.

Senator Geddes stated that he shares **Senator Darrington's** view because once guidance is written and drafted it never goes away. It may be superceded but the old guidance seems to remain. Deciding which guidance is relevant at the time and what has been superceded is a problem. In his experience with environmental efforts, guidance does in fact become a policy. **Senator Geddes** asked **Ms. Cloonan** how do we manage guidance so that it truly is guidance? **Ms. Cloonan** stated there is two parts to this. She doesn't know if there is much that can be done with EPA guidance. She worked for the Department of Justice for about six years defending EPA rules. They operated on guidance documents. Guidance for the EPA was the rule and that is a bigger battle than what is being addressed here. On the State level, several things need to be done with guidance. The DEQ agency director, **Toni Hardesty**, has done a good job with directing the agency that guidance is guidance. On the DEQ website there is a list of guidance documents for each segment for air, water, and waste. **Ms. Cloonan** said that she has spent a lot of time on land application with wastewater guidance in the eighties. Meetings with the regulated community and anyone else that is interested are held twice a year on guidance. If anyone is going to do a land application with wastewater they need to be informed. The legislation that is being proposed has the requirement that guidance be indexed. The agency people that she deals with are extremely sensitive to the fact that it is guidance and not "shall." The EPA treats a lot of its guidance as absolutes.

Senator Davis asked **Mr. Eiguren** if it is contemplated that language for guidance documents will be codified? **Mr. Eiguren** responded that the intent behind the legislation is not to proliferate guidance documents, but

to have a clear and precise definition of what a guidance document is. The legislation this year reflects the work that has been done over a long period of time, so it is the “state of art” definition of guidance. **Mr. Eiguren** said that he would like to visit with **Senator Davis** before it is introduced to see if it accomplishes what the Legislature would like. The goal is to make it clear by definition what the difference is between a rule and guidance. In addition to that, it will provide an index of all the guidance documents that will be more user friendly. **Senator Davis** stated that his concern is that by codifying that standard it could do the reverse for some agencies. Those agencies may be reluctant to bring forth guidance documents. **Mr. Eiguren** stated that he shares the concerns that **Senator Davis** has. Guidance documents are necessary especially in technical areas. The real concern is that agencies will essentially use guidance as a rule.

ADJOURN:

Chairman McKenzie said there is no other business before the Committee. He adjourned the meeting at 9:17 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 6, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Stegner, Fulcher, Stennett (Thorson), and Kelly

MEMBERS ABSENT/ EXCUSED: 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 8:00 a.m.

GUBERNATORIAL APPOINTMENT: **Chairman McKenzie** asked **Tom Katsilometes** to speak to the Committee regarding his appointment as Commissioner for the State Athletic Commission. **Mr. Katsilometes** stated that he appreciates the Governor's appointment. At one time the Commission only regulated boxing and wrestling, but now it oversees mixed martial arts as well. It is the fastest growing sport in the world today. It is also referred to as cage fighting. It has been out of control for quite some time due to the match makers and promoters, who put professional fighters in with the amateurs. The difficulty is the fact that records are not kept as to who are the amateurs and professionals. The Commission is getting it under control and statute gives authority for appointing deputy commissioners. **Mr. Katsilometes** said that he has a tremendous commissioner who oversees the mixed martial arts events. Meets are held once or twice weekly in Idaho Falls, Pocatello, Coeur d'Alene, and Twin Falls, as well as the Treasure Valley. The duty of the Commission is to provide public safety at the meets. The fighters in boxing sustain more damaging head injuries than cage fighters, even though mixed martial arts looks more violent. In boxing, the fighters are getting hit in the head continuously.

Senator Kelly asked **Mr. Katsilometes** how often the Commission meets, and is it staffed? **Mr. Katsilometes** responded it has one Commissioner. Legislation gave authority to the Commission to appoint five deputy commissioners. Currently he has three appointed. One is an attorney in Lewiston, another is a former commissioner, and the other commissioner oversees the mixed martial arts. The Commission meets when necessary for violations, but otherwise they meet approximately every three months. The Commission has two staff members at the Bureau of Occupational Licenses who issue licenses, regulations for sanctioning permits for the fights, and pay the officials. All fees are

handled through the Bureau as the Commission was put under the Bureau of Occupational Licenses about three years ago.

Vice Chairman Pearce asked **Mr. Katsilometes** if the financial issues of the Commission have been resolved. **Mr. Katsilometes** answered that has been resolved since they are now under the Bureau and they share the deputy attorney and rule writing with Occupational Licenses. **Vice Chairman Pearce** asked **Mr. Katsilometes** how much time he spends working on the Commission? **Mr. Katsilometes** responded not a lot of time because he has commissioners in place who do a great job. When there is a large fight it requires a little more time. **Vice Chairman Pearce** stated that he appreciates his time and service to the Commission.

Senator Geddes commented that he echoes the sentiment of **Vice Chairman Pearce**. **Senator Geddes** asked **Mr. Katsilometes** if there is always a deputy commissioner at an event? **Mr. Katsilometes** replied that there is, including an investigator from the Bureau of Occupational Licenses, to ensure that everyone is paid correctly. The deputy commissioner enjoys the events so he is always there. **Senator Geddes** stated this seems like a large commitment especially when there is no salary paid. He asked if the expenses that are associated with these activities were paid out of the gate, or is there an appropriation through the Bureau. **Mr. Katsilometes** stated the way this works is that five percent of the gate is paid to the Athletic Commission. The funds are deposited into the general fund of the Bureau and the Commission's expenses are paid out of that as well as travel expenses. **Senator Geddes** asked if the person who sponsor's the event handles the money, and is it scrutinized or audited? **Mr. Katsilometes** responded that it is all done through the Bureau who handles the distribution and auditing. The officials fees are set by the Commission and the fight promoter pays the fee. It is the responsibility of the investigator and the deputy commissioner to make sure that everyone is paid.

Senator Geddes asked **Mr. Katsilometes** if he has any conflicts of interest with his appointment and his position at the Tax Commission. **Mr. Katsilometes** answered that he does not foresee any at this time. **Senator Geddes** stated it seems that the deputy commissioners handle the majority of the travel and supervision of the events. He asked **Mr. Katsilometes** if he feels that he is adequately supervising them, and that it isn't just a form of entertainment for them? **Mr. Katsilometes** replied the commissioner in Lewiston, Jim Grow, has been involved in boxing for many years and he does a terrific job for the Commission. A former Commissioner, John Vestal, knows and regulates events in this area. Chris Hunt handles all the mixed martial arts events and he goes wherever he is needed. He speaks to them several times a week to ensure that they do things correctly. **Senator Geddes** asked if it is legal to bet on these events, and if not, how does the Commission control it? **Mr. Katsilometes** stated that it is not legal to bet on these events in Idaho and that is why the investigators are there.

Senator Stegner commented that he and **Mr. Katsilometes** had a conversation earlier this week where he mentioned an upcoming,

unsanctioned fight somewhere in the State. There is a lot of interest in these types of events nationally. He asked if the Commission has any jurisdiction over these events? **Mr. Katsilometes** answered the event he is referring to is on the Nez Perce reservation. It is a mixed martial arts event that is most likely going to happen next week. The problem is that the Commission does not have jurisdiction on the reservation. The tribe can run and regulate anything they want for athletics. It is an illegal event that should be under the Commission.

Senator Kelly stated that **Mr. Katsilometes** mentioned a casino in northern Idaho and there was some oversight. She asked **Mr. Katsilometes** if that was correct? **Mr. Katsilometes** answered there are two tribes, Coeur d'Alene and Nez Perce. The Commission regulates fights for boxing, but when the Nez Perce tribe has a mixed martial arts event the tribe prohibits them from regulating it. The Coeur d'Alene tribe allows the Commission to regulate their events, but Nez Perce does not want them to be involved in the mixed martial arts events.

Senator Darrington asked **Mr. Katsilometes** if he is still refereeing boxing events? **Mr. Katsilometes** replied that is one of the downfalls of his appointment. He cannot referee fights anymore. **Senator Darrington** asked what about in other states? **Mr. Katsilometes** said that he can, but every state is territorial and make sure their events are covered by their own referees.

Chairman McKenzie thanked **Mr. Katsilometes** for his service on the Commission and advised him that the Committee will vote on his appointment at the next meeting. **Chairman McKenzie** turned the gavel over to **Vice Chairman Pearce** at this time.

Dr. Ted Hoffman addressed the Committee regarding his appointment to the Idaho State Racing Commission. **Dr. Hoffman** stated that he has been a rancher and a veterinarian in Mountain Home since 1983. He raises sporting and roping cattle. He does not have any experience in horse racing, and he does not anticipate any difficulties.

Senator Darrington asked **Dr. Hoffman** if there will be horse racing at Les Bois this summer? **Dr. Hoffman** replied that is up in the air, but there are ongoing discussions that he cannot comment on publicly at this time.

Senator Kelly asked **Dr. Hoffman** if this is his first appointment to the Commission? **Dr. Hoffman** answered that is correct. **Senator Kelly** asked how much time will he have to commit to the Commission and how will it fit with his work schedule? **Dr. Hoffman** replied it will probably be one day a month. He has an active practice where he is one of the senior partners so he does not have to work as hard. **Senator Kelly** asked if he has any personal or professional conflicts of interest that may arise in the execution of his duties. **Dr. Hoffman** responded none that he is aware of. Some of his clients own race horses, but he seldom sees them. There would be few instances where the owners would be part of the regulating that he is involved in. If a conflict should arise he would not have a problem withdrawing.

Senator Geddes asked **Dr. Hoffman** if he is familiar with the other commissioners and can he support the efforts of the Commission as a whole? **Dr. Hoffman** stated that he has not met the other commissioners yet and he does not anticipate any problems working with them.

Vice Chairman Pearce thanked **Dr. Hoffman** and told him the Committee will vote on his appointment at the next meeting.

H13

Melissa Vandenberg, the Deputy Attorney General for the Department of Administration, addressed the Committee regarding **H13**. Copies of the statute that are being repealed as well as the statutes that will replace the sections being repealed, were provided to the Committee. **Ms.**

Vandenberg stated that **H13** will repeal two superceded *Idaho Codes*, 59-1205 and 59-1212. In 1980 the group insurance statues along with many other statutes were moved to Title 67 Chapter 57. Section 59-1205 and 59-1212 are the only remaining code sections. The others have already been removed or repealed. *Idaho Code 59-1205* creates the personnel group administrator within the Department. That position is non-classified and no longer exists. Currently the group insurance is administered by the Director of Administration and there is an employee benefits manager as well. It was replaced by 67-5760 and 67-5761. **Ms. Vandenberg** stated that 59-1212 ensures that no other group plan or policy will be affected by the passage of 59 Chapter 12. It is a duplication of current statute, 67-5765, and it is redundant.

Senator Kelly asked **Ms. Vandenberg** if **H13** will repeal the codes that are no longer needed because there are other provisions in Title 67? **Ms. Vandenberg** responded that is correct.

Senator Stegner asked **Ms. Vandenberg** when were the statutes in Title 67 enacted? **Ms. Vandenberg** replied that the statutes were enacted in 1980.

Senator Kelly asked **Ms. Vandenberg** why wasn't this done in 1980.

Ms. Vandenberg said that she could not answer that, or why it was missed. It was discovered when the Department did the zero base budget analysis and she has no idea why it was never repealed or removed.

Senator Stegner asked **Ms. Vandenberg** if there is a personnel group insurance administrator? **Ms. Vandenberg** responded that it is no longer a non-classified position. It was replaced by the Director and the Employee Benefits Program Manager.

MOTION:

Senator Kelly made the motion to send **H13** to the floor with a **do pass** recommendation. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

H15

Ms. Vandenberg presented **H15** to the Committee. **Ms. Vandenberg** said that **H13** is also a repeal of a statute that has been superceded by another statute. It repeals section 67-3206. In 1980 the Department of Public Works statutes along with other Department of Administration

statutes were moved to Title 67, Chapter 57. At that time the Department of Public Works became the Division of Public Works under the Department of Administration. Section 67-3206 is the only remaining code section in this title and chapter. All others have either been replaced or repealed. Section 3206 requires the Division of Public Works to inventory all real property owned or leased within the City of Boise. The Division of Public Works currently is required to keep an inventory of all real and leased property throughout the State. *Idaho Code 67-5707A* requires the Department to adopt rules managing the acquisition and record keeping of State owned dwellings. That rule is contained in Idapa 38.04.05 rule 171, which requires that all agencies provide a list of all dwellings that they own and the Division of Public Works keeps an inventory of them. **Ms. Vandenberg** said that section 67-5708A requires the Division to keep an inventory of all leased property throughout the State. This statute is a duplication and less comprehensive as to what the Department already does.

MOTION: **Senator Stegner** made the motion to send **H15** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Fulcher** stated that he reviewed the minutes of January 30, they seem to be in order, and he moved to approve them. **Senator Kelly** seconded the motion. **Senator Geddes** stated that he has one correction on page 4 regarding the salary paid to the Governor and the Lieutenant Governor. **Senator Fulcher** restated his motion to approve the minutes with changes. The motion carried by **voice vote**.

The minutes for January 28, 2009 were held for approval at the next meeting.

ADJOURN: There was no other business before the Committee. **Vice Chairman Pearce** adjourned the meeting at 8:40 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 11, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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 8:08 a.m.

GUBERNATORIAL APPOINTMENT: **Chairman McKenzie** asked **Marsha Smith** to speak to the Committee regarding her appointment to the PUC (Public Utilities Commission) and some of the cases that the Commission is doing now. **Ms. Smith** stated that the Commission just concluded a case that will change the rate structure for residential customers into a tier rate, which will promote conservation. Rocky Mountain Power and PacifiCorp have a rate case in house with a settlement that was filed recently. There will be a one day hearing regarding the settlement on March 11. The energy side of the business is very busy. The Commission became very concerned last fall with regard to affordable services, so the Commission engaged in several work shops on energy authority. Participation was engaged by a broad spectrum of entities and a report and order has been issued, stating that the Commission agrees with some of the findings. Supporting legislation will be forthcoming.

Chairman McKenzie asked **Ms. Smith** to explain the tier residential rates. **Ms. Smith** responded that is for the Idaho Power Company. Previously there was a rate structure of summer and non-summer rates. Idaho Power is a summer peaking utility which means that the energy they buy is much more expensive in the summer than winter months. It is a myth that Idaho is able to generate all the power that is needed. Idaho is an energy importer and sometimes in peak hours of the summer energy has to be bought and it is very expensive. There was a two tier structure that provided 300 kilowatt year round at the non-summer rate and then it was bumped up for the summer rate. **Ms. Smith** stated that the new rate structure goes up to 800 kilowatt hours. The second block is between 800 and 2,000 with a bump in rates, and the third tier is usage over 2,000 kilowatts with a larger bump in rates. It is a rate structure that the PUC believes will reflect the costs of a utility in an age

where they are capacity constrained. New resources are needed as well as conservation and efficiency. **Chairman McKenzie** asked if this would be a year round tier system? **Ms. Smith** answered yes it is.

Senator Geddes thanked **Ms. Smith** for her service on the Commission. He asked if this appointment was her third or fourth, and is she now the longest serving commissioner? **Ms. Smith** replied that it is her fourth and she believes no one else has served four terms. **Senator Geddes** said that her experience serves the State well. With the economic crisis that the State is facing, what does she see happening for the utility companies, and how are they responding to this? **Ms. Smith** responded that it is fairly recent, but it has been addressed and the PUC feels that it is their duty to continuously and extensively review the measures taken in response to the changes that are happening. With the growth of the State, very expensive base load resources are needed and with demand down now, there is some breathing room to explore new ways to get more resources. The PUC isn't sure what Congress will do with regard to climate change issues and carbon, so it is uncertain as to what can be built.

Senator Darrington asked **Ms. Smith** if the PUC plays a role in the construction of power lines? **Ms. Smith** said that usually they do not. In Idaho the siting is done by the cities and counties where the line will travel across. **Senator Darrington** asked if the companies recoup the cost of those high voltage lines through the rates. **Ms. Smith** replied that is true, but those lines are used not only for local service, but for wholesale services. Some of the wholesale customers will bear that cost.

Vice Chairman Pearce commented he sees that **Ms. Smith** has had some international experience with conferences. He asked her to share some of those experiences with the Committee. **Ms. Smith** said that she enjoys that part. The National Association of Regulatory Utilities Commissioners has for several years had a partnership with Eastern European countries. All their utilities were national government owned, and when they went to privatization they looked to the United States for assistance in how to structure a system with private utilities. DOE (Department of Energy) and USAID (United States Agency for International Development) helped fund this, and no State funds were used. **Ms. Smith** stated that last June when she went to Sydney, it was interesting to learn that across the globe they deal with the same issues that we do with regard to structure of utilities, competition or regulation. We may speak different languages and live in different places, but the issues regarding utilities are the same. **Vice Chairman Pearce** asked **Ms. Smith** what does she foresee will be the major issues for the PUC and trends in the energy field that the State will face. **Ms. Smith** responded that in the energy field it is the issue of supply, what can we build to provide the base load. We want the economy to recover so that we can provide the power that is needed to everyone who wants to do business and provide services. There will be changes on the Federal level and the biggest challenge will be on the water side. Water is something everyone needs and they have challenges as well as being financially viable to ensure the supply for demand.

Senator Davis said that **Ms. Smith** spoke earlier regarding the ruling with Idaho Power. He asked **Ms. Smith** if the PUC will retain jurisdiction or does it require opening a new rate case in order to actively participate with them. **Ms. Smith** replied that the Commission has ongoing oversight responsibilities with regard to all the utilities. Auditors can go at any time to audit a regulated entity. An open case is not necessary. If the PUC wanted to change rates then a case would have to be opened either by the utility making an application to request it, or the Commission on its own motion can open an investigation. They would issue an order to show cause. **Senator Davis** asked **Ms. Smith** if the PUC has statutory authority to request that the utility add to the base load? **Ms. Smith** responded that the commissioners are not a substitute for company management. The company has an obligation to manage its business. It also has an obligation to provide adequate, reliable, and safe service for its customers, which means that it has an obligation to have enough resources. Every two years the PUC requires the energy utilities to file an integrated resource plan. This is a forecast of their needs along with the resources they have or plan to obtain to meet those needs. **Senator Davis** asked **Ms. Smith** if she and the Commission have confidence in those forecasts, to ensure the power needs of the people in the State of Idaho. **Ms. Smith** answered that forecasts are just that, but the PUC has a reasonable level of confidence that the utility companies are actively engaged in good processes to prepare them in providing the needs of their customers. When there is the worst water year on record combined with unseasonably hot temperatures in July, there could be a shortfall, so you do the best planning that you can to meet energy needs. **Senator Davis** said other than the reasons that you just mentioned, are there any current or foreseeable areas that the Commission has that the State is not actively working on with regard to utilities. **Ms. Smith** answered that she cannot think of any at this time.

Senator Davis asked **Ms. Smith** if there is still a residential exchange credit program in Idaho? **Ms. Smith** replied that the PUC has filed suit against the EPA (Environmental Protection Agency) in the Ninth Circuit Court of Appeals on this issue. When the Ninth Circuit Court threw out the settlement agreement because of lawsuits by Washington, the exchange program did cease. Avista, in northern Idaho has reached an agreement with Bonneville that will be out for public comment soon, that will reinstate some of their credit, but it is diminished. Idaho Power will not see a credit unless we prevail in some way against Bonneville. The reason that the PUC filed suit was because the Commission believes that the intent of the Four State Act was to cut one state, i.e. Idaho, completely out of the program, which is exactly what has happened. **Senator Davis** said obviously this has a great impact on irrigation as well as residences. He asked if the other states are actively participating and benefitting from the residential exchange credit? **Ms. Smith** answered yes, although she believes that Oregon has been cut back to some extent because PacifiCorp serves there. The bulk of the benefits now go to the state of Washington.

Senator Kelly thanked **Ms. Smith** for her willingness to serve on the Commission. She said this is undoubtedly one of the most important appointments that the Legislature confirms. The job the PUC does is so important to the State. She asked **Ms. Smith** to comment on the internal workings of the Commission. **Ms. Smith** responded that the Commission is divided into divisions. There is the consumer division and they interface with customers who have problems with utilities, to try and resolve them before they become formal complaints. The utility division, is comprised of engineers, analysts, accountants and an economist. They analyze the cases, prepare formal written testimony, and participate in cases just like any other party. The administrative division handles the fiscal part, bookkeeping, supplies, etc. to ensure the day-to-day operations of the Commission, and then there are the Commissioners, who are appointed by the Governor. The staff is a resource for the Commissioners as long as it doesn't involve a contested case. When there is a contested case matter, the staff is walled off from the Commissioners. There are two policy analysts who work solely for the Commissioners, and they rely on them for analysis of cases. Lawyers are provided by the Attorney General's Office. **Ms. Smith** stated she believes that the State and the Commission works better than ninety-five percent of the other states, especially those who have separate advocate divisions, lawyers, and staff. At one time the Commission looked at splitting the staff internally into advocacy and advisory, but it didn't work well. That is the reason the Commission handles cases as a case by case method. **Senator Kelly** said that was very helpful. She asked **Ms. Smith** if the three Commissioners supervise the whole staff, and are they involved in budgeting, or staff management? **Ms. Smith** replied that each division has their own supervisor. The Commission President is the head of the agency and has the responsibility to sign payroll, and deal formally with employee grievances, but the day-to-day supervision is not done by the Commissioners.

MOTION:

Chairman McKenzie stated the confirmation vote on **Tom Katsilometes** as Commissioner to the State Athletic Commission is before the Committee. **Senator Darrington** made the motion to confirm the appointment of **Mr. Katsilometes**. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote**.

The appointment of **Ted Hoffman** to the Idaho State Racing Commission was before the Committee. **Senator Kelly** made the motion to confirm the appointment of **Dr. Hoffman**. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

H20

Larry Johnson, Manager of Investments for the EFIB (Endowment Fund Investment Board) presented **H20** to the Committee. **Mr. Johnson** stated that this bill addresses a minor fairness issue by modifying the compensation of the Investment Board, making it consistent with other state government boards. The Board has the responsibility of managing about 1.5 billion dollars primarily for the land grand endowments and the State Insurance Fund. **Mr. Johnson** said the fiscal impact to **H20** is small. At most, this bill would increase the total compensation expense for the EFIB by \$600 per year. In some years the incremental impact

would be zero, and all additional spending would come from dedicated funds and not the general fund.

Mr. Johnson stated that from time to time, EFIB members are asked by the Board to serve in an official capacity outside of regular board meetings. The language in code provides for payment to board members who attend board meetings, and not for any extra official duties such as representing the Board on a task force. No other board or commission in the State has this limitation. This legislation makes the EFIB's compensation language consistent with the statutes of the other Idaho boards and commissions.

Senator Kelly asked **Mr. Johnson** if he found anything in legislative history as to why that phrase was added? **Mr. Johnson** replied no, it was a long time ago.

MOTION: **Senator Kelly** made the motion to send **H20** to the floor with a **do pass** recommendation. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

H22 **David Brasuell**, Administrator for the Division of Veterans' Services presented **H22** to the committee. **Mr. Brasuell** stated that this legislation will correct code to change the reporting structure so that the Veteran's Home Administrators will report to the Administrator of the Veterans' Services. The Veterans' Services became a self governing agency in 2000, and all the administrators have not reported to Health and Welfare since that time. The proposed change will allow for the correct chain of command.

Senator Stegner asked **Mr. Brasuell** if this change will correct code to make it the correct practice? **Mr. Brasuell** responded that is correct.

Senator Fulcher asked **Mr. Brasuell** if recently Veterans' Services was transferred from oversight of the State Board of Education? **Mr. Brasuell** replied that was the Technical Education Program that will be transferred from the Professional Technical Education section to Veterans' Services. **Senator Fulcher** asked **Mr. Brasuell** to explain the difference. **Mr. Brasuell** responded that the Idaho Division of Veterans' Services maintains three state veteran's homes, the advocacy section that assists veterans with benefits, and the Veterans' Cemetery. The education program has been in Professional Technical Education under the supervision of the Board of Education for a number of years. With the Governor's recommendations to streamline that department, that program was moved to the Division of Veterans' Services.

MOTION: **Senator Fulcher** made the motion to send **H22** to the floor with a **do pass** recommendation. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Darrington** made the motion to approve the minutes of February 6. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

Senator Stegner made the motion to approve the minutes of January 28. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

Senator Kelly made the motion to approve the minutes of February 2. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

ADJOURN:

There was no other business before the Committee. **Chairman McKenzie** adjourned the meeting at 9:46 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 13, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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.

CONFIRMATION HEARING: **Chairman McKenzie** welcomed **Brad Little**, appointed as Lieutenant Governor for the State of Idaho to the Committee. **Chairman McKenzie** stated that he will open this to the Committee for questions.

Senator Davis said that he appreciates the tone that **Lieutenant Governor Little** has set by providing the answers to the questionnaire. He asked **Lieutenant Governor Little** what resources does he have today for guidance with conflicts, and what additional measures has he put in place to ensure that he separates his business interests and his responsibilities as the Lieutenant Governor? **Lieutenant Governor Little** responded that immediately after he assumed this position, the Attorney General came to see him and advised him that they would provide whatever services he might need. They discussed his position and conflicts, such as his blackberry or personal e-mails. He purchased a laptop and turned in his senate one, as he does receive personal and business e-mails. Those were concerns that he addressed with **David Hensley**, Chief Counsel to the Governor. **Senator Davis** asked if he has had any conflicts, and if so, how did he deal with it? **Lieutenant Governor Little** responded other than having to buy some paper, and probably a printer so he can print things for his personal business, that is the extent of his conflicts at this point in time.

Senator Davis asked what type of responsibilities does the Governor ask him to assume, what are those assignments, and what does he foresee them to be. **Lieutenant Governor Little** replied that he has been attending leadership meetings, they visit frequently, and he has been briefed by the military division. In the event that the Governor is out of the State he knows what the obligations and duties are during a time of crisis. In addition to that, he is involved with the appointment of boards and

commissions by interviewing some of the candidates. **Senator Davis** asked what he hopes to accomplish in his position as Lieutenant Governor in addition to what he has done so far. **Lieutenant Governor Little** stated that one thing he should do is learn the Governor's job, so when he is out of town he can fulfill those obligations. He has met with several businesses and the Department of Commerce on numerous occasions regarding the economic crisis and learning what he can. **Senator Davis** asked him to speak to the issue of legislation in the absence of the Governor. **Lieutenant Governor Little** said that he would be remiss if he were to act on the Governor's legislation in his absence. He did discuss this with the Governor because their relationship is based on trust. To maintain that level of trust, obviously he is not going to be freelancing when legislation comes across the desk.

Senator Darrington commented that **Brad Little** was his seat mate in the Senate and he knows his view on things. He asked **Lieutenant Governor Little** how he might improve decorum in the Senate such as drinking water, someone without a suit and tie, or using a path of egress? **Lieutenant Governor Little** responded that he has always appreciated the decorum in the Senate. In 1976 the legislature regularly met on Saturday. When one of the freshman legislators showed up in a turtleneck, the Pro Tem sent him home. That was his first lesson on decorum.

Senator Kelly stated that Senate rules are there for a reason. She asked **Lieutenant Governor Little** to address his view on discretion when there is a discrepancy on a rule. **Lieutenant Governor Little** responded that the role of the Senate is to maintain the respect of the population. If we do not allow the minority to be heard and to participate, we will lose the respect of the community. Fairness is a huge part of how the people of Idaho view the process and decorum.

Senator Stegner stated that during his association with **Lieutenant Governor Little** he has witnessed his efforts to be conscious of conflicts of interest, so he does not have any concerns in that area. Although the Committee has access to his written questionnaire and since this is a public hearing, it is important to have a declaration and maybe he can comment on them. It is hard to imagine that a large land owner in the State would not have dealings with the Department of Lands. He asked **Lieutenant Governor Little** if his relationship would change in any way with the Department and does he anticipate any problems separating his public and private role? **Lieutenant Governor Little** replied that he has always been conscious of his dealings, and most things have been turned over to his son now. He is very aware of possible conflicts. If you own land you will have neighbors and State lands inside of your holdings, that is just the way that it is. **Senator Stegner** asked him to discuss the changes in his business holdings that have been turned over to his son. **Lieutenant Governor Little** responded that his son is taking care of the day-to-day transactions, but he will still have to give him some guidance. **Senator Stegner** asked if he is still on the Endowment Board? **Lieutenant Governor Little** said the Governor needs to make a new appointment to that Board. **Senator Stegner** asked if he has exchanged any

of his own personal land for land in the State. **Lieutenant Governor Little** responded in some instances he has ingress and egress agreements for access to timber ground that crosses his private land, so real estate transactions are a continual process.

Senator Kelly asked **Lieutenant Governor Little** if it is possible that he would substitute for the Governor on the Land Board meetings. **Lieutenant Governor Little** replied that he does not know, but usually the vice chairman serves as chairman. **Senator Kelly** asked what is the status regarding appointments to boards and commissions. The **Lieutenant Governor** said that there is a list of recommendations and interviewing is taking place. The process is still ongoing with Education and the Transportation Board. **Senator Kelly** asked if he is involved in Project 60? **Lieutenant Governor Little** responded that the Governor would like him to be a liaison between him and the House and Senate, and yes he is involved in Project 60.

Vice Chairman Pearce stated that he compliments the **Lieutenant Governor** on his answers. He asked him to talk about his manufacturing company and the fact that he may sell some products to the State. The **Lieutenant Governor** stated that the company manufactures a machine that pokes holes in paper that binds a document with plastic or wire. The company does not sell retail, but only wholesale to companies such as Staples. If the State buys that product or if they go to Kinkos they may use his product, which is much better than the Chinese knock-off. **Vice Chairman Pearce** asked if he has any current land exchanges in progress with the State? **Lieutenant Governor Little** replied the asset management position of the Land Board is to diversify their holdings. He had some neighbors come to him that wanted to buy the State holdings that were inside. They asked him if he would give them access if they were to buy the land. He went to the State and told them that he would like an opportunity to purchase it if they are selling it. The Federal government is purchasing a block of land that is part of the foothills, which are part of his leases. His interest in that is to be able to continue his livestock operation.

Senator Stegner asked for the name of the manufacturing company that **Lieutenant Governor Little** owns. **Lieutenant Governor Little** answered it is Rhin-O-Tuff, PDI (Proposed Design Incorporated).

Senator Davis said he was hoping that Theresa would have been with him today so he could ask her a question. He asked the **Lieutenant Governor** if she were here today, what are some of the things that she would want us to know about him? **Lieutenant Governor Little** answered that he will take the fifth amendment. However, she would probably say that he is enjoying his new job. **Lieutenant Governor Little** said he misses the Senate and even the State Affairs Committee.

Senator Fulcher commented that when he took over **Brad Little's** office at the Senate there was paper left denoting "personal use" versus another stack for Senate use. That told him immediately that he was mindful of conflicts and that he took specific measures even down to a piece of

paper. **Senator Fulcher** added that if a man takes the effort to ensure that he doesn't abuse even a sheet of paper than he probably will not allow other conflicts to get in the way.

Senator Geddes said that he just wanted to comment as well. He has worked for a number of years with him, they are good friends and colleagues as well. He respects and honors **Lieutenant Governor Little** as someone he trusts and that he has great confidence in. The Governor could not have made a better choice. **Lieutenant Governor Little** thanked the Pro Tem for his comments.

Senator Darrington added that successful people do not have to fill these positions, but it is really good for State government when we do have successful people who step up and make the sacrifice to serve our State. **Lieutenant Governor Little** said that he looks forward to seeing something in the 10th Order of business.

MOTION: **Chairman McKenzie** said the confirmation vote on **Marsha Smith** to the PUC (Public Utilities Commission) is before the Committee.

Senator Kelly made the motion to confirm the appointment of **Ms. Smith** to the PUC and **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

RS18626 **Ron Williams** appeared before the Committee regarding **RS18626** which relates to the use of public right-of-way to provide video service.

MOTION: **Senator Davis** stated that as he understands this, it is just a rewrite of a previous RS that the Committee heard and printed. He moved to print **RS18626**. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

S1059 **Mike Helppie**, Deputy Director of Sales for the Idaho State Lottery presented **S1059** to the Committee. **Mr. Helppie** thanked the Committee for the opportunity to discuss and answer questions regarding **H1059**. He has been with the agency for twenty years and over this time he has worked extensively to develop retail partnerships. Currently the retailers receive a five percent commission on every lottery ticket sold and a one percent commission on cashing winning tickets sold. This program has been in place for seventeen years. Last spring the Lottery had surpassed the statutory limits of the six percent and had to suspend the one percent bonus. During the remaining eighty-one days of the fiscal year, the retailers did not receive the one percent bonus owed them. Fortunately at the end of the fiscal year, the Lottery came in under the six percent cap. They were able to pay back a portion of the selling commission, about eighty-nine percent was paid for the winning tickets that were sold, and the cashing commission was not paid. **Mr. Helppie** said beginning with the fiscal year the Lottery restructured the program, and **S1059** will give the Lottery the opportunity to not fall into that same predicament. Last year was an unusual year as the Lottery had paid out over one hundred percent more in prizes than previous years. By increasing the one percent bonus to two percent will help to protect the retailers. The retailers have supported the Lottery over the last nineteen years, and they

are an integral part in producing four hundred million dollars of dividends given to help build State schools and buildings. The retailers compensation over this time has remained the same, while their costs have risen. **S1059** will provide the flexibility needed to compensate the retailers for their work regardless of how many winners are paid out.

Senator Kelly asked **Mr. Helppie** if there was a legal obligation to pay the additional one percent? **Mr. Helppie** responded that Idaho code allows for payment of six percent in commission. Due to the unusual situation last year of jackpot winners, the Lottery was over the six percent in early March. In order to not exceed the limit of the statutory six percent, the Lottery suspended the program.

Senator Davis stated the language on line 10 says the director “may pay” so this does appear somewhat discretionary. **Senator Davis** suggested that maybe it should state “may pay up to an additional two percent.” If adjustments are needed throughout the year, perhaps a floating number would be an approach to consider. **Mr. Helppie** thanked **Senator Davis** for his comment and stated that he sees the point he is making.

Senator Geddes asked **Mr. Helppie** to explain the relationship with the retailers who provide the service of marketing and selling lottery tickets. **Mr. Helppie** responded that he has been with the Lottery since its inception. Initially he started out as a sales representative so he was in the stores. The last eleven years he has been the Deputy Director. It is a struggle for the retailers to continue selling lottery tickets due to rising costs of labor, but they do see the value of carrying the product because it does bring people into their stores. Over the last twenty years the Lottery fluctuated between eight hundred fifty to one thousand retailers. Currently they have approximately nine hundred retailers. **Senator Geddes** said from a retail standpoint the Lottery takes up some space on the counter to market the tickets, some training and expertise is required as well as compliance. **Senator Geddes** asked **Mr. Helppie** if there has been a decline in the retailers who want to sell lottery tickets? **Mr. Helppie** said there has not been a decline. **Senator Geddes** said he understands that this will be a bonus based on sales and the retailers will receive this based on an increase in sales. He asked **Mr. Helppie** what does he anticipate might occur from the retailers in marketing this to reach the higher threshold? **Mr. Helppie** responded that currently the one percent commission is based on selling winning tickets or cashing them. The Lottery has been meeting with the retailer advisory board to determine what is a fair and equitable plan for all the retailers involved. A plan has not been formulated as yet, but more importantly what they have been doing has been successful, and the plan is to move it from one to two percent.

TESTIMONY:

Senator Darrington inquired how many are here to testify in opposition to this. **Chairman McKenzie** answered four have signed up to testify and have indicated that they support **S1059**.

Charley Jones, President and Co-owner of Stinker Stores, testified and stated that he has forty-five locations throughout the State selling Idaho

lottery tickets since the very beginning. **Mr. Jones** said they are happy with this relationship and proud to help generate funds to support our schools. **S1059** will allow the Lottery to continue that partnership and meet that commitment. The retailers were surprised to learn that they were ever at risk for the commission. **Mr. Jones** stated that he supports **S1059** and that he believes the Lottery will effectively market this program to ensure success.

Senator Stegner asked **Mr. Jones** if lottery tickets are a lower margin item than the other items that he sells? **Mr. Jones** answered that the only thing he sells that he makes less on is gasoline sales. There is a five percent gross profit margin on the sale of lottery tickets compared to the other items sold in the store, which is in the high twenty percent gross profit margin range. It is a general practice to pull out the sale of lottery tickets as it is not a comparable sell when valuing a business. All retailers are exposed to shrink and theft especially with lottery tickets by employees. When that occurs it is at the expense of the retailer.

Dennis Baird, representing Baird Oil testified regarding **S1059**. **Mr. Baird** stated that he has one convenience store in Caldwell and he markets petroleum products. Primarily he is a wholesale distributor in the Boise valley. He has been in business since 1967 and he has handled lottery tickets since the inception. As a retailer, obviously they like to make some margin and lottery tickets are small. His convenience store is in the top twenty as far as the dollar amount in sales in the State. **Mr. Baird** said that he appreciates the fact that the Lottery works to sell the tickets which promotes his business. That is the reason he sells lottery tickets as it draws people to his business. **Mr. Baird** encouraged the Committee to support **S1059**.

Suzanne Budge who represents the IPM&CSA (Idaho Petroleum Marketers & C-Store Association) addressed the Committee in support of **S1059**. **Ms. Budge** stated that the members sell a significant amount of lottery tickets. Some members have stopped selling lottery tickets as they view it as more of a hassle. In recent years the Lottery has done a commendable job working with the members as complaints have ceased. **S1059** is a simple fix for a formula that needs to be modernized, in order to allow for flexibility for the program to continue to pay incentives. **Ms. Budge** said that IPM&CSA supports **S1059** and that it is important to continue the commitment with the retailers who participate.

Senator Davis asked **Ms. Budge** how would the Association view this if there was an amendment added to **S1059**, modifying line 10, stating that the Lottery may pay the retailers up to an additional two percent. **Ms. Budge** responded that the Association is open to whatever the appropriate language would be. The Association defers to the Lottery in how they run the program.

Pam Eaton, Executive Director for the Idaho Retailers Association, testified in support of **S1059**. **Ms. Eaton** stated that a good portion of the members are grocery stores that sell lottery tickets. The Association views this as a fairness issue. Last year, due to circumstances some

retailers did not receive what they were due. Lottery tickets are a very low profit margin item as well as labor intensive. **Ms. Eaton** added that the Lottery is doing a great job and the retailers who do sell and promote the Lottery should receive what is owed them. She urged the Committee to support **S1059**.

Senator Stegner asked **Mr. Helppie** if the Lottery has rules to define how the bonus incentive is derived? **Mr. Helppie** responded "yes." **Senator Stegner** asked **Mr. Helppie** if the current rules allow for a one percent bonus or up to a one percent bonus to be paid. **Mr. Helppie** stated the one percent is looked at as a whole. The bonus pays up to one percent, not over. Under the current program that was revised in July, the Lottery has a formula in place to give the bonus to the retailers. **Senator Stegner** asked if the Lottery pays less than the one percent? **Mr. Helppie** replied that the Lottery has in past years. It ranged between 5.8 to 5.95 percent over the last three or four years. **Senator Stegner** asked **Mr. Helppie** if the bonus incentive is administered under the assumption that the Lottery has the authority to pay up to one percent, and will this change make it two percent? **Mr. Helppie** replied that is correct.

Senator Kelly asked **Mr. Helppie** if there is money left over at the end of the year, will the Lottery distribute the whole amount to the retailers. **Mr. Helppie** said this will be monitored over the year to make sure that it doesn't go over two percent. The Lottery intends to distribute it by the end of fiscal year to the retailers. **Senator Kelly** asked if this is in administrative rules, or is it a policy to implement this provision? **Mr. Helppie** responded that it is a policy based on language in the current code. **Senator Kelly** said when **Mr. Baird** testified he indicated that the retailers would be paid a larger bonus and it would help with declining sales. She asked **Mr. Helppie** if less money will be distributed in other areas because of the additional one percent incentive paid to the retailers who sell winning tickets? **Mr. Helppie** said it is not an incentive but an actual commission based on selling a winning ticket. The Lottery believes that as revenues increase so will the dividends, so he does not see a correlation or effect to the dividend.

Senator Geddes said because there was an inordinate number of winning tickets last year the Lottery was not able to pay the one percent through the end of the fiscal year. He asked **Mr. Helppie** if that was correct. **Mr. Helppie** replied that is correct. **Senator Geddes** asked if there are any guidelines or has there been any changes as to how the money is allocated for prizes, advertising, and to the retailers? **Mr. Helppie** stated that there hasn't been any changes because the Lottery follows the guidelines that are set out in code for those expenditures. **Senator Geddes** said in the event there are the same inordinate amount of winners it seems to him that they are creating a difficulty. The Lottery would be limited to a higher level. **Senator Geddes** said he does not understand where the extra one percent will come from. **Mr. Helppie** replied with **S1059** the Lottery will be able to format a commission structure so there will be a buffer and help prevent what happened last year.

Senator Kelly asked **Mr. Helppie** why can't the Lottery do that with one percent? **Mr. Helppie** stated that the formula for paying a one percent commission has been in place since the early nineties. Prior to that it was all incentive based. The Lottery believes the fair and equitable way to pay the one percent to the retailers is basically the luck of the draw. Every retailer has a chance to earn an additional commission and not meet sales goals.

Senator Stegner asked **Mr. Helppie** if this statute will allow the Lottery to set up a larger reserve and that two percent will not really be paid out? **Mr. Helppie** answered that is correct.

MOTION: **Senator Davis** made the motion to send **S1059** to the floor with a recommendation that it go to the **fourteenth order for possible amendment**. **Senator Stegner** seconded the motion.

Senator Davis said that he is not a fan of the Lottery but it is a law in the State of Idaho. The current mechanism that is in place does not work and the language provides that the director may pay one percent, not up to one percent. Whether or not there is a rule or a policy the statute needs to be changed to do what is being suggested.

Chairman McKenzie asked if there is additional discussion on the motion. There being none, the motion carried by **voice vote**.

H28 **Dyke Nally**, Superintendent of the State Liquor Dispensary presented **H28** to the Committee. **Mr. Nally** stated that since 1939 the chief executive officer of the ISLD (Idaho State Liquor Dispensary) has had the title of superintendent of ISLD. This is an antiquated title and no other equivalent position has this title in any of the eighteen control states in the nation. This legislation will change the title of the chief executive officer of the ISLD from Superintendent to Director. Additionally, the use of dispensary is also antiquated. This legislation would change the title of the agency from the Idaho State Liquor Dispensary to the Idaho State Liquor Division to be more consistent with other divisions within the Executive Office of the Governor. **Mr. Nally** said the fiscal impact is minimal and limited costs are for one time changes to printed materials, publications, rules, stationary, and forms that contain old title references.

MOTION: **Senator Stegner** made the motion to send **H28** to the floor with a **do pass** recommendation. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

RS18510

Senator Stegner presented **RS18510** to the Committee. **Senator Stegner** stated that this is a simple piece of legislation dealing with tuition at the University of Idaho. State law changed several years ago authorizing all higher public education institutions to charge tuition. The concern is that the University of Idaho does not have Constitutional authority to charge tuition. The change will make it uniform with other institutions. **Senator Stegner** asked the Committee to print **RS18510**.

Vice Chairman Pearce commented that the language on line 22 appears to be antiquated, it should be cleaned up as well. **Senator Stegner** said that he would not mind doing that, but he had not considered it. This could be redrafted and reintroduced at the next committee meeting, but the time for introduction of Constitutional amendments is running out. This is a clarification of policy not just a change to the Constitution. The restriction on this goes back to the formation of Idaho and territorial law.

MOTION:

Senator Davis made the motion to print **RS18510**. **Senator Fulcher** seconded the motion.

Senator Geddes asked **Senator Stegner** if this will hamper a student from receiving loans, grants or scholarships at the University of Idaho? **Senator Stegner** responded that he does not believe so. The language says that the regents "may", so there is an option. Scholarships are payments to the university for these various things. **Senator Geddes** said if there isn't a way to charge tuition at the University of Idaho, wouldn't some lending institutions limit students from receiving a loan because this has a different connotation. **Senator Stegner** replied he really didn't think so, this has been done for over one hundred twenty years. Fees are equivalent to the amount charged for tuition, it just isn't called that. The technicality restricts the use of the funds.

Senator Davis commented that the University is in a difficult situation to ensure that they apportion the money appropriately. Keeping track of those fees can be costly and those dollars could be better spent elsewhere.

Chairman McKenzie commented that it is usual for a Constitutional amendment to have a fiscal impact related to the Office of the Secretary of State.

Senator Stegner said that is a good point and he will ask the Secretary of State to take a look at this.

The motion carried by **voice vote**.

RS18538C1

Senator Geddes presented **RS18538C1**. **Senator Geddes** stated that there are approximately forty private driving schools in the State of Idaho. These schools provide an alternative for instruction and driver training that is generally given by the Department of Education. These private driving schools have expressed a desire to be removed from the jurisdiction of the State Board of Education and moved to the Bureau of Occupational Licenses. This bill will allow them to operate their business

in a more specific way to meet their needs and recognize them as independent businesses. **Senator Geddes** urged the Committee to print **RS18538C1**. **Senator Geddes** added that this is not an attack on the Department of Education and how they run their program. There is a lot of difference between the way public education conducts driver education versus the way a private driving school manages their business. The goal is to provide parents an option for driver training for their children.

MOTION: **Senator Davis** made the motion to print **RS18538C1** and **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote**.

ADJOURN: **Chairman McKenzie** adjourned the meeting at 9:21 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 18, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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.

GUBERNATORIAL APPOINTMENT: **Gavin Gee**, addressed the Committee regarding his appointment to the Idaho Endowment Fund Investment Board. **Mr. Gee** said that he has served on the Board for fourteen years and last April he was reappointed by Governor Otter. In addition to his experience on the Board, he has been on the Board's executive committee for eight years. He has also been involved in financial regulation for approximately thirty-one years with the Department of Finance, including regulations in the security industry. **Mr. Gee** stated that he received his law degree from the University of Idaho College of Law, his bachelor's degree from Brigham Young University, and currently he is an affiliate member of the Idaho State Bar.

Senator Geddes asked **Mr. Gee** if he has any conflicts of interest that would prohibit him from serving on the Board? **Mr. Gee** responded not to his knowledge. The one issue he had in 2003 concerned his wife who works for the accounting firm that serves as the outside firm for the Board. The Attorney General's Office does not view this as a conflict of interest and recommended that he disclose that relationship to the Board. **Chairman McKenzie** thanked **Mr. Gee** and advised him that the Committee would vote on his appointment at the next meeting.

Chairman McKenzie requested **R. John Taylor** to speak to the Committee regarding his appointment to the Investment Board.

Mr. Taylor stated that he is from Lewiston and has been on the Board for over ten years. He was first appointed by Governor Batt, he is a business man, and that he owns radio stations and an insurance agency. **Mr. Taylor** said as well as his duties on the Board he has been Chairman of the audit committee for the Board for the past twenty-five years. In

addition to that he has been active on other boards including the Avista Corporation.

Senator Stegner stated that he is a personal friend of **Mr. Taylor**. He asked **Mr. Taylor** if he has any conflicts regarding his other associations or are there any crossovers with the other boards that he is involved with? **Mr. Taylor** replied that he did not believe so. **Senator Stegner** asked **Mr. Taylor** if there would be a conflict with the Idaho Heritage Trust. **Mr. Taylor** said "no," they have separate managements.

Vice Chairman Pearce said that every board has a unique makeup and personalities. He asked **Mr. Taylor** what is his major strength that he brings to the Board? **Mr. Taylor** responded at this point in time probably longevity. It has been a fairly tumultuous ten years and he is very pleased with the Board and the staff.

Senator Kelly asked **Mr. Taylor** if he is the CEO (Chief Executive Officer) of an insurance business? **Mr. Taylor** answered that he is the Chairman and CEO of CROPUSA Insurance, which sells crop insurance programs throughout the United States. **Senator Kelly** said it seems like he has a lot on his plate. She asked **Mr. Taylor** how does he handle all these commitments? **Mr. Taylor** replied that he has attended and participated in all the meetings.

Chairman McKenzie thanked **Mr. Taylor** for his service on the Board.

PRESENTATION:

Ann Joslin, State Librarian for the Idaho Commission for Libraries, provided an update on Idaho libraries and the Commission's digital repository for State publications. **Ms. Joslin** stated that over the past ten years libraries have changed dramatically and library services and programs are being rediscovered. There has been an increase in use in spite of the current economic downturn. Visits to Idaho public libraries increased four percent in 2007 and six percent in 2008. The Commission has helped pave the way by developing statewide programs, that are delivered by public, school, and academic librarians. The Libraries Linking Idaho services help libraries deliver local access to global information efficiently and cost-effectively. With the LiLI (Libraries Linking Idaho) databases, catalog and e-audio book service, the services offered are seamless for all citizens and publicly funded libraries through any internet connection. Other statewide programs offered are the Read to Me early literacy program and the Talking Book Service for those who are unable to use standard print materials.

Ms. Joslin said that prior to the digital repository system, statute directed that all agencies, boards, bureaus, commissions or department of the State should deposit with the State librarian twenty copies of all documents, reports, surveys etc. that it produces for public distribution. This depository system was outdated and inefficient. The result was that State agency information intended for public availability was, in fact, not easily accessible. A Task Force was formed and it recommended that Idaho Code 33-2505 be revised. The Commission has been working to establish a secure, fully searchable digital repository of publications from

State agencies. In 2008 the Legislature passed the revision, and the repository known as “Stacks” was implemented. The repository is intended to serve as a free centralized resource for the public and as a memory of the State of Idaho’s business. The digital repository is easy for the public to use and it makes compliance fast and easy for State agencies. **Ms. Joslin** continued and said that State agencies have been enthusiastic and more than ninety percent have appointed a liaison to the Commission. The feedback is that electronic submission of publications are easy, fast, and much less expensive than the old requirement of submitting twenty print copies.

Since July the Commission has collected more than 13,000 State publications. The Commission has attached metatags and uploaded more than 8,000 to the LiLI web catalog with a link to specific publications that can be found by the public through a web browser search. In December an archival scan of 121 Idaho State agency websites identified over 3.7 million documents. The agencies are publishing new information every month. **Ms. Joslin** stated that even if the Commission assumes that only half of these qualify as publications, they still have a long way to go.

Chairman McKenzie thanked **Ms. Joslin** for her presentation and the update on the digital repository and told **Ms. Joslin** that he uses the LiLI data base.

HCR10

Representative Crane presented **HCR10** to the Committee and stated that this bill is a simple resolution to reject rule 303 that this Committee previously approved. There was some unintended consequences by the adoption of rule 303. This rule will not allow for profit businesses to allow their employees to operate a charitable bingo operation. In particular this would effect a business in northern Idaho, The Green Idaho Foundation, has donated approximately \$286,000 to local charities since 2004. **Representative Crane** said that **HCR10** will not expand gaming and the Lottery is in full support of this.

Senator Davis asked if the Committee has a copy of the rule that is being proposed for rejection. **Chairman McKenzie** responded after the rules review was completed, the rules were recycled. **Chairman McKenzie** asked **Representative Crane** if he had a copy of the rule and to explain it in more detail. **Representative Crane** said he would like to defer that question to **Russell Westerberg**.

Mr. Westerberg stated that his client, Green Group, is an Alabama corporation, which built the Coeur d’Alene Greyhound Park twenty years ago. Through an Idaho corporation formed about 1996, it now operates Coeur d’Alene Racing at that site. In 1994 live greyhound racing was repealed by statute and the simulcast racing at the facility was allowed to continue, to preserve jobs and the economic impact. In response to requests, the Idaho Green Foundation was formed, which operates charitable bingo under Idaho law. The laws for charitable bingo provide that sixty five percent of every dollar has to be returned to the player, twenty percent goes directly to charity, and the remaining fifteen percent

is used for administration costs. **Mr. Westerberg** said that the bingo operation in Post Falls takes place at the facility in Coeur d'Alene, and often times the employees of the facility assist the employees of the charitable bingo operation. The rule that is being rejected would preclude the for profit employees from assisting in the charitable bingo operations. In some instances fifteen percent is not sufficient to pay wages, so from time to time the for profit company subsidizes it. There was a concern by the Lottery that charitable bingo revenues not be allowed to benefit the for profit company or its employees. Rule 303 should be rejected and reinstated with the existing rule 304, which gives the Lottery some comfort that there isn't a transfer of revenues between the for profit company and the charitable foundation.

Senator Davis asked **Mr. Westerberg** if the Green Idaho Foundation is a for profit business? **Mr. Westerberg** responded it is a charitable organization. **Senator Davis** asked if it fits the definition of a for profit business or a for profit entity. **Mr. Westerberg** answered "no." **Senator Davis** asked if the rule the Committee is being asked to reject is rule 303. **Mr. Westerberg** replied that is correct. **Senator Davis** asked if there is a strike and insert version of rule 303 to look at. **Chairman McKenzie** stated we cannot amend rules in Committee, only accept or reject them. **Senator Davis** stated that he needs to understand what is being proposed, it appears to be a whole new rule. **Mr. Westerberg** said the sheet before you is the rule that was proposed by the Lottery and it is now being rejected by a concurrent resolution. The resolution will also reinstate rule 304. The resolution does two things, it deletes rule 303 and it reinstates rule 304.

Senator Davis said he needs to catch up with what the subcommittee has done. He doesn't understand what a for profit business or entity is, and perhaps someone from the Commission is willing to say a mistake was made and now they want the Committee to reject this rule. **Senator Kelly** added the Committee needs to see a copy of what is being proposed or rejected. **Chairman McKenzie** said the director of the Lottery is here. He asked **Jeff Anderson** to yield to questions regarding the proposed rule, the difference between a for profit business or entity, and the intent of this legislation.

Mr. Anderson responded that when this pending rule was proposed it was in response to a Supreme Court ruling. It dealt with a for profit business that was operating charitable gaming in Garden City. The Supreme Court ruled that there was a need for clarity on rule 304, which spoke to the directors and officers of a for profit business. The directors and officers cannot be directors or officers of a charitable organization. **Mr. Anderson** said the intent of the Lottery was to make it clear that the rules of a for profit business or entity cannot financially benefit from the operation of charitable gaming. As this went through the process of rulemaking, there were no adverse comments, but the Lottery agrees there is confusion over the definition of rule 303, and that it may preclude employees of a for profit business from participating in charitable gaming. The rejection of pending rule 303 and the reinstatement of rule 304 provides the Lottery with some ability to administer the rules in statute that

relate to charitable gaming. This will ensure that the profits from charitable gaming will not benefit the for profit business or entity.

Senator Stegner asked **Mr. Anderson** if he had any objection to the rule? **Mr. Anderson** replied he does not.

Senator Stegner asked **Mr. Westerberg** if the rejection of rule 303 will preclude the employees of the for profit business from donating their time at charitable gaming? **Mr. Westerberg** answered that is correct. In order for charitable bingo to operate, it must be subsidized from time to time by the for profit corporation by donating time of their employees. **Senator Stegner** asked **Mr. Westerberg** if this rule needs to be rejected in order to not allow a for profit entity to pretend to be operating a charitable organization, when in fact it is profiting from it. **Mr. Westerberg** responded that is what the Lottery is attempting to do.

Senator Kelly asked **Mr. Anderson** if we take the action that is being proposed today, will this rule revert back to the way it read before the Supreme Court made its decision? **Mr. Anderson** said that is correct. **Senator Kelly** asked if there would be a rule in place. **Mr. Anderson** stated by reinserting rule 304 the Lottery will have some protection that officers and directors of a for profit organization cannot be the same officers or directors of a charitable organization. Should this be approved, the Lottery will reexamine the language of rule 303 to make sure that it does not cast too light of a net to prevent operations from benefitting their community.

MOTION: **Senator Stegner** made the motion to send **HCR 10** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

Chairman McKenzie said the confirmation vote of **Brad Little** as Lieutenant Governor for the State of Idaho is before the Committee.

MOTION: **Senator Geddes** made the motion to confirm the appointment of **Brad Little**. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

RS18650 **Neil Colwell** who represents Avista Corporation presented **RS18650**. **Mr. Colwell** said that Avista is a natural gas and electric utility with headquarters located in Spokane, Washington. In Idaho they have more than 100,000 electric customers and more than 60,000 natural gas customers. It is an investor owned company regulated by the PUC (Public Utilities Commission). The PUC regulation is why he is here today. **RS18650** proposes to amend code 61-315 to prevent discrimination or preference in rates. The purpose for this is to allow the utility companies to recommend to the PUC the adoption of low income energy bill payment assistance programs, and then to recover those costs in rates. The PUC cannot authorize these programs without specific legislative authorization, otherwise the programs could be declared invalid. **Mr. Colwell** stated the need for this legislation comes from the current economic situation. There are existing low income energy assistance programs that are available to customers, that are federally

funded and then distributed by the various utilities. The utilities themselves also offer various programs wherein the customers are asked to voluntarily contribute to a fund to supplement the programs. Utilities often contribute as well. Avista donated \$280,000 from shareholder earnings. Recently another \$220,000 was added to the Project Share Program.

Mr. Colwell said that the Legislature itself has on one occasion used money from the general fund to provide energy assistance dollars to customers in the State. Idaho has only done that on one occasion. The vast majority of the states provide some sort of energy assistance funding through general fund dollars. Idaho does not allow for the utility companies to operate these types of programs. Given those limitations and the economy, the PUC opened a docket in September to examine what is going on with low income needs and to determine where we stand within the State. That docket was open until January 16 when the staff issued its report to the PUC. On January 30 the Commission issued an order relative to energy affordable options along with recommendations. If **RS18650** is printed the Committee will have an opportunity to hear an expanded explanation for the need of this program. The PUC will testify as to what can be expected and to the intent of this legislation. **Mr. Colwell** stated that there is significant support for this legislation from the utility companies. He is not aware of any opposition to this.

Vice Chairman Pearce said this looks like a back door approach to an additional tax. He asked **Mr. Colwell** if there will be some control over rate increases? **Mr. Colwell** responded that ultimately what they are looking at is the discretionary power of the PUC to authorize programs. When utility customers cannot pay their bills, those costs are written off, and then are added to all utility customer rates. The intent here is to establish a program that prevents the situation where a customer cannot pay their utility bills. This program will provide assistance to them. This would impose a small cost to customers and more details will be provided at a hearing.

MOTION: **Senator Stegner** moved to print **RS18650** and **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

RS18542 **Chairman McKenzie** turned the gavel over to **Vice Chairman Pearce** and presented **RS18542** to the Committee. **Chairman McKenzie** said this is similar to a bill that was heard last year regarding energy efficiency for school buildings. There were a number of concerns regarding costs and other issues. The Interim Energy Committee met and came back with a voluntary program that would sunset after ten years. Basically this would forgive the school districts contribution to the maintenance fund over a period of time, if they use integrated design and fundamental commissioning. **Chairman McKenzie** stated that the cost savings to the State would more than make up the costs. After five years the school districts portion would be forgiven to the maintenance fund, and then the State would continue to match like they currently do. The concerns the Committee had have been addressed, and it also provides an incentive for the school districts to opt in and not increase costs to the general fund.

MOTION: **Senator Stegner** made the motion to print **RS18542**. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

ADJOURN: There was no other business before the Committee. **Chairman McKenzie** adjourned the meeting at 8:58 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

- DATE:** February 20, 2009
- TIME:** 8:00 a.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Stegner, Fulcher, and Kelly
- MEMBERS ABSENT/ EXCUSED:** Senators Davis and Thorson
- 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. and said before we go into our business for the day he would like to recognize and acknowledge **Kendra Knighten**, the Committee page for the first half of the session. **Ms. Knighten** said that she will be returning to Payette High School and next year she will attend the College of Idaho and possibly law school after that. **Chairman McKenzie** thanked **Kendra Knighten** for her hard work on the Committee.
- RS18558** **Senator LeFavour** presented **RS18558** to the Committee. **Senator LeFavour** asked if **Senator Coiner** could make the opening comments. **Senator Coiner** stated that he wanted to show his support for this. The Special Olympics have just finished and we have come a long way in forty years with supporting that organization. When he was growing up that population had no support, and today we celebrate them and call them special. There is a huge movement across the nation for women, African Americans, and the developmentally disabled. The gay and lesbian community is still a few years behind, but moving. A print hearing on this is a small step forward in that direction. **Senator Coiner** urged the Committee to print **RS18558**.
- Senator LeFavour** stated there are several legislators who support this. Each time other groups were added to the Human Rights Act, they faced very similar objections. There are definitions that have been added, for gender identity and it prohibits discrimination whether or not an individual is gay. Sexual orientation should not be a form of discrimination. There is also a religious exemption which is designed to reiterate exemptions for religious beliefs that are stated elsewhere in the act and in Idaho code.
- Senator LeFavour** explained that the Human Rights Act provides a process whereby issues of discrimination are brought forward. When a complaint is filed individuals come to the Commission, an investigation is

done, findings are made and sometimes mediation is needed to resolve the issues. This process creates fairness and protection of all parties. Adding sexual orientation and gender identity to this code in the Human Rights Act, will provide a way to prohibit discrimination. **Senator LeFavour** stated that one of the consequences for not including sexual orientation and gender identity in the Human Rights Act, is that many employers and individuals feel it is okay to discriminate. Many of the gay and lesbian population in the State of Idaho live in fear due to the measures they take to prevent employers from knowing, which creates a great deal of stress in the work place for them.

Senator LeFavour stated that adding gender identity to this code does not change execution of protecting individuals on the basis of gender identity. Under Idaho's Human Rights Act, gender identity is protected under the class of sex, so the changes will reiterate those protections. **Senator LeFavour** asked the Committee to print the RS so that this issue can be acknowledged and go forward as a bill.

MOTION:

Senator Stegner made the motion to print **RS18558**. **Senator Kelly** seconded the motion. The motion failed by **voice vote**.

S1101

Senator Geddes presented **S1101** to the Committee. **Senator Geddes** said at the request of the private driver education schools and **Teresa Molitor** this was brought to him. **Ms. Molitor** will walk us through the bill today.

Ms. Molitor stated that she represents the Idaho Association of Professional Driving Businesses and a number of other driving businesses who are not members of the Association. The reason for this bill is to provide more driver education services for teenagers and their families. Currently there are waiting lists at the Department of Education. Last year the Department estimated that approximately 20,000 students did not receive driver education who requested it. Clearly there is a need between students, families and their schedules. The private driver businesses are hoping to meet those needs if allowed to become a self governing agency through the IBOL (Idaho Bureau of Occupational Licenses). This is what **S1101** will do. **Ms. Molitor** stated that Idaho is in the minority of states that still have these businesses under the Department of Education. Wyoming along with Idaho are the only ones out of the thirteen western states that still do. This bill will bring Idaho in line with what other states have done with their driver education program.

Ms. Molitor stated that this bill has been discussed and in the works for quite some time. She met with the Department of Education for their input and recommendations. In July she received a letter from **Tom Luna**, the Superintendent of Public Instruction, who expressed his commitment to work in passing legislation during this session. During meetings with **Nick Smith** and **Jason Hancock**, who represent the Department of Education, proposals for instructional components were discussed to ensure that they were in line with the current requirements. The requirements for instructors are in the bill, but much of that will be in rule. At all times the Department told her that this was in line with the Department's

requirements. An apprenticeship program will be required for all new instructors, which goes above and beyond what is currently required. **Mr. Luna** suggested an “opt-out” which is not in the bill. **Ms. Molitor** stated that including an “opt-out” creates more of a patchwork of regulatory authority than is necessary.

S1101 focuses on forty or more private businesses in the State. It does not affect public schools, their driver education programs or their driving instructors. **Ms. Molitor** said that she has met with **Tana Cory** at IBOL several times regarding code versus rule, how to craft legislation so that it is appropriate as far as code, and what may be promulgated later in rule. IBOL is prepared to work with the driver businesses to negotiate fees which will be promulgated in rule, once that determination is made. On January 17, **Dallas Forrester** and **Chad Arnell**, who own Excel, a private driving school, notified all the private driver businesses in the State to come and discuss the legislation. Fees were discussed along with the legislation that is being proposed.

Ms. Molitor said that Chapter 54 is a new chapter in Idaho Code called the “Idaho Driving Businesses Act.” The definitions clarify the scope of the bill and limit it to the private driver businesses who are instructing teenagers. “Driver education” means classroom instruction and behind the wheel driving time. “Driving business” means a driver education business, for the education of students in a classroom or motor vehicle, or both. Programs run by a church or synagogue are excluded. “Driving instructor” means a person licensed by the board to teach students, and it does not apply to any independent certified driving instructor who participates in a state or federal program, as well as retraining persons in occupational skills, or instructors who work for public driving businesses that are overseen by the Department of Education. “License” applies to the document issued by IBOL to practice as a driving instructor or to operate a driving business within the State. “Student” is defined as a person aged fourteen and one-half years old up to seventeen years of age.

The terms, powers and duties, compensation and qualifications for the Board are in section 54-5403 of the bill. The board will have five members appointed by the Governor. **Ms. Molitor** stated that fees are in section 54-5404. IBOL requested that caps be included in the legislation and fees will be set by administrative rule. IBOL believes the application fee will be lower than \$100 and the driver business license fee is in subsection (4). Licensing requirements for the private driving business are in section 54-5405 and in 54-5406 the requirements for a driving instructor is outlined. The curriculum components will be in rule, and discipline and prohibited acts are covered in sections 54-5408 and 5409. The last section is being amended regarding oversight from last year of certified shorthand reporters.

Senator Stegner asked **Ms. Molitor** if she has looked at Title 33, chapter 17 in the Education Title, and would there be a conflict? **Ms. Molitor** said she has. This legislation limits the scope enough within the definition section and it is not in conflict. **Senator Stegner** asked **Ms. Molitor** to

explain how the public driver education and private driver classes will work? **Ms. Molitor** responded that the public driver programs will not be affected by this legislation. There are national standards that exist in this country and used most often by driver education programs. The only difference is in the creativity of instruction and schedules. **Senator Stegner** asked if she is familiar with Title 49, chapter 21? **Ms. Molitor** answered "yes." **Senator Stegner** said in this chapter it states that no commercial driver school shall be established without applying for and obtaining a license from the Department of Education. He asked if this conflicts with **S1101**? **Ms. Molitor** responded this has been looked over, and she believes the legislation as written will apply only to those defined. **Senator Stegner** said he believes this is a significant conflict that should be addressed.

Senator Darrington asked **Ms. Molitor** where in the bill does it say that rules will be promulgated under the APA (Administrative Procedure Act)? **Ms. Molitor** replied that the inference is that rule adopted by the board is IDAPA rule. **Senator Darrington** asked again where in this legislation does it say that rules will be promulgated under the APA? **Ms. Molitor** said it is not specifically stated in **S1101**. **Senator Darrington** asked if the word promulgate has a legal connotation that also means APA. **Ms. Molitor** answered that she does not know all the interpretations of promulgate in Idaho code. **Senator Darrington** asked where in this legislation does it prevent the development of exclusivity that would be restrictive to others entering this profession? **Ms. Molitor** said that topic is not addressed in this legislation. **Senator Darrington** commented that it is usually done by rules under the APA.

Senator Kelly commented that she is a parent who has used private driver education schools. It is very confusing to understand what standards are currently in place for public and private driving instruction. In addition to that there appears to be two code sections that are not addressed by what is being proposed here. **Senator Kelly** said that she has always assumed that the private school was equivalent to the public, but that it was just more convenient. **Ms. Molitor** responded that the private businesses are very transparent because of the market they operate in, and the liability and accountability they have to parents.

Vice Chairman Pearce asked **Ms. Molitor** if an opt out would work in this program? **Ms. Molitor** answered that she believes it would be bad policy and that it would create more of a patchwork than is necessary.

TESTIMONY:

Chairman McKenzie stated that there are twelve individuals that have signed up to testify. Testimony will be limited to under three minutes.

Dallas Forrester and his partner **Chad Arnell** own and operate Excel Driving Academy in Meridian and Nampa. **Mr. Forrester** testified in support of **S1101** and said they started the business seven years ago due to the need for public driver education. Small businesses like his provide services and jobs that stimulate the economy. **Mr. Forrester** stated that he represents the majority of private driving businesses in Idaho who support **S1101**. He has called, e-mailed and traveled to visit all of the

business owners throughout the State. This bill will allow private businesses to operate more efficiently and remove the burden the Department of Education was never meant to assume. Other states have faced this same dilemma and seen the only solution was to allow the parties to separate. There is a growing demand among parents and teens in Idaho for choice and availability of driver education programs. Passing this bill will allow the private businesses to meet the demand and provide a valuable service.

The public programs are based on availability and age of the student and the fees are set by the district. Public schools pay no licensing fees, taxpayers bear the liability for the cars, and any personal loss of life or property damage that may occur. The programs are subsidized, so the districts have little to no incentive to innovate and improve their programs.

Mr. Forrester explained the benefits of the private driver school program. Parents choose a private program because flexible schedules are offered to meet their needs. The operating costs are paid 100% by the business. Private programs offer parent training which helps eliminate confusion. Private programs exceed state requirements and although it is more expensive, parents choose private instruction for the scheduling flexibility, course content, access to better technology and personal service that is offered. Moving private driving businesses to the IBOL will allow private business to grow and better serve those students who choose to take drivers training in Idaho. **Mr. Forrester** asked the Committee to support **S1101**.

Vice Chairman Pearce asked **Mr. Forrester** if this bill will decrease the competition among small businesses? **Mr. Forrester** replied that he does not think so. Fees will be nominal, it is a change and in order to grow we need to be more active.

Tom Luna, the Superintendent of the Department of Education testified and stated that he does not oppose the private driver schools from moving out from under the Department. He has been working for some time to craft language and ensure that the integrity of driver education remains consistent. **Mr. Luna** said there are three things that are essential to accomplish this transition. One, to create a uniform set of content standards, two, instructor requirements, and three, an opt out for schools that have no desire to move out from under the Department.

Mr. Luna stated as a parent of six children he used the public program and sometimes the private one for the convenience. He expected the programs to be consistent, but this bill does not assure that it will remain consistent in the future. The same is true for instructor requirements. As to the opt in or opt out, it is just a matter of fairness. **Mr. Luna** stated it is not fair to force the schools who are content to move to another agency and increase their fees. Anytime the private sector chooses to get involved in the programs offered in public education, they are always regulated by a government agency. **Mr. Luna** said that **Senator Stegner** brought up a critical flaw to this bill. **S1101** sets up a new license and regulatory structure for commercial driver schools in Idaho under the

IBOL. However, Title 49, chapter 21, has established a license and regulatory structure for these same private schools under the Department. **Mr. Luna** stated that if this bill passes as written the schools would be licensed twice by two different entities. **Mr. Luna** asked the Committee to reject **S1101**, and for all parties to go back to the drawing board and come back with a bill that addresses the concerns and conflicts that he has outlined.

Vice Chairman Pearce asked **Mr. Luna** if the private schools are removed from the Department will it make a difference in dollars or employees? **Mr. Luna** responded that it is not a cost issue for the Department, they have a coordinator that works with the public and private schools.

Senator Stegner said he agrees with some of what **Mr. Luna** says, but that he does not agree with the opt out. There isn't an opt out for other professional businesses in the State. In his opinion this is unacceptable from a policy standpoint. The critical issue is what does the industry want to do. **Senator Stegner** said that he opposes a two tier system. **Mr. Luna** replied that he appreciates **Senator Stegner's** comments about opt out or opt in. That situation doesn't happen with other self regulating groups.

Jason Hancock testified that the existing regulatory structure in Idaho code is still in code. This bill sets up a situation where the driving schools would have to serve two masters at the same time. It is bipolar and a fatal flaw.

Robert Fenn testified and said that he is an owner and operator of a driving school. His son turned fourteen and one half years old about eighteen months ago, and he could not get him into a public driving school program. The only school that would talk to him was Eiguren Driving School. There is a huge demand for driving schools, he did his research, and his business was up and running within ten weeks. **Mr. Fenn** stated that today is the first time he heard that the purpose of **S1101** is to serve the demand. All the arguments that he had heard before was that the driving schools do not like the Department of Education and how their program works. There are approximately 47,000 students who need driver education, and currently they only serve about 20,000 because of the cost.

Kelly Glenn testified in opposition to **S1101**. **Ms. Glenn** stated that she is a driver education instructor and that she will be significantly affected by this bill. On page 4 of the bill under discipline, all the responsibility lies with the instructor not the school. The instructors were not included in any discussion regarding this, only the business owners. As an instructor she takes offense to that. Everyone should have had an opportunity to be involved in this process and voice their opinions.

Jolynne Cavener said that personally she is against this bill and that she would have to close her business. The city of Nampa limits her enrollment and she cannot increase her business based upon her

occupation. The increased fees will put her out of business.

Debbie Cottonware testified in opposition to **S1101**. **Ms. Cottonware** said that she is both a commercial and public school instructor. She does not believe that this bill has been set in motion to improve the driver education program in Idaho. Commercial schools exist to serve the public even though they are private businesses. She encouraged the Committee to defeat this bill until the issues can be resolved to improve driver education and the services provided to students.

Dave Eiguren said that he and his wife own Eiguren Driving School and that he has been in business for ten years. **Mr. Eiguren** said that he opposes this legislation because it would transfer his licensing, fees, audits, and direction to the IBOL. This legislation would increase fees and many small schools in the State would have to close due to the additional expense. There is a need that could still be met and achieved under the Department. **Mr. Eiguren** stated that he is not in favor of an opt out, he favors a grandfather clause. It is unfair to change this and increase expenses.

Brian Eichler stated that he is the owner of Cracker Jack Driving in New Plymouth, Idaho. In addition to that, he works for the Idaho Star Program and he is a motorcycle skills tester for the Transportation Department. **Mr. Eichler** said that he opposes **S1101** and that he was never contacted regarding this bill, and he has no desire to move out from under the Department of Education. He is pleased with the Department and their assistance in building his business. **S1101** will effectively shut down small town businesses like his. If this bill passes he will have to increase his fees to cover the costs.

Deanna Reed testified in support of **S1101**. **Ms. Reed** said that she is a small business owner. She started her business when her daughter took driver education because of her bad experience. There is only one person to monitor all the instructors, in her opinion that is not enough. She has only five students a month and if she can afford the fees, so can the larger businesses. Driver education is a privilege not a mandate. **Ms. Reed** asked the Committee to consider the bill with some revisions.

Ms. Molitor addressed the Committee and stated that there are thirty-one businesses out of forty who support **S1101**. She has not seen the list from those who oppose this. This has been in the works for a long time and every effort was made to communicate to those who would be effected by this. **Ms. Molitor** said she is concerned by the issues raised by **Senator Stegner** and **Jason Hancock** regarding Title 49 and Title 33. If this bill has a fatal flaw maybe an amendment is necessary. This is a good bill that has been talked about for a long time and it is time to pass this bill for the good of the students and families in the State.

Senator Geddes commented that there has been some ideas put forward today that can potentially improve **S1101**. He is happy to sponsor the bill and his intent is to have the best bill possible.

MOTION: **Senator Geddes** moved to return **S1101** to the sponsor. **Senator Darrington** said with all due respect to the Pro Tem this is a bill and there is no provision to return a bill to the sponsor. **Senator Geddes** made the motion to **hold S1101** in Committee. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

HJM2 **Senator Mortimer** presented **HJM2** to the Committee. This Memorial will acknowledge the 60th anniversary of the INL (Idaho National Laboratory). In February 1949 the Federal government settled on a site in east central Idaho to host the national reactor testing station, which is a place for scientists and engineers to develop new ways to test the power of the atom for productive use for society. **Senator Mortimer** said this facility produced the first useable amount of energy from nuclear power and later proved that reactors could produce more fuel than they could consume. The INL has pioneered and designed the construction of fifty-two different nuclear reactors which are used for the propulsion of U.S. Navy submarines and aircraft carriers. The INL was formally recognized as a national laboratory in 1974. **Senator Mortimer** said in the 60th year of operation, the INL's operation could not be greater in relevance. It's mission is to ensure that the nation's energy is safe, competitive and has sustainable energy systems. The unique national and homeland security capabilities represents a pledge to serve our public in the nation with its nearly 8,000 employees.

MOTION: **Senator Geddes** made the motion to send **HJM2** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

RS18716 **Paul Kjellander**, the Administrator for the Idaho Office of Energy Resources, presented **RS18716** to the Committee. **Mr. Kjellander** said this will provide an additional optional tool for regulators and utilities to access the very tight financial markets that we are experiencing today. There is an abundance of risk and lack of trust which creates a difficult scenario for them when it comes to accessing financing. At hearing the legislation will be covered in greater detail along with testimony to support it.

Senator Stegner asked if this bill was discussed with the energy task force. **Chairman McKenzie** responded this is a recommendation from the Office of the Energy Resources, not the energy committee.

MOTION: **Vice Chairman Pearce** made the motion to print **RS18716** and **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

RS18737 **Vice Chairman Pearce** presented **RS18737** and stated that Fish and Game in Oregon, Washington and Idaho including the Forest Service came together to transplant bighorn sheep into the Hell's Canyon area. There are already allotments in place and the signed agreement provided that all parties would be held harmless and that they would only be fined. **Vice Chairman Pearce** said hopefully this legislation will improve the situation and provide some direction.

Chairman McKenzie asked if this RS came to the Committee with the

request and consent from the resources committee, and will it go to that committee if printed? **Vice Chairman Pearce** answered "yes."

MOTION: **Senator Geddes** made the motion to print **RS18737**. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

RS18635C1 **Vice Chairman Pearce** continued with **RS18635C1** and stated that this RS will revise provisions relating to the auction and lottery of bighorn sheep tags. The agency that markets the tag currently receives twenty five percent. This will change will make it five percent.

Chairman McKenzie asked if this RS will also return to the resource committee? **Vice Chairman Pearce** said that it will.

MOTION: **Senator Fulcher** moved to print **RS18635C1**. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

CONFIRMATION VOTE: **Chairman McKenzie** said the confirmation vote on **Gavin Gee** and **John Taylor** to the Idaho Endowment Fund Investment Board is before the Committee.

MOTION: **Senator Geddes** made the motion to confirm **Gavin Gee**. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

Senator Stegner made the motion to confirm **R. John Taylor**. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

MOTION: **Vice Chairman Pearce** said that he had read the minutes of February 11 and February 13. He moved to approve the minutes as written. **Senator Darrington** seconded the motion. **Senator Fulcher** said that he read the minutes of February 13 and requested some minor changes. He asked for permission of the mover and the second to approve the minutes with the changes he suggested. The motion carried by **voice vote**.

ADJOURN: **Chairman McKenzie** adjourned the meeting at 10:05 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 23, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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.

S1100 **Ron Williams**, who represents the Idaho Cable Telecommunications Association presented **S1100** to the Committee. **Mr. Williams** stated that there were numerous meetings with participation from Cable One, Cox, Time Warner, Qwest, AT&T, Verizon and the Idaho Telephone Association. The two primary goals of **S1100** are to create a more competitive market place in Idaho while protecting local control over the public rights-of-way. The framework will allow new video providers to apply for and receive a certificate of franchising authority from the Secretary of State (SOS) . The SOS is only a certifying agency, not an enforcement or regulatory body under this act. **Mr. Williams** said when a system operator applies for and receives a certificate of operation, the incumbent cable operator can choose to remain franchised at the local level or elect to be under a state video franchise system for that area. An incumbent operator can also elect to receive a state issued franchise when their local franchise expires. All video providers will continue to pay local government a video service fee up to five percent, which is historically what local operators have been paying local government. This bill will preserve the rights and powers of local government to control access to and use of public rights-of-way. If there isn't a local ordinance to that effect, then the act sets the minimum standards for access to and use of public rights-of-way. The act establishes standards and obligations for providing customer access to community programming which are known as PEG (Public Education and Government) channels. The same obligations that apply to new entrance to the market apply to the incumbent cable operators. The act prohibits local government from discriminating access to the public rights-of-way, and discrimination by video providers against groups or customers based on income, or what is referred to as redlining.

Mr. Williams said the definition of actual competition is defined as the activation and installation of a network. This will allow incumbent cable companies to elect to move to the State franchise. The most operative provision of the bill is found on page 2, section 50-3003 Idaho Code. This establishes that a video wireline service in the State can be offered by an incumbent video provider through an existing franchise, or through a certificate of franchise issued by the SOS. The requirements for a certificate are in subsection 2, fees are covered in 3, 4 relates to the use of public rights-of-way, and 5 and 6 spell out the provisions for local rights-of-way. Subsection 7 provides a default provision when there isn't a local ordinance in place for the installation of public rights-of-way. For a certificate of franchise authority to be nonexclusive is in subsection 8, and subsection 9 provides for a transfer of franchise authority. On page 5, line 18 it establishes that any person may submit an application and an incumbent operator can make an application when they face actual competition. **Mr. Williams** stated that section 50-3004 establishes the fees that the SOS will charge for a certificate. Section 50-3005 is a provision for compliance to offer service to at least one subscriber in a twenty-four month period, otherwise the certificate will be revoked.

Section 50-3006 lays out the requirements for PEG channels. The new provider would have to provide the same number of channels as the incumbent. If there are no incumbents it establishes a system relative to the population. **Mr. Williams** said section 50-3007 establishes a video service provider fee called a "franchise fee." The amount cannot exceed the amount of five percent of gross revenues. The definitions of gross revenues is on page 8 of the bill and section 50-3008 relates to nondiscrimination by governmental entities for use of the public rights-of-way.

Senator Darrington asked **Mr. Williams** if there will be overlapping service areas by a franchise holder who delivers wireline video services? **Mr. Williams** said that is a provision of Federal law that went into effect about a decade ago. It prohibits municipalities from issuing exclusive franchises. **Senator Darrington** asked if service is not currently offered in an area, and the cable is already established, can a provider get a franchise and offer service, or will they have to establish new cable? **Mr. Williams** said that he believes they would have to provide a new cable. There isn't an open access or common carrier provision in Federal law or in this bill. **Senator Darrington** asked if wireline services will take a back seat or be phased out for wireless in the future? **Mr. Williams** answered that is the bet that stockholders make every day on both sides.

Senator Fulcher asked **Mr. Williams** if there is anything in the bill that will place restrictions on video that is produced and sold, or transmitted? **Mr. Williams** said there aren't any content related provisions in this bill. There is a provision under the PEG provisions that State carriers have no responsibility for the content.

Senator Kelly asked if the language in this bill was modeled after another state, and how do other states handle this issue? **Mr. Williams** replied that approximately half of the states have enacted some form of video

franchise reform legislation. The other half have made the decision that it should remain at the local level. There wasn't any model language used for this bill, but in the drafting process probably a half dozen other states were looked at. The guiding principal was not to discriminate against the incumbent provider, so that the new provider would not have a competitive advantage with the State franchise.

Senator Davis asked **Mr. Williams** why the SOS was selected instead of the PUC? **Mr. Williams** responded that the majority of states probably use something equivalent to the PUC. Nevada recently passed similar legislation and they use their SOS. This issue was more important to the new providers who felt it should be a bulletin board type of service. The bill that was proposed two years ago did use the PUC as the issuer of the State franchise. **Senator Davis** asked **Mr. Williams** if he was aware of the opposition to the bill by Verizon? **Mr. Williams** replied that he is. **Senator Davis** said Verizon suggested some additional language to limit public disclosure. He asked **Mr. Williams** to speak to that. **Mr. Williams** said he is opposed to the Verizon amendment for two reasons. First of all, it doesn't work, and initially that provision was in the bill. Cities have public records and they cannot protect them from the public. Cable companies already report the number of customers that they have and their franchise fees. Verizon can see our information yet they are asking for their information to remain classified or proprietary. Secondly, it doesn't meet the definition of what the cities can classify as a protected record.

Senator Kelly asked **Mr. Williams** where will the fees for the application and user fees be paid? **Mr. Williams** replied that the \$200 fee is paid to the SOS and probably goes into the general fund. The franchise fee is paid to the local authorities and is deposited into their general fund.

Senator Fulcher asked **Mr. Williams** if the implementation of this bill will make it more difficult or easier for a new provider to enter the video franchise business? **Mr. Williams** stated that it will make it easier.

Vice Chairman Pearce asked **Mr. Williams** will the Idaho Education Network overlap this? **Mr. Williams** responded there isn't a direct relationship between the Idaho Education Network and this legislation. The telecommunications that are involved with that network had a hand in crafting this legislation. This is designed to provide local video services.

TESTIMONY:

Ed Lodge stated that he represents Qwest Communications. **Mr. Lodge** stated that this was a collaborative process between the cable and telecommunication companies and local government entities. As a result, Qwest enthusiastically supports **S1100**.

Senator Davis asked **Mr. Lodge** to speak to the Verizon issue, and if they participated? **Mr. Lodge** responded although they weren't physically present at many of the meetings, he and **Bill Roden** kept Verizon informed, so they were very much involved. **Senator Davis** asked him to speak to the amendment that Verizon proposed. **Mr. Lodge** said the cable industry has been doing this for years, so Qwest does not have a

problem with it.

Vice Chairman Pearce asked **Mr. Lodge** to speak to the issue that Verizon raised that this will interfere with competition. **Mr. Lodge** replied that he really can't concur with Verizon. This legislation is an opportunity for customers in Idaho by opening up a statewide franchise.

Senator Thorson asked **Mr. Lodge** what is the typical length of a franchise agreement? **Mr. Lodge** answered he is not an expert on franchise fees, and perhaps **Mr. Williams** could answer that.

Pam Burgess yielded to the question. **Ms. Burgess** said that it varies from community to community, but five, ten, or fifteen years is common. **Senator Thorson** asked what is a typical fee? **Ms. Burgess** responded the typical franchise fee is five percent. It is the maximum fee allowed under Federal law.

Pam Burgess, President of ICTA (Idaho Cable Telecommunications Association), testified that this bill is a collaborative effort to make it easier for new video service providers to enter the market in Idaho. **Ms. Burgess** said she is a cable operator in Mountain Home. This will allow a new provider to obtain a franchise through the SOS, rather than having to negotiate a franchise agreement with each local entity where they intend to operate. It will also provide equal regulation of all video service providers and maintain the rights of local government to manage and maintain the rights-of-way. The incumbent operators of Idaho support **\$1100**.

Vice Chairman Pearce asked **Ms. Burgess** how many local entities have ordinances that deal with this, and how many will rely on this legislation for direction for their rights-of-way? **Ms. Burgess** responded that she is not aware of how many communities have rights-of-way ordinances in place. Small rural communities may not have ordinances in place to govern their rights-of-way, that is why that provision was included.

Senator Stegner asked **Ms. Burgess** if a city or municipality has a franchise with a cable provider, does the new provider have to negotiate to provide service in the same area? **Ms. Burgess** answered that existing franchises are nonexclusive. If another cable operator desires to build over an existing cable operation, they would have to negotiate a franchise with that local government and not be precluded by any exclusivity. **Senator Stegner** asked if there is currently a exclusivity for cities to only offer one franchise. **Ms. Burgess** replied that she is not an expert on the governing of Federal law. The franchise agreements that she operates under in Mountain Home are nonexclusive, so another provider can come in and provide a franchise through local government.

Mr. Williams yielded to **Senator Stegner's** question and stated that under the Telecommunications Act of 1996, it barred exclusive franchises at the local level. There are examples across the country where there are two competing video providers fighting in the marketplace. It also exists in some areas of Idaho, primarily in **Senator Darrington's** district.

Senator Stegner asked **Mr. Williams** if a city has the authority to issue an exclusive franchise to one carrier today. **Mr. Williams** replied that is correct. **Senator Stegner** asked if **S1100** goes into effect, will it negate any current authority for the local government to issue an exclusive franchise for video service. **Mr. Williams** responded that is right. If a local government did not issue a franchise to a new competitor they would be in violation of Federal law.

Senator Stegner asked **Mr. Williams** what is the real purpose of **S1100** if they aren't negating any local government to reject a franchise? **Mr. Williams** stated that the competitors believe if they have to go city by city to obtain a franchise, that it is too cumbersome to do on a local level. The desire is to have a mechanism to obtain a State franchise from an administrative agency who is perceived as more friendly than the local franchising authority. **Senator Stegner** asked if this was done based on perception? **Mr. Williams** responded in order to obtain a franchise it can be a sixty to ninety day process. The SOS process will only take fifteen days. The negotiation of a local franchise can at times be arduous. There are some instances where the cities have been aggressive and **S1100** establishes the standards for the process to obtain a video franchise.

Senator Darrington asked **Mr. Williams** if the statewide franchise would blanket the franchise area rather than having to deal with several franchises? **Mr. Williams** responded that some providers carry as many as ten or fifteen franchises. Under this legislation a provider can target an area and have it under one franchise.

Senator Geddes said he believes that companies were encouraged to offer service in the rural areas and develop service. In the meantime private businesses have developed their own system. A bigger company comes in and eliminates the need for the original company and puts them out of business. **Senator Geddes** asked how will this work under **S1100**? **Mr. Williams** responded the companies can merge or transfer franchises. It has no restriction on the market functions that you described.

Senator Kelly asked if Verizon was here today to testify? **Chairman McKenzie** stated they are not.

Skip Smyser testified on behalf of AT&T. **Mr. Smyser** complimented **Mr. Williams** and all the parties that have worked on the legislation. **Mr. Smyser** said that AT&T was present and involved in the meetings, but they are proposing a basic change to this, based upon technology that AT&T has versus that of the incumbent cable industry. The change deals with the PEG Channels. AT&T represents a much larger geographic area than other cable providers. This bill will require AT&T to be on the same channel as the local incumbent. A letter from AT&T was provided to the Committee regarding the changes that AT&T proposed.

Senator Davis asked **Mr. Smyser** if the proposal was submitted before and then rejected? **Mr. Smyser** said that it was submitted but not

discounted. AT&T was late in coming forward with their comments. **Senator Davis** asked **Mr. Smyser** if AT&T was invited to participate in the process prior to yesterday. **Mr. Smyser** said AT&T was present at the meetings, but this proposed language was only finalized last night.

Tim Hurst from the SOS testified and stated that the role of the SOS is to receive the application, check it for completion, and then issue a certificate for franchise authority. The SOS is set up to do this but there are some provisions and requirements in the bill on page 4, lines 11 through 36. **Mr. Hurst** said there are minimum standards in case a city does not have an ordinance. On page 6, line 4 relates to community access where the program has to be available. Line 28 on page 10 relates to the FCC requirements for customer service obligations and on page 5, line 36, if a provider cannot provide service within two years, the franchise is revoked. **Mr. Hurst** stated that nowhere in the bill does it address who has the responsibility or oversight for these provisions. The role of the SOS will be only to issue the certificate of franchise. If enforcement or inspection is required, than another agency would be better.

Senator Kelly asked **Mr. Hurst** to speak to the fiscal note. **Mr. Hurst** said that the SOS is set up to handle the fees just like other business licenses. The fees will go to the general fund and it will not be a burden for the SOS.

Chairman McKenzie asked if someone is not provided access to public rights-of-way, how will it be handled? **Mr. Williams** replied that ordering the local government to allow access for the private entity would be the appropriate thing to do.

Mr. Williams stated **S1100** has been a three year process and it truly is a consensus bill. Both issues from Verizon and AT&T were discussed intensively. The guiding principal for the cable association was to establish and answer the desires of the competitors to enter into a video franchise program, while maintaining fairness. Verizon claims that more competition might come in if they don't have to disclose their records. That will diminish many of the provisions provided in **S1100**. Legislation from other states is biased against the incumbents and advantageous for the new competitors. **Mr. Williams** said that the amendment that Verizon proposed is in that category. Legal counsel from the Association of Idaho City believes this would be illegal. As for the AT&T proposal, the PEG issues are important to the local communities. The PEG channels were negotiated due to the backlash from the cities regarding a different requirement that was originally in the bill. To give AT&T an adjustment now will not provide the same level of public access to those channels.

Senator Kelly said under Idaho law, the government is required to keep trade secrets confidential. It appears that Verizon has a different opinion. **Senator Kelly** stated that this appears to have the potential for litigation. She asked **Mr. Williams** to respond to that. **Mr. Williams** replied that he has not reviewed that section of code. His concern is not legal, it is competitive, which he has already spoken to. **Senator Kelly** said that

Title 48 has a trade secret provision in it.

Vice Chairman Pearce asked **Mr. Williams** if any of the smaller companies participated in this? **Mr. Williams** responded that the Idaho Telephone Association participated in the meetings.

Senator Kelly asked **Mr. Williams** who will enforce the provisions in the bill? **Mr. Williams** answered there are a few cities who take responsibility for consumer standards and enforcement. Boise City for example, has the jurisdiction to enforce the provisions of the Federal Act as it relates to this, and the FCC does as well. Customers who are dissatisfied with their service usually switch providers. Once there is competition the market is the better enforcer rather than at the local level or the SOS. **Senator Kelly** said that you are asking the Legislature to adopt a law that appears to put sideboards in place, and stating that the marketplace will take care of it. **Mr. Williams** answered that he was speaking to the consumer protection provision of the bill.

MOTION:

Senator Davis made the motion to send **S1100** to the floor with a **do pass** recommendation. **Senator Geddes** seconded the motion.

Senator Davis said that he has concerns about placing this with the SOS. The cable industry has a monopoly in several communities and they are the ones asking for this bill. They have done the best they can to protect the incumbent providers as well as providing for new competitors. In spite of his concerns he is willing to give the legislation a chance.

Vice Chairman Pearce stated that he has concerns as well and asked if the PUC is involved in cable regulation. **Senator Davis** responded that his understanding is that this bill will not take anything away from the PUC. **Vice Chairman Pearce** said there are sideboards and they are narrowing the competition. He would like more time to investigate this further.

Chairman McKenzie said that he attended some of the meetings and he was kept informed during the process. This will make it easier for competitors to come into a market where an incumbent is already providing service under a franchise. This is a significant issue as more and more people use cable and wireless service. This makes competition better and more fair within the State.

The motion carried by **voice vote**.

RS18569

Pam Eaton presented **RS18569** to the Committee. **Ms. Eaton** stated that she is President of the Idaho Retailers Association, and that she is here today to ask the Committee to print the RS and refer it to the Senate Commerce Committee. This RS will repeal the quantity limitation section of the Unfair Sales Act.

Senator Davis asked **Ms. Eaton** if there was a formal request from the Chairman of the Commerce Committee to print the RS? **Ms. Eaton** responded that she spoke with the members of that committee as well as the Chairman and asked if a letter was needed to do this. The Chairman

told her to tell the State Affairs Committee that his committee was fine with this. **Ms. Eaton** said, however, if it is the will of the Committee to print this and keep it in State Affairs, it is also fine. There was some question regarding which committee should hear this legislation.

Chairman McKenzie stated that was discussed and it is his desire to refer it to that committee if it is printed. **Senator Davis** said from his point of view he would prefer having a formal request from the commerce Committee, and knowing that it was a unanimous consent for our Committee to print this. **Senator Darrington** said this issue can easily go either way.

Ms. Eaton stated that she repeatedly asked the Chairman of the Commerce Committee if it was necessary for an official request. He assured me that it was fine. **Chairman McKenzie** commented that he told **Ms. Eaton** the same thing.

Senator Kelly asked **Chairman McKenzie** if he spoke with the Chairman of Commerce? **Chairman McKenzie** replied that he did not speak to him directly.

Senator Darrington asked **Ms. Eaton** if the intent here is to repeal 405A and then repeal 405 at a later time? **Ms. Eaton** answered that was not looked at or discussed. **Senator Darrington** said that he was recently in a store where his wife purchased four items for less than the cost of one. That is the reason for his question.

Ms. Eaton continued and said this will repeal the quantity section of the Unfair Sales Act. It is a section of the act that has not been looked at or enforced for several decades. This was brought to her attention last year during the rice shortage when shoppers were hoarding it. Retailers were putting limitations on that purchase. A consumer called the Attorney General's Office (AG) inquiring if it was illegal. She had a conversation with the AG and was told that it is in statute and no one enforces it, nor do they want to. In today's world this no longer makes sense, so she asked the AG's office if it would be okay to repeal this. The AG's office told her to go ahead. **Ms. Eaton** stated this just doesn't make sense any longer especially on hot ticket items, especially when there is internet capabilities to resell items at a higher price. By repealing this it will protect the consumer and allow them the opportunity to purchase items at a fair and not an inflated price.

MOTION: **Senator Stegner** moved to print **RS18569** 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 9:20 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 25, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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.

RS18568C1 **Senator Sagness** presented **RS18568C1** to the Committee and explained that this originally went through the Education Committee. It needed some corrections so that is the reason it is before the State Affairs Committee. **Chairman McKenzie** stated that he has a letter from the Chairman of the Education Committee requesting that this Committee print the RS.

Senator Sagness stated that he has known **Ron Hatzenbuehler** for many years. His wife Linda is the Dean of Health Professions at the University of Idaho. **Mr. Hatzenbuehler** has made many contributions to the University and to the State in a variety of areas. Many of them were through the Council on Humanities for which he was recognized this year with the Outstanding Achievement Award.

MOTION: **Senator Davis** moved to print **RS18568C1** and **Senator Darrington** seconded the motion.

Senator Darrington stated that he knows the **Hatzenbuehler's** and that this is a timely and outstanding recognition of Ron's work in the State.

The motion carried by **voice vote**.

S1084 **Senator Sagness** presented **S1084** to the Committee and said this bill deals with the distribution of Lottery funds, to provide flexibility for school districts regarding discretionary spending. This is particularly appropriate given the economic circumstances that the State is facing. **Senator Sagness** stated that he knows from personal experience how important it is to have flexibility in terms of how money is spent. A good administrator will put the money where it is most needed and have the ability to do

some creative things in that process. The restriction for using Lottery funds for capital expenditures only should be removed, so that the funds are available for any manner the school districts deem necessary.

Senator Darrington asked **Senator Sagness** what is the reason for paragraph two in the bill? **Senator Sagness** responded that language makes it consistent with current language. **Senator Darrington** asked if this will change anything. **Senator Sagness** replied that it will not change anything.

Senator Davis asked **Senator Sagness** to speak to the language that school districts may utilize this money for any lawful purpose of the district, and should the language also include "subject to appropriation." **Senator Sagness** answered the Lottery funds flow directly to the district, so he doesn't know why it would take an appropriation. **Senator Davis** said in some legislation there is language for a continuing appropriation. What he is understanding is that **Senator Sagness** is proposing that the funds will not be used for a specific statutory purpose. He asked **Senator Sagness** if the Chairman of Finance has looked at this and expressed any concerns regarding it. **Senator Sagness** responded that he provided a copy of the RS to **Senator Cameron** and he has not received any comments negative or positive from him. **Senator Davis** said the fiscal note indicates there is no impact. He asked how much money will be available for any lawful purpose. **Senator Sagness** answered it is the amount allotted to each district which depends on how much the Lottery has to distribute. **Senator Davis** asked how much money statewide would be available for the flexibility that you seek to achieve? **Senator Sagness** said in any given year it is about seventeen to eighteen million dollars.

Senator Darrington commented that is his recollection as well, because half goes into the permanent building fund, which is 17.5 percent.

Senator Sagness said in this past year Boise City received about 1.5 million dollars. Pocatello and Twin Falls received around seven hundred thousand. This is not an insignificant amount of money and there are variables by district.

Senator Stegner asked **Senator Sagness** if the restriction is removed in three years, will it revert back to the way it is now? **Senator Sagness** said that is correct and the school districts will be able to spend the money in any way that is legal.

Senator Kelly asked **Senator Sagness** if the distribution amount that the school districts receive now will be different? **Senator Sagness** replied only if there is a change in enrollment or if the formula changes. Other than that it will be distributed the way it currently is, which is based on how much money the Lottery receives. The only thing this bill will do is allow the school districts flexibility in terms of how they spend the money. **Senator Kelly** asked what about the ongoing lawsuits regarding the State or school districts not spending enough money on capital building, will this effect that? **Senator Sagness** stated that he could not answer that, but he doesn't believe that it will.

Chairman McKenzie commented that he does not believe this will effect how much the school districts have to put aside for maintenance. That obligation will still be ongoing. As long as it withstands legal challenge this should not effect that.

Senator Geddes said this has the potential for robbing Peter to pay Paul. The State has been challenged about not providing enough funding for buildings to be maintained in a safe and proper way. He asked **Senator Sagness** if this could result in a tax shift, or would the school districts be required to pay a higher level of tax to offset the loss of Lottery money. **Senator Sagness** responded that he does not believe that would happen. The districts have the opportunity to spend money on maintenance and given the three year restriction that wouldn't occur.

Senator Davis said that he doesn't have a problem with the flexibility given the short period of time. However, he believes that the school districts will be under greater pressure to negotiate that for salaries. By isolating the funds and protecting them for the benefit of the school facilities will ensure that the investment is protected. That is the hurdle he needs to overcome. **Senator Sagness** stated that he has faith in the district trustees to support what is in the best interest of the students.

Vice Chairman Pearce asked **Senator Sagness** why is this for three years, why not make it for two? **Senator Sagness** responded based on what the economists project, three years seems to be a reasonable amount of time. This may be too short a period of time and it could be too long. **Vice Chairman Pearce** asked **Senator Sagness** what does he envision three years from now after the school districts have had the flexibility to spend these funds and it reverts back, what arguments could we be faced with then? **Senator Sagness** said he is looking at what the school districts are facing right now. Circumstances have changed and after three years it will revert back.

MOTION:

Senator Darrington said this will sunset automatically in three years. **Senator Darrington** made the motion to send **S1084** to the floor with a **do pass** recommendation. **Senator Kelly** seconded the motion.

Senator Davis stated that he finds great value in some of the ideas presented by this bill, but experience teaches him that he should be troubled. The school boards will be under pressure to negotiate away the funds that help maintain fiscal assets. Positive comments have been made for the positive purpose of the bill. **Senator Davis** said because he has some anxiety he will not support the motion.

Senator Thorson commented this will sunset in three years. He doesn't believe that anyone would use these funds to support something that goes beyond a contract that was longer than one or two years. He hoped that provides some comfort to **Senator Davis** to move forward.

Senator Davis said it does not. Right now it is important to maintain a solid flow of money for maintaining facilities. Substantial progress has been made over the past eight years and this may not be the right

direction to take.

Senator Stegner said he is not troubled by school boards being unduly pressured. This will provide flexibility for the school districts to get through this difficult period. After three years this will revert back to the way it is now. **Senator Stegner** stated that he believes the school districts will act appropriately.

Senator Geddes commented that **Senator Davis** has the same concerns that he has. The needs for maintenance have been addressed and it is important that it continues to be used for that. He does not believe that this will be a significant amount of money to help the districts to survive in the short term.

Senator Kelly said as a member of the Education Committee she has heard a lot of arguments on this same issue. It is critical in this difficult time to help make decisions for the school districts and the students. Giving them more flexibility in the short term is the right thing to do.

Senator Davis said the votes on tougher issues are usually divided. This is not something that he is dead set against, but because of his concerns he cannot support this.

Vice Chairman Pearce said the school districts have been responsible, and in tough times they have to do what is necessary to survive. The concern is to maintain the entire program, not just various phases. **Vice Chairman Pearce** suggested a one year sunset to the bill and to review it each year.

Senator Davis said he knows it is always best to hear a bill and then vote on it. Maybe having a conversation with his local district would impact how he voted on the bill. **Senator Davis** stated if the Committee was willing to hold the bill, he would make that effort.

Senator Fulcher stated that he sees value in local control. Maybe we should shorten the window as **Vice Chairman Pearce** suggested.

**SUBSTITUTE
MOTION:**

Senator Fulcher made the substitute motion to send **S1084** to the amending order. **Senator Geddes** seconded the motion.

**AMENDED
SUBSTITUTE
MOTION:**

Senator Stegner moved to hold the bill in Committee for one week. **Senator Davis** seconded the motion.

Chairman McKenzie asked the Committee Secretary to take a roll call vote on the amended substitute motion.

Senator Darrington - Nay
Senator Geddes - Nay
Senator Davis - Aye
Senator Stegner - Aye
Senator Fulcher - Nay
Senator Thorson - Aye

Senator Kelly - Aye
Senator Pearce - Nay
Chairman McKenzie - Nay

The motion **failed**.

A roll call vote was taken on the motion to send **S1084** to the amending order.

Senator Darrington - Nay
Senator Geddes - Aye
Senator Davis - Aye
Senator Stegner - Nay
Senator Fulcher - Aye
Senator Thorson - Aye
Senator Kelly - Nay
Vice Chairman Pearce - Aye
Chairman McKenzie - Nay

The motion **carried** to send **S1084** to the 14th order for amendment.

S1119

Neil Colwell presented **S1119** to the Committee. **Mr. Colwell** said that he represents Avista Corporation. This bill will give authority for the Public Utilities Commission (PUC) to provide for low-income bill payment assistance. The program will be totally voluntary and if the bill passes Avista will participate and offer a pilot program. Avista has a program in other states where a small charge is added to customer bills and then it is utilized in the same way the Federal program works. Idaho Power has no intention at this time to participate. PacifiCorp offers a discounted rate program to assist bill payments for their low-income customers. There isn't any limitation with regard to creativity and what a utility company can offer. The PUC will have to approve the proposal and they may offer other suggestions to improve that program. The program will also provide for the recovery costs of the program which is really the underlying purpose of the bill. **Mr. Colwell** stated that assistance is provided to those who are most vulnerable such as non-payment, shut off and reconnects, which drive up costs. The existing customers pay those costs. This will provide a proactive management program to try to mitigate those costs and not burden other customers. There is significant support for this legislation and it will not affect the coops. **Mr. Colwell** provided a letter to the Committee signed by non-governmental entities who support **S1119**.

Senator Geddes stated that most of the utility companies already have some sort of an assistance program. He asked **Mr. Colwell** if the PUC allows for this when rates are set to offset the costs for assistance? **Mr. Colwell** said that he would defer that question to the PUC or to **Linda Gervais**.

Linda Gervais, Manager of regulatory authority for Avista, stated that it is fully vetted through the rate making process and it is worked out between the PUC and the utility. **Senator Geddes** asked **Ms. Gervais** if the utility company allows some leeway in the voluntary program for customers who

cannot pay their utility bill, and are those companies allowed some credit from the PUC when the rates are set? **Ms. Gervais** responded that is correct. **Senator Geddes** asked if a company takes advantage of this program will they receive full reimbursement for the utility bills that are not paid by adding an additional cost to the customers who do pay their bills? **Ms. Geravis** answered that the company would receive reimbursement for the amount they spent through the rate making process. Currently there is an uncollectible adjustment in rates. This particular adjustment would be to offset that particular accounting.

Mr. Colwell said to clarify that, when they go to the PUC the uncollectible amount is part of the rate making process. It is added into the rates that all customers pay. The voluntary programs that exist today do help to mitigate the uncollectible costs, but there really isn't any credit given for the uncollectible bills. **Senator Geddes** said the fiscal note states there is no impact to the State or local entity. When rates are set is the voluntary program a factor in that process? **Mr. Colwell** said that is correct, but the utility companies try to minimize the uncollectible amounts all the time. The other part of this equation is the voluntary program. If this is included in rates and customer bills are increased, will the customers who voluntarily contribute now continue to do so on top of that. The key to this is the fact that when customers cannot pay their bills, the utility customers are going to pick that up regardless. **Mr. Colwell** stated that Avista has proactively tried to manage that problem and contain those costs, otherwise those costs would be passed onto the customers.

Ms. Gervais commented in the voluntary program such as Project Share, the customer can check the box on their bill and contribute a certain amount of money. Those dollars are one hundred percent passed on to the customers and it is not part of the rate making process.

Vice Chairman Pearce stated that his concern is for customers who do not pay their bills who engage in illegal activities. He asked if the utility companies would be less motivated to collect from those customers with this program? **Mr. Colwell** answered that he does not believe the utility companies will be less motivated to try to stay ahead of this problem. Even with programs such as this the need will probably always be there. **Mr. Colwell** suggested that **Ms. Gervais** give her testimony at this time and then **Mack Redford** from the PUC will also provide their perspective.

Senator Davis stated as a utility customer he has the option to check the box and voluntarily contribute if he chooses. The voluntary nature of this bill is on line 16 and the decision is made by the PUC to participate in the voluntary program. If the PUC approves the plan it will no longer make it voluntary to participate in the program. Lines 17 and 18 state that costs will be approved and provide assistance for low-income customers. Through a rate case the PUC will define for the utility what the program is, what the parameters are, and how the program will be structured. **Senator Davis** asked **Mr. Colwell** if he was reading this proposed language correctly? **Mr. Colwell** answered mostly, but his perception is that the utility would offer a program with requirements and parameters. The PUC would then make a determination if that program was

appropriate to authorize. The intent is for Avista to provide a pilot program so that the PUC can make a final determination as to what would be in place. **Senator Davis** said if the bill is for the utility to reduce its bad debt right off, he does not support it. If, however, a program is established for individuals who meet the definition for service to be provided he would like to hear about that.

Senator Stegner asked **Mr. Colwell** if the statute they are amending will allow Avista to engage a program for low-income assistance and then the PUC will have the authority to authorize it? **Mr. Colwell** answered that is correct.

TESTIMONY:

Ms. Gervais provided a brief explanation for the program offered at Avista. The CEO of Avista wanted to know what could be offered to help customers who are least able to pay for their utility service. The Federal government's definition provides for a service territory to have anywhere from twenty to thirty percent of its households to be at poverty level. Programs such Project Share and the Limited Income Heating Assistance Program (LIHEAP) provide only a fraction of this need. Every utility has a different profile and approach. Avista considered several options and the Low Income Rate Assistance Program (LIRAP) was established. The LIRAP program is in Washington and Oregon for the purpose of reducing the energy cost burden among the customers least able to pay bills, increase their ability to pay their bills, and to minimize the impact to Avista customers who pay the cost of uncollectible accounts. **Ms. Gervais** stated the funds are collected through a utility surcharge and then distributed by community action agencies similar to the Federal and State sponsored LIHEAP program. This reduces administrative costs by using existing services already in place and it assures that more customers are receiving benefits. Avista believes that conservation education is an integral part of the assistance programs, so they have created a conservation education kit. The kit includes weatherization and conservation materials that are distributed to the customer when they apply for a LIRAP or LIHEAP grant. Additionally, Avista has an energy conservation program for children called Energy Watchdog, and a Senior Outreach Program that is funded through LIRAP.

Ms. Gervais said the LIRAP program truly focuses on those least able to afford utility service. This program is designed to cover all the customer's arrearage so that he or she can get back on their feet. **Ms. Gervais** stated that is an important component of the program. California, for example, offers discounted service, but this does not get to the systemic issue at hand. Some utilities may find such a program suitable in their service territory. This program is optional for the utility and must be approved by the PUC. Upon approval and implementation, the utility is required to report periodically with the ability to modify aspects of the program. A program such as LIRAP could double existing resources but still only cover less than a third of the defined need. But due to its program design it will truly help those who are most financially distressed. If **S1119** is passed, Avista looks forward to working with the PUC and other interested parties to pilot a program in Idaho that will assist those least able to pay, while protecting the rest of customers from runaway

costs associated with case management, disconnects and reconnects, and uncollectible accounts.

Mack Redford, Commissioner of the PUC, addressed the Committee regarding **S1119**. **Mr. Redford** said he hopes this program will be enacted to help those in need. Present legislation does not provide for the PUC to enact such a program and without this it could be ruled as discriminatory. There is a real need for low-income assistance in the State. Currently, Idaho offers the LIHEAP program, but not a low-income assistance program. A handout was provided to the Committee regarding energy affordability assistance.

Mr. Redford stated that there are 101,000 Idaho households at 150% of poverty or below. There are more than 18,000 residential customers who were eligible for protection from disconnection by utilities during the 2007-08 winter heating season. Following that heating season there were 137,000 residential utility accounts that were past due, with a total amount owing of 13.4 million dollars. The PUC believes that providing assistance to low-income customers under this program will decrease the accounts receivable bad debt. This means that money will not go into the rate base and lowers costs to the customers. **Mr. Redford** said after one year if only one penny per month was charged, it is estimated that there would be seventy to eighty thousand dollars collected. This program is totally voluntary for the utilities and it will provide another tool for the utility companies in providing assistance without raising rates. The money that is raised by Project Warmth and Project Share are not sufficient to have an impact on lowering rates. **Mr. Redford** stated that the rate base is the term used to determine how costs are developed for rate making purposes. One of the costs is the right off for bad debt. Other funding sources net only a fraction for the need. **Mr. Redford** asked the Committee to approve **S1119** with the assurance that the PUC will be very judicious in selecting the type of program to be offered by the utility companies.

Senator Davis asked **Mr. Redford** to explain the factors that the PUC will look at in establishing a program for the utility. **Mr. Redford** responded first of all the application would identify the factors such as the poverty level, service area, and the returns on their voluntary program. The PUC will set the rules and regulations of the program through the rule making process. The administrative costs will have to be provided as well as how aggressive the utility intends to be, in providing the program to those who need the assistance. **Mr. Redford** stated he supports this bill as well as the staff of the PUC. **Senator Davis** asked **Mr. Redford** if the PUC has statutory authority to promulgate rules for this program? **Mr. Redford** replied yes. **Senator Davis** said if the major utility companies participate in the program, will the term "voluntary" for the remaining utilities increase pressure on them to also participate? **Mr. Redford** answered it is voluntary for the utility to come to the PUC for a program. The monies that are collected will be wrapped into the rate base with a small increase. Some utilities may not participate at all. The voluntary rate that is funded under Project Share does not impact the rate base.

Senator Kelly commented that it would be helpful to explain this program to the media. **Mr. Redford** said he did meet with the Associated Press and he believes his explanation was sufficient. There was some bad press initially and calls from customers that do not want this, but the PUC is doing what is necessary to clear up the misinformation.

Senator Geddes asked **Chairman McKenzie** if anyone is here to testify in opposition to the bill. **Chairman McKenzie** said "No, only Mr. Redford signed up to testify."

Mr. Colwell stated that he trusts the questions have been answered. Avista is trying to address a problem in the best way possible for proactive management. He asked the Committee to approve **S1119**.

Senator Darrington asked **Mr. Colwell** if there is a provision for the utilities to receive a payback from customers? **Mr. Colwell** responded the way the program traditionally works is that it provides the needed assistance. If a customer is in arrears and their situation improves, we do expect them to catch up on their bill. This program does not wipe out the customers bill, it is a temporary assistance program to help them and not get into a deeper hole. **Senator Darrington** asked **Mr. Colwell** if he envisions the PUC developing a rule for this program that the customer will have to pay back the money. **Mr. Colwell** said in the states where Avista offers this program that is not a component.

Senator Stegner said he would like to thank **Mr. Colwell** for bringing this legislation forward. Additionally he would like to thank **Teri Ottens** who has worked on this for at least three or four years. **Senator Stegner** stated this is a vital step for the State in dealing with a significant problem. There is no obligation or mandate for the utility companies to do this. Up until now the PUC has not been in a position to legally improve the situation.

MOTION: **Senator Stegner** made the motion to send **S1119** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**. **Senators Pearce** and **Fulcher** requested they be recorded as voting no on the motion.

ADJOURN: There was no other business before the Committee. **Chairman McKenzie** adjourned the meeting at 9:32 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 27, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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.

MINUTES: **Chairman McKenzie** called the meeting to order at 8:02 a.m. **Chairman McKenzie** stated the first two RS's on the agenda came to State Affairs from the Transportation Committee, at the unanimous consent of that committee to print them and return them to their committee for further action.

RS18766 **Russ Hendricks** presented **RS18766** to the Committee. **Mr. Hendricks** stated that he represents the members of the Idaho Farm Bureau Federation. **RS18766** clarifies that certain features of auto insurance are not applicable for insurance coverage for off-highway vehicles. The RS will not diminish the current requirement in law for off-highway vehicles to have valid liability insurance that meets or exceeds the State minimums when upon roads. Last year **H602** changed the way that off-highway vehicles are registered. Because of the confusion, the Idaho Department of Insurance issued a bulletin to the insurance industry alerting them of their interpretation of the law. This bulletin stated that because of the change in **H602** off-highway vehicles are now subject to all of Chapter 12, Title 49, even though some of the sections have never applied nor were they ever intended to apply. Those sections are specifically designed for automobile insurance, not insurance for off-highway vehicles. **RS18766** seeks to restore the way insurance coverage for off-highway vehicles has been working effectively in Idaho. It clarifies that four specific sections of Chapter 12, Title 49, do not apply to off-highway vehicles. **Mr. Hendricks** asked the Committee to print **RS18766** and return it to the Transportation Committee for their consideration.

Senator Davis stated that decision is not made by the Committee, but the Pro Tem. He asked **Mr. Hendricks** why is State Affairs printing an RS for a House member, and why wasn't this heard in a House committee? **Mr. Hendricks** responded the reason is because **S1090** was already introduced. **Representative Hagedorn** had worked with **Senator McGee**

on that bill. In discussions with the Idaho Transportation Department (ITD), they had language that need clarification in this particular bill. This RS incorporates that language. **Senator Davis** asked if this is also **Senator McGee's** bill. **Mr. Hendricks** replied that **Senator McGee** was involved in the process, but he is not a sponsor. **Senator Davis** asked **Mr. Hendricks** if he is familiar with **S1098**. **Mr. Hendricks** answered that he is. **Senator Davis** said if **S1098** passes, will this RS be necessary. **Mr. Hendricks** said yes, **S1098** makes necessary corrections to last year's bill, **H602**. This addresses a different matter that came up recently because of the bulletin issued by the Department of Insurance. Both bills are important and necessary. **Senator Davis** commented that he is not a fan of this especially when the contact person from the House is not present. This is just his personal opinion.

MOTION: **Senator Fulcher** moved to print **RS18766**. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote**.

RS18750 **Senator Corder** presented **RS18750** to the Committee and stated that the RS may be the only revenue generating measure that deals with transportation to pass the Legislature this session.

MOTION: **Senator Stegner** made the motion to print **RS18750**. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Pearce stated that he does have a question with regard to temporary registration. He asked **Senator Corder** if this process will accentuate that? **Senator Corder** responded that the process is fairly simple. The process can be done at home and the permit can be printed. Last year legislation that passed doubled the fees with the intent that abuse would stop. This bill will go one step further and make it easier.

RS18757C1 **Bill von Tagen**, Deputy Attorney General, addressed the Committee regarding **RS18757C1**. This RS proposes changes to the State's Open Meeting Law which is found in Chapter 23, Title 67. **Mr. von Tagen** stated that the first open meeting law was written in 1974. With thirty years of experience, change is needed to some areas, as some language creates confusion and ambiguity. An example can be found in 67-2343 which deals with meetings and agendas. The argument is what the interpretation of "up to and including the hour of the meeting" really means. The Attorney General's Office (AG) has always understood that to mean an agenda can be amended if necessary during a meeting. The other interpretation is only up to the hour of the meeting.

Mr. von Tagen said there is confusion over the language "knowingly" in 67-2347. Does it require merely a conscious act, or does it require an intent to violate? The court has ruled that "knowingly" must be more specific in its intent. All case law since 1974 has never imposed a fine on any member of a governing body. The general approach of this bill is not to impose fines, but to achieve compliance with the Open Meeting Law. The first change is in 67-2341 to reflect the understanding by the AG of the existing law. The change in 67-2344 addresses what requirements are necessary in the minutes of an executive session. It is only necessary to reference the specific statutory authorization when going into executive

session and to identify the purpose and topic of the meeting. In 67-2345 it repeats the rationale for the changes, and on page 3, lines 1 and 2 addresses how the vote is taken for an executive session. The employment exemption is on page 3, lines 3 to 6. Sometimes governing boards do not discuss the discipline of a specific employee, but instead they talk about budget issues. On lines 34 to 37, page 3, it restates a well established rule of statutory construction that states an executive session is an exception to a general rule. Rule 63-2347 talks about the violations and the different approaches to the Open Meeting Law. **Mr. von Tagen** said this is for compliance and not to just impose a fine for a violation. The types of monetary penalties are on page 4. The old law had a fine of \$150 for a knowing violation, which is changed to a \$50 penalty. The knowing violation or intentional violation is increased to a \$500 fine, and finally, there is another \$500 penalty for a violation of the Open Meeting Law for a second time in a twelve month period.

Senator Davis asked **Mr. von Tagen** if there should be some language that suggests that there is a judicial determination for a prior violation? **Mr. von Tagen** responded that is a good point. The intent was for a prior violation that has been established through a fine with some sort of evidence. The AG or prosecuting attorney will have to prove every element of the case and show proof of the violation, including the prior one. **Senator Davis** said the difference is that in subsection 4, “knowingly” is not part of the language. It appears that only one of the two violations has to be a knowing violation. **Mr. von Tagen** said this section is intended to work with the cure provision. “Knowingly” does not have to be demonstrated for the second subsequent violation. As a practical matter the first violation might be a letter from the AG stating there is a violation. There is an admission but no actual process. Most cases are settled in an informal nature, and it is rare that it ever reaches the courtroom.

Senator Stegner said what is the reason for the language on page 3, lines 42 and 43, that references decision making. **Mr. von Tagen** said this was not in the original draft. It is a combination of the changes that Legislative Services makes, and the hyphen in decision making doesn’t show after it is stricken.

Senator Kelly asked **Mr. von Tagen** to factor in the statute of limitations when he discusses the cure provision. If action has to be brought forward within six months, the twelve month prior violation doesn’t seem to work from a chronological standpoint. **Mr. von Tagen** said they are two separate requirements within the same statute. **Senator Kelly** said she understands but it is a very tight time frame. **Mr. von Tagen** replied the six month time frame has been used for many years. This approach was taken because finality is necessary in government decisions.

Mr. Von Tagen stated that the cure provisions are on page 4 and 5, lines 31 to 45. There are a number of different ways that an agency can effectuate a cure. The agency acknowledges that the notice wasn’t posted and that the decision made at the meeting is invalid. If the agency is notified that they did, in fact, violate the law then they have an

opportunity to cure most of the violations. Almost all violations can be cured under this process. The \$50 penalties and the repetitive violation can always be cured. There is a potential for a \$500 fine, but one can always be cured, and in most instances that second violation can be cured as well. If an agency recognizes on its own that there was a repetitive violation, they can go back and fix it without a penalty being assessed. If the violation is a "knowing" violation than it will be up to the discretion of the prosecutor or the AG's Office to proceed or not.

Senator Stegner said the cure provisions seem to be a significant aspect of this. On page 4, paragraph 7, the way the violations are laid out seem to be confusing and maybe they should be outlined differently to make them more clear. **Mr. von Tagen** responded that is a good suggestion.

Senator Kelly asked **Mr. von Tagen** to describe the process taken for the RS. **Mr. von Tagen** answered it was arduous. The first attempt at this was three years ago. Since then there have been many discussions with the press, news media, local governments, and the AG's Office. Some of that is reflected here and it is a significant improvement in the law.

Vice Chairman Pearce said on page 4, lines 6 to 10, deals with the open meeting as well as the executive session. He asked **Mr. von Tagen** if it covers both. **Mr. von Tagen** answered if a governing body improperly goes into an executive session it would be a violation of the Open Meeting Law. The executive session provisions are an exception to the general rule, which states that all meetings are to be open to the public. Executive session means the public is excluded and statute sets up a number of specific reasons for going into executive session. Sometimes in an executive session the discussion tends to drift from the topic. When that occurs they need to get back to the specific topic or return to the public session.

Senator Davis said that they have discussed a lot of topics today. Maybe **Mr. von Tagen** would like to pull the RS and return with another version before the RS is printed.

Mr. von Tagen replied that he would be happy to do that.

Senator Thorson asked **Mr. von Tagen** what determines the majority of the governing body for going into executive session, is it determined by the members present, or by the total number of elected officials? **Mr. von Tagen** said it is a full governing body. If there is a five member body it will require three out of five, not sixty percent of those present.

H132

Lieutenant Colonel David Dahle, a judge advocate for the Idaho Military Division presented **H132** to the Committee. **Lieutenant Colonel Dahle** said that **H132** will authorize that certain state employees who are also members of the Guard or reserves, and who work uncommon schedules, have their Military Leave benefit prorated. An "uncommon tour of duty" is defined as a duty assignment that exceeds eighty hours in a two-week pay period on a regularly scheduled basis. The Military Division seeks

this change because it operates within a highly complex employment environment. At this point they have identified ten employees that this would affect today. They are firefighters who routinely work 106 hours in a two-week pay period. This will allow the same type of benefit that is currently enjoyed by other Federal employees in the Military Division. **Lieutenant Colonel Dahle** stated that other State agencies that hire members of the Guard or reserves will also be eligible for the same military leave benefit.

Senator Davis said at the beginning of the bill there is the common “notwithstanding any other provision of law” language. He asked if that language is somewhere else in the code? **Lieutenant Colonel Dahle** replied that he is not aware of any provision that this would conflict with in Idaho code. That language is often used to avoid any potential conflict. That particular phrase was actually provided by the drafter of the bill. **Senator Davis** asked if he would be comfortable without that language in the bill? **Lieutenant Colonel Dahle** responded that he would be comfortable without that language. **Senator Davis** commented maybe that language should be in every bill. If there is a conflict, then Legislative Services should advise what the conflict may be.

Senator Stegner said that he agrees that we are seeing a lot more of that language in bills. It is becoming a common phrase and it is used more often than not.

Senator Darrington said that he does not disagree, but he doesn't believe it does any damage to this piece of legislation. Leadership can have that conversation with Legislative Services any time and resolve that issue.

Lieutenant Colonel Dahle commented that there may have been some other language that was originally submitted to Legislative Services.

Senator Davis said in difficult budget years this language is used more frequently. It does not mean that he will or will not vote for the bill. If there is a specific reason that it may be in conflict, he just wants to make the most informed decision as possible. This may be a good time to stop this practice and have that conversation with Legislative Services, as well as amending the bill to not include that particular language.

MOTION:

Senator Davis made the motion to send **H132** to the **fourteenth order** for possible amendment. **Senator Stegner** seconded the motion.

Senator Davis said that he would encourage **Lieutenant Colonel Dahle** to take a look at the language and see if there is something else to propose. Otherwise his intent is to strike that language in the bill.

Lieutenant Colonel Dahle stated that he finds that very agreeable.

The motion carried by **voice vote**.

SJR101

Senator Stegner stated that **SJR101** is the constitutional amendment

specifying that the University of Idaho may, through the Board of Regents, impose rates of tuition on its students. The University of Idaho was established prior to statehood, by the territory of Idaho and not the State of Idaho. As an existing institution when the State was created, it has unique status by being referenced in the Constitution of the State of Idaho. Section 12 of Territorial Law states that no student shall be required to pay tuition. The real question is what is the status of Territorial Law which makes this complicated. In some manner this law was incorporated in the Constitution. It has always been assumed that the Constitution protected the Territorial Law that prohibited tuition. **Senator Stegner** said another remedy would be to challenge this in court. The easiest way would be to just change the Constitution and clarify once and for all that the University of Idaho can charge tuition. If **SJR101** passes both bodies of the Legislature, it will be voted on in the next general election in November 2010.

There are two State statutes that deal with this issue in the education title of State Code, Title 33. One statute deals with the University of Idaho and the other deals with all the other institutions. The statute was changed a few years ago for the other institutions and because of the constitutional question, the statute for the University of Idaho was not changed. The statute needs to be changed and the Board of Regents would have to authorize it as well. Tuition will not be automatically charged at the University and it will not be a significant increase to fees. The fees that are charged today are in lieu of tuition. **Senator Stegner** stated that the primary reason for doing this is to allow the University to operate under the same standard like the other institutions in the State. A more fundamental reason for doing this is to define what tuition is in statute. Fees that are currently charged cannot be used for instructional purposes at the University. The University needs the flexibility to manage its budget in a more efficient manner. The fiscal note has been modified with a more substantial explanation.

Senator Davis asked if someone signed up to speak to the Resolution. **Chairman McKenzie** said no. **Senator Davis** asked if **Marty Peterson** could speak to the Committee regarding their view on this.

Marty Peterson, assistant to the President of the University of Idaho, stated that this Resolution would be beneficial to the University. The Board of Regents have not reviewed it so he is not in a position to say that the University supports this. The University funds most of its instructional programs through the State's general fund appropriation. With the appropriation being reduced, the University has not had the same ability as the other institutions to utilize a portion of student fees to offset the hold backs. This would remedy that situation.

Senator Davis asked **Mr. Peterson** had this bill been in effect today, would it have impacted the closure of some programs? **Mr. Peterson** responded that he does not believe it would have. There are forty-one degree programs that are under review for elimination from the University. That process was started three years ago to determine the priority of those programs.

Senator Kelly commented that she believes an eight percent increase has been proposed to fees. She asked **Mr. Peterson** with the general fund appropriation being reduced, how will this play out, and will the University increase tuition as well as fees? **Mr. Peterson** replied if the Resolution had been approved it would probably be the same. But the mix of the use of the funds would be different. The reason being is that two years ago when the other institutions started charging tuition, the University has not seen a significant increase beyond what they would have charged. The process for approving student fees will be unchanged if approved. **Senator Kelly** asked if this is more a matter of bookkeeping than for students to pay more in tuition and fees. **Mr. Peterson** answered yes, it is safe to say that this will provide a better, more efficient use of monies that are currently charged.

Senator Kelly asked **Senator Stegner** why the language “on all students” is being used? **Senator Stegner** responded that Territorial Law that created the tuition free history for the University has an exception. The University has out-of-state tuition which is not restricted by the Idaho Constitution and higher degree programs have tuition. In this case, “on all students” applies to everyone. **Senator Kelly** asked if the University can impose tuition selectively? **Senator Stegner** answered they would have the opportunity to set tuition fees for out-of-state students and other degree programs separate from the undergraduate programs.

Senator Stegner stated that he did not seek the advice or approval of the State Board of Education for this amendment.

MOTION:

Senator Davis moved to send **SJR101** to the floor with a **do pass** recommendation. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

RS18779

Senator Geddes stated that he would like to make a few brief comments and then have **Teresa Molitor** walk the Committee through the new **RS. S1101** was previously discussed and through that course ideas were presented and agreed to by the Committee to hold **S1101**. **Ms. Molitor** has created a new RS incorporating the comments and concerns that were raised. The new RS is similar to what was discussed with the additional changes.

Ms. Molitor stated that she appreciated the comments regarding **S1101**. The first change to **RS18779** is on line 2, which will repeal Chapter 21, Title 49. The change in 54-5403, subsection 2, defines the composition of the Board. Line 44, page 2, references Chapter 52, Title 67, Idaho code, regarding promulgation of rules. Subsection (f) on page 3 was added to provide information to parents regarding the curriculum. **Ms. Molitor** said on page 4, line 8, a cross reference was added for Title 33, which deals with public driving programs and their reporting requirements. This makes it clear that private schools licensed under this provision are exempt from the provisions of Title 33. The next addition is in subsection 3, line 12, and the language was lifted in part from Chapter 21, Title 49, that was repealed, which emphasizes that private driving businesses may contract with public schools, use their own instructors, and curriculum.

Ms. Molitor stated that the majority of private driving businesses in the State support this. They understand the fee structure and that the costs are negotiated with the Idaho Bureau of Occupational Licenses (IBOL). The bill is revenue generating as it will create jobs and serve teens and families in the State of Idaho.

Senator Stegner asked **Ms. Molitor** how many of the private driving businesses support this? **Ms. Molitor** responded that out of forty there are thirty that have indicated in writing that they support the move. **Senator Stegner** asked if that had been done within the last week. **Ms. Molitor** replied it was done over the course of January and prior to that.

Senator Kelly said that **Superintendent Luna** suggested a mechanism to grandfather in existing private businesses. She asked if this RS has that provision in it? **Ms. Molitor** answered that it does not. As she indicated before, this is where she and **Superintendent Luna** parted ways. It is an opinion as to what policy would be best for the State.

Chairman McKenzie stated that there was a full hearing on the previous bill and he does not have a preference to print the RS and to send it to the floor, or to return it to the Committee for an additional hearing.

Senator Geddes commented that he doesn't know what the will of the Committee is regarding additional testimony. He does believe if the RS is printed that any additional testimony will demonstrate the same desire of many of these businesses.

Vice Chairman Pearce asked if anyone signed up to testify today. **Chairman McKenzie** stated that he doesn't typically take testimony at a print hearing. **Senator Geddes** said **Roy Eiguren** is here today and that he would probably like to testify particularly if this goes direct to the Senate floor. He asked if **Mr. Eiguren** could make some comments regarding the RS. **Chairman McKenzie** responded if the Committee wishes to ask **Mr. Eiguren** some questions, we can certainly accommodate that.

Senator Geddes asked **Roy Eiguren** if he could express his opinion with regard to moving this bill forward.

Mr. Eiguren stated that he has not been formally retained by anyone to speak on this issue. His cousin, **David Eiguren**, operates the largest commercial driving school in the State, he is opposed to the bill, and that there should be a grandfather provision in it. **Superintendent Luna** has not been consulted on this and he has strong objections to any legislation that does not contain the provisions that he suggested to the sponsors of the bill. **Superintendent Luna** would prefer a full hearing on this before proceeding.

MOTION:

Senator Fulcher moved to print **RS18779** and **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

- RS18775** **Chairman McKenzie** turned the gavel over to **Vice Chairman Pearce** in order to present **RS18775** to the Committee. The RS relates to public school buildings, to provide for school building design and energy efficiency.
- MOTION:** **Senator Davis** made the motion to print **RS18775**. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.
- MOTION:** **Senator Geddes** stated that he had read the minutes of February 20 and they reflect the issues discussed in that meeting. **Senator Geddes** moved to approve the minutes as written. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.
- Senator Thorson** stated that he had read the minutes of February 18 and they are well executed and accurate. He moved to approve the minutes of February 18 and **Senator Kelly** seconded the motion. The motion carried by **voice vote**.
- ADJOURN:** **Chairman McKenzie** adjourned the meeting at 9:28 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 2, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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 8:01 a.m.

HCR16 **Representative Eskridge** presented **HCR16** to the Committee and stated that this Resolution will reauthorize the legislative council to continue the Interim Committee on Energy, Environment and Technology. This committee is even more important now because of the emerging issues that include electric and gas transmission development, and choices for future generation resources including renewable resource development within our own State boundaries. Continuation of the committee will help to assure that the Legislature retains its expertise and leadership on these important issues. **Representative Eskridge** asked the Committee to support the Resolution.

Senator Darrington commented it is usual for these types of Resolutions to be held until the end of the session, and then Leadership makes the determination which committees will be approved. **Senator Darrington** asked if it has been determined that this committee will continue?

Senator Geddes stated this has been discussed and because this is a continuation of a committee that has been in place for a few years, the decision was made to not hold this one.

Vice Chairman Pearce asked **Representative Eskridge** to explain the funding of the committee. **Representative Eskridge** answered that the funding comes out of the current budget, it is not a new addition to the budget. The committee spends very little money, basically it is just the cost of meetings.

Senator Kelly asked **Senator Geddes** if legislative council has a role in continuing task forces? **Senator Geddes** said what is usually done is to hold the concurrent resolutions regarding interim committees. Leadership

meets to determine if there is enough interest between the House and the Senate membership to staff the committees. **Chairman McKenzie** said maybe he scheduled this too early and the Committee can hear testimony and then hold it until that is done. **Senator Geddes** responded that may be what will happen. **Chairman McKenzie** said it is the usual procedure for Leadership to make that determination.

MOTION:

Senator Darrington said this is an existing committee and an authorization to continue it is all that is needed. **Senator Darrington** moved to send **HCR16** to the floor with a **do pass** recommendation. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

HCR13

Representative Stevenson presented **HCR13** to the Committee and stated that this Resolution is also a reauthorization of the Natural Resource Interim Committee. **Representative Stevenson** stated that this interim committee has been in place for a number of years. When Montana Power sold out their energy division it affected water issues in the state of Montana. To avoid those same issues this committee was formed to protect the natural resources of the State.

Chairman McKenzie asked **Representative Stevenson** what are the statutory obligations of the committee to report on for this year?

Representative Stevenson responded there was an eighteen month study on the Eastern State Plain Aquifer. Legislation will implement a State water plan to work with the Idaho Water Resource Board and the interim committee to determine a funding mechanism to use.

Senator Geddes said this committee has been in place for a long time and has dealt with significant issues. He asked if the members of the committee still have an interest to serve and participate? **Representative Stevenson** responded that they do.

MOTION:

Senator Geddes made the motion to send **HCR13** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

HCR11

Senator Winder presented **HCR11** to the Committee and stated that he is before the Committee today in support of **HCR11**. Our nation and State are navigating some very perilous waters. The economy is falling while the needs of friends, neighbors and families for community services are on the rise. Unemployment in Idaho is at its highest level in decades. There are many organizations throughout the State that daily meet the needs of the growing population of the unemployed. This Resolution will encourage our State agencies to look for opportunities to collaborate with Idaho's private faith based organizations, to help meet the needs of our citizens during these difficult times.

Senator Davis said that the language states the agencies are encouraged to convene a conference, yet the fiscal note is negligible. He asked **Representative Durst** to speak to that. **Representative Durst** responded that Boise State University has indicated that they would be happy to host a conference. There might be a small registration fee. **Dr.**

Rainford has indicated that the School of Social Studies and Public Affairs has committed to hosting the conference free of charge to the State.

Senator Davis said what about the attendees, is this only applicable to agencies and their members here in this valley? **Representative Durst** replied these costs should already be somewhat incurred by the State by virtue of the Federal mandate to work with the Office of Faith Based Community Relations, that President Bush originally authorized. From a total cost perspective, there should be a net savings to the State if it is done the right way. **Senator Davis** said it seems there should be some idea as to what the hard costs could be. In order to be consistent with rule, there should be some indication as to what the costs may be. He asked **Representative Durst** to speak to that. **Representative Durst** said the intent was to encourage the State of Idaho to participate and he cannot dictate what the agencies should do. If agencies should decide to send someone to participate who lives outside the area, that decision would be made within the cost structure the agency has. **Senator Davis** said then the language you are relying on is "are encouraged to," because the executive branch may not follow through on that encouragement. Is it a fair assumption that if the State were to accept this encouragement, the fiscal note could be relatively substantial? **Representative Durst** responded the Federal government is telling the states this is something they should be doing anyway, and it should be built into their cost structure. Some executive agencies do a good job of this. For example, the Department of Juvenile Corrections reports annually their relationships with faith based community programs. With regard to the fiscal note there could be some marginal costs.

Senator Geddes said that his concern is that there isn't a specific person or agency assigned to take the lead. He asked **Representative Durst** how will this happen? **Representative Durst** replied he struggled with that same issue when he was drafting the Resolution. After he had discussions with different agencies, he decided that it was better to leave that open ended and allow the State agencies to decide for themselves. **Representative Durst** said with discretion, he believes the Governor's office will move forward with what they think is an appropriate plan of action to make this happen.

Senator Darrington said that he sees notices all the time regarding conferences. If Boise State is interested in this, why do we need a Resolution for them to host a conference? **Representative Durst** stated they think it is an appropriate plan of action to make this happen. This is a step by step process. We don't want to have a conference until a partnership is identified. At the hearing in the House, he was asked why aren't the faith based communities spearheading this. **Representative Durst** said that the State has the scale and scope to provide a much more detailed examination of what is going on. Everyone in the State needs to be contacted and have an opportunity to participate. **Senator Darrington** asked if some of the Federal stimulus has been earmarked for faith based? **Representative Durst** answered that he does not know.

Senator Stegner asked **Representative Durst** if his intent is to have all agencies within the State be involved in this effort? **Representative Durst** responded that he did not specifically identify certain agencies so that they could make that determination for themselves.

Senator Geddes asked **Representative Durst** to walk through the process of how he intends to get the conference organized, for people to participate and then what the outcome might be. **Representative Durst** replied that he envisions first sending out a notice to the agencies.

Senator Geddes asked who will send out the notice? **Representative Durst** said he believes that the Secretary of the Senate and the House would extend the invitation. Once they receive a response they could determine who might want to participate and from there set up a date and move forward with the conference.

Vice Chairman Pearce asked **Representative Durst** if he is aware of any barriers? **Representative Durst** said that he is, and maybe someone from the faith based community could better answer that question.

TESTIMONY:

Julie Lynde, a legislative director for Cornerstone Family Council testified in support of **HCR11**. **Ms. Lynde** said Cornerstone is a faith based non-profit organization. Any time Cornerstone can work to promote legitimate partnerships to help Idaho families, they are pleased to join in that effort. **HCR11** seeks to open communications towards addressing barriers between groups and the State to serve more citizens. This Resolution will not establish policy or procedure, but it will open the lines of communication to help direct policy and procedures, so that faith based community groups and the State can work together. **Ms. Lynde** stated that this initial step is a worthy one and she urged the Committee to support **HCR11**.

Senator Davis commented that he struggles with the specifics of this bill. Faith based groups can back fill the hole that the State is unable to do, but the fiscal note should explain something other than negligible. He asked **Ms. Lynde** what she believes the real costs may be for the State? **Ms. Lynde** responded that Cornerstone was not involved in the drafting of this bill. She believes what **Representative Durst** was trying to explain is that this may have a long term effect.

Bryan Fischer, Executive Director for Idaho Values Alliance, addressed the Committee regarding **HCR11**. **Mr. Fischer** said a century ago the bulk of social relief services were delivered by churches and private charities. For the last seventy-five years there has been a profound transition of the delivery of services from private charities to agencies of government. As a result, services are sometimes delivered on parallel tracks. This is probably a duplication of services and an inefficient use of resources. Revenues to State agencies and donations to private charities have been impacted, so if there is an opportunity to come together and deliver the services needed it would be a productive exercise. Additionally, it would be important for the Legislature to receive a report back from this interim committee regarding the barriers between faith based organizations and State agencies.

Senator Darrington commented that the Resolution does not provide for an interim committee. He asked **Mr. Fischer** if he envisions an ongoing committee of some sort that would culminate in a conference. **Mr. Fischer** responded that he was referring to the proposed conference, not an interim committee.

Senator Kelly asked **Mr. Fischer** to provide an example of a barrier to the Committee? **Mr. Fischer** replied when tax payer resources are being directed towards social relief, limitations will be there to fund delivery of services. The issue is whether or not State policy should look for ways to return tax payer resources back to the citizens, and then urge them to support private charities. That would be one way to eliminate that barrier.

Senator Geddes said what concerns him is that there isn't an assignment for anyone to take the lead to make sure this will happen. He asked **Mr. Fischer** what does he envision to make this proposal happen? **Mr. Fischer** replied that he would have to defer that to **Senator Winder** or **Representative Durst**. There will likely be churches that are willing to host an event like this to reduce the costs involved.

Will Rainford, Legislative Advocate for the Roman Catholic Diocese of Boise and the Catholic Charities of Idaho, stated that the Diocese and Charities support **HCR11**. Catholic Charities has been serving the citizens of the country with deep collaborative relationships with other faith based partners. In the State of Idaho they have five regional offices who serve over five hundred families. Currently they have collaborations with the Latter Day Saints Church, the Jewish community, Lutherans, Baptists, Unitarians, Muslims, Presbyterians, Methodists and people of good will. The strength of their collaboration is the common ground of love of humanity and the common good of the community. **Mr. Rainford** said the weakness of this collaboration is exactly what the Committee is hearing today. Catholic Charities and other faith based organizations look to this Resolution as a starting point for an ongoing partnership. They do not want the government to solve problems, but to facilitate them in solving the problems themselves. **Mr. Rainford** stated that he hoped that **Representative Durst** will call the Governor to task, and say that he is the person responsible to convene and guide this effort as the State's leader.

Senator Winder said he supports this Resolution because it encourages the State and the Governor to implement this. The Legislature will not have a real part in this other than receiving a report. It is an opportunity for the State to look at how it may benefit from the non-profits and church organizations to help meet the needs of some of our citizens at this time.

Senator Kelly asked if any of the sponsors have talked with the Governor's office about the Resolution? **Representative Durst** replied only indirectly. They know that it exists, but he has not had a direct conversation with the Governor.

Senator Fulcher commented that there has been a massive shift from the private sector to the government in terms as to who is responsible for

services. **Senator Fulcher** said that he supports anything that we can do to encourage the private sector to help with the struggles that we are dealing with. As **Senator Winder** has said, this is an encouragement not a mandate.

MOTION:

Senator Fulcher moved to send **HCR11** to the floor with a **do pass** recommendation. **Vice Chairman Pearce** seconded the motion.

Senator Davis said as a Committee they have the responsibility to take a look at the fiscal impact. He would be willing to vote for the motion if the statement of purpose is corrected and has some projected costs.

Senator Davis asked **Chairman McKenzie** if the sponsors are willing to amend the statement of purpose.

Senator Fulcher commented that was his intent. **Representative Durst** responded that they would be happy to do that and do some more due diligence to provide a more robust fiscal note to the Committee.

Chairman McKenzie stated he would not object to sending this to the floor of the Senate with the understanding that the sponsor would return with a corrected statement of purpose.

Senator Kelly asked if the Resolution would go to the amending order? **Senator Darrington** replied that a Resolution cannot be amended, but the fiscal note can be changed. **Senator Kelly** said if we send this to the floor it will appear that we are recommending support no matter what the fiscal note states. **Chairman McKenzie** responded that is the current motion before the Committee. It is the intent of the maker of the motion that there would be a corrected statement of purpose, unless there is a substitute motion to hold it. **Senator Darrington** stated that Leadership has the prerogative to hold something up on the calendar. **Senator Kelly** said what this Resolution is asking us to do, is something that the executive branch could clearly do on their own by an executive order. There should be some discussion with the Governor's office before going forward with this.

Senator Stegner stated that his objections go a little deeper than just the fiscal note and he will not support going forward. The vagueness of the Resolution regarding "all agencies" to participate is significant overkill. This is something that the administration could take on if they choose. It is up to the faith based organizations to take the lead and try to reverse the trend, not the State. This is a backward approach that should be solved in another way.

**SUBSTITUTE
MOTION:**

Senator Stegner moved to hold **HCR11** in Committee. **Senator Kelly** seconded the motion.

Senator Thorson said he does not agree that the Resolution suggests that the State is removing itself from the responsibility of ensuring the health and safety of its citizens. This proposal is just to facilitate what two agencies are doing and to provide a savings. **Senator Thorson** stated that he does not support the substitute motion.

Senator Davis said he believes that the State is backing away from some services that the faith based organizations may be able to help with in a more orchestrated effort, and to provide services to those individuals who need it. For that reason he does find some value in the Resolution. The Governor may choose to do nothing, but when he sees a fiscal note that is negligible, it could very well not be enough. He will not support **Senator Stegner's** motion to hold the bill in committee.

Senator Geddes said he finds some value in doing something. The most effective use of assistance is provided by the faith based organizations. They are the organizations that are closest to the people that they serve and they never give up. If there is an opportunity to coordinate this and identify what could be done better, it is a good effort to undertake. Senator Geddes stated that he shares the concerns that **Senator Davis** has.

**AMENDED
SUBSTITUTE
MOTION:**

Senator Geddes made the motion to **hold HCR11** in Committee until additional work is done to the fiscal note, and that the sponsor of this bill will speak to the Governor's office to see if they support this. **Senator Davis** seconded the motion.

Senator Fulcher asked if this will be held until a time certain? **Senator Geddes** said the Chairman and sponsor can work that out.

The amended substitute motion carried to hold the Resolution until the conditions have been met 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 4, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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.

S1123 **Paul Kjellander** from the Idaho Office of Energy Resources presented **S1123** to the Committee. **Mr. Kjellander** stated in the energy sector we are in a time and place in history where there is an abundance of risk and a lack of trust. That combination makes it very difficult for investor utilities to try and find the financing that is needed to help build the critical infrastructures needed to keep the lights on. That situation is even more critical as the utility companies have been downgraded by Wall Street analysts, and in some instances the rating is so low that it is just an inch above junk status. That means that access to investment dollars are tougher to come by and the cost of capital is much higher as a result. **Mr. Kjellander** said that interest rates are higher for projects and the customers end up paying more for energy to cover those costs. The reasons for lowering a utilities credit rating is due to concerns over regulatory risk as a factor. The concern is that regulators could disallow the utility's cost after the capital investment has been made. The potential to recover the investment is jeopardized and it represents more risk for the investment community than it is willing to take.

Mr. Kjellander said this proposal will provide an opportunity to provide an additional layer of certainty in today's economy that is necessary to attract investment capital. At the same time it will provide a benefit to the customers. This bill will not diminish the Commission's authority, instead it supplements their authority with an optional regulatory process. This process has been used successfully in other states to facilitate and challenge the utility's proposal for generation and transmission. The bill also creates a regulatory process that is entirely voluntary for the utility and the Commission. Both have the option not to use the process. The bill will not change the authority the Commission has to determine the reasonableness and prudence of the utility's investment in generation and

transmission. It simply ensures that the Commission doesn't have to wait until the utility has already made the investment to make that determination. **Brent Gale** from Mid American authored the legislation in Iowa, and there are approximately fifteen states that have adopted this process and using it.

Senator Stegner said it has been suggested that **Mr. Kjellander** was not a fan of this legislation when he was a commissioner. **Mr. Kjellander** replied that he first heard of this concept about three years ago and at the time most of the utilities were in good shape and had access to capital. His feeling at that time was why now. It has now become apparent that we need to build both transmission and generation, which is very costly. At the same time the utilities have been downgraded. Previously the utility companies were perceived as gold and they were in everyone's retirement portfolios. Now the investor owned utilities are teetering on the edge of bankruptcy, so steps need to be taken to improve access to capital markets. **Mr. Kjellander** stated that having remembered this he decided to take another look at it. It does make good sense and it doesn't take away the authority of the commissioners.

Senator Thorson commented that it appears with the increased access to capital markets that the cost for the improvements will go down and that it should be passed on to the customer of that power. He asked **Mr. Kjellander** if that was correct. **Mr. Kjellander** responded yes, they hope that is correct.

Chairman McKenzie asked **Jim Kempton** if he wouldn't mind giving the Committee the Public Utility Commission's (PUC) perspective on this legislation.

Mr. Kempton, a Commissioner for the PUC stated that when the PUC first looked at this, they did not have a lot of background that went into the development of this. With communications between the PUC and the Office of Energy Resources (OER) they did acquire the model legislation. Initially the PUC had concerns that there wasn't a hearing process, and the direction for the responsibility of responding to the legislation made the PUC fully responsible for the provisions. There wasn't a common tie between the Commission and the utility responsibility with regard to the financing. A number of pieces needed to be worked out before the PUC came on board. **Brent Gale** from MidAmerican, talked to the PUC about the process and over time the Commission became more comfortable with the language and the purpose of the legislation. This is important due to the financial situation in the market right now.

Mr. Kempton said that seventy-five percent of the utilities have a rating of triple B. So the issues of how a utility will invest in capital, and how they will establish negotiations in purchases direct from wholesale marketers, needs to be addressed. There are two problems, the cost of bonds and whether or not there will be interest for becoming a shareholder in Idaho power. The question is can some of these costs be deferred to the rate payer, where the rate payer assumes more risk. The hearing process establishes the mechanism where an order is issued for a set of

circumstances by which the generating facility could be built. The guarantee would be passed on to the company and those costs would be passed to the rate payer, when the generator goes on line. This will not affect the rate payer until the power is available, and it assures Wall Street that the stipulation in the order will meet the financial needs of the company.

Senator Darrington asked **Mr. Kempton** what is different in this process? **Mr. Kempton** responded this legislation will prohibit the PUC from doing advance funding to the utilities or guaranteeing it. The PUC issues orders based on used and useful criteria, but with a Construction Work in Progress (CWIP) Program they can move forward. The forecasted cost of the plant can be incorporated into the cost ahead of the time when it is used and useful. This legislation will take it one step further. The PUC does not have the authority to do this without this legislation.

Vice Chairman Pearce asked what has happened to the ratings for the utility companies? **Mr. Kempton** replied the same thing that is troubling Wall Street. There was an excessive promise of monetary profits to investors rather than investing in a utility. Gradually there was pressure to invest in higher return investments and the utilities fell by the way side. In 2000, Idaho Power had a low A rating and only about twenty-five percent of the utility companies in the United States were at that level. With the energy crisis it has steadily changed, except for how the investment market works. **Mr. Kempton** said so it was the market, activity and some regulatory aspects that were impacting the utility. This legislation will provide greater commitment to the utilities that their investment will not be wasted in the process, and at the same time try to protect the rate payers. **Vice Chairman Pearce** asked **Mr. Kempton** if the legislation will impact the rate of return on investment? **Mr. Kempton** said that the PUC believes this process will help move the regulatory lag aspect on a rate case allowance, and there will be consistency as to how issues will be held and worked if something unusual happens in the process.

Senator Kelly asked **Mr. Kempton** if there is an unforeseen circumstance once the process starts, will it impact the rate payer instead of the utility? **Mr. Kempton** responded there would be an equal balance between the rate payer and the utility's responsibility. Hypothetically if there was a hearing, an order was issued to construct a utility and the utility invests money, they would expect a return to cover the process. If the project had to be terminated the utility should be allowed to recover their investment. The utility cannot however recover anticipated returns. There would be ramps installed in the order and then there would be a second review. It does not shift risk to the rate payer, but it does provide for the company to recover their investment. **Senator Kelly** said there are terms in this legislation that states the rate making treatment in the order "shall be binding on any subsequent commission proceeding, except as otherwise provided by law." She asked what does that mean? **Mr. Kempton** replied that it means once the order is issued, the terms are binding. If the Commission has included in their decision a condition that

is prohibited by law, than the statutory provision will be considered to override the provision.

Senator Geddes said it appears that the utilities will balance the infrastructure with the ability of the rate payers to pay. It could potentially force a burden on the rate payers where they cannot afford to pay the rates. He asked **Mr. Kempton** if there would be ramps so that the rate payer will not have to pay before they actually receive the benefit from the project. **Mr. Kempton** answered that the rates are not assigned to the rate payer until the facility is used and useful. The return on the investment to the utility may be incorporated into the rate, even though the rate payer would not have received any power from the facility.

Senator Geddes asked **Mr. Kempton** is there some effort by the utility to come to the Commission and provide justification regarding the infrastructure they are going to develop? **Mr. Kempton** said that **Brent Gale** can better explain how this process really works. The hearing process will bring all the intervening parties together to address the proposal and through that process a fair, just, and reasonable decision will be made.

Senator Davis asked **Mr. Kempton** to walk through the process for nuclear transmission and how it would impact the rate payers. **Mr. Kempton** responded it will be the same process as he previously stated. The investment that the company has put into the project is fair, just, and reasonable if they get a return on the investment. It is not reasonable for the utility to assume they will receive a rate return based on an unfulfilled promise to generate power. **Senator Davis** said if the expenditure is substantially different from what was approved at the hearing, will it be protected by this. **Mr. Kempton** answered it would be protected by the order and off ramps could be added to take another look during the process. **Senator Davis** said the protection to the consumer is that the utility can only come back and ask for consideration based on the terms of the initial order. The order will provide the parameters within the money. **Mr. Kempton** said there is protection for both the utility and the consumer in the order that the Commission writes.

Senator Kelly asked **Mr. Kempton** to explain the CWIP process. **Mr. Kempton** responded in the CWIP process rates are put into the account ahead of the completion of construction. In this legislation the rates are not assessed until the project is used and useful. **Senator Kelly** asked why doesn't the CWIP program address the lack of capital issue. **Mr. Kempton** replied because the way the legislation is constructed, it works for short term projects where the Commission can forecast what the project is going to be at the end. In CWIP the risk to the rate payers is not worth incorporating something into rates ahead of time. **Senator Kelly** said then this is effectively incorporated into the rates because of the lack of the ability to go back. **Mr. Kempton** said they can go back as long as it is incorporated in rates ahead of time. The used and useful concept to the utility is the foundation when decisions are made. CWIP moves the Commission out of the comfort zone, and the benefit has to be demonstrated to move away from used and useful.

Senator Davis asked **Brent Gale** to comment on some of the parameters that are built into the bill for the benefit of the consumer.

Brent Gale, Senior Vice President of MidAmerican Energy Holdings Company, stated that the company owns a number of regulated utilities, including Rocky Mountain Power, Pacific Power, and PacifiCorp. Through the holding company they construct and operate merchant generation and merchant transmission. **Mr. Gale** said that utilities, consumers and regulators are faced with some very difficult decisions today regarding the types of generation and size, as well as the type and size of transmission. A modest sized generation plant will cost one billion dollars or more. Five hundred miles of transmission line will also cost about that. The traditional regulatory process that existed in Iowa before 2001, and that exists here today, is for the utility to make the decision of what to add. It could be wind generation, geothermal, coal, gas or transmission. There is some regulatory process prior to the utility making that determination, but it is not a binding process. The regulators do not look at a specific investment and determine if it is the right size, type or cost. That review does not occur until after the utility has already spent the money.

Mr. Gale stated that this bill will not supercede that process. This bill will provide an optional process that is voluntary. The process will be the same except it moves the review process to the front before the spending ever occurs. The utility can propose it, the Commission uses the process, and the bill requires a hearing where all parties can participate. In the end the Commission will make the determination for the utility to move forward or not.

Senator Davis said there is another alternative. The Commission would not prejudge the proposal and would make the decision later. It would be added into the rate base after completion of the project. **Mr. Gale** responded that is exactly right. There are three options specifically in the bill. The Commission can authorize or grant the utility rate making principles, they can deny all of them, or the Commission can modify it. If denied, they are basically telling the utility if you want to build this go ahead, but you are fully at risk. They will review it after construction is completed four or five years down the road.

Senator Kelly said under the conditions set forth in the bill, if the Commission chooses to deny the proposal they would have to justify it. A record for denial would be needed. They can't deny it without being subject to challenge from the utility. **Mr. Gale** stated that is true for all actions taken by the Commission. The Commission's decision must be based on the record. If the proceeding does not require a record then the decision is looked at somewhat differently. This bill will not change that process at all.

Mr. Gale said this bill will not change rates. The Commission will issue an order under this bill, which will approve or modify rate making principles that are proposed by the utility. Section 4(b) urges the Commission to issue the decision before the utility starts spending money and that is the purpose for this whole process. The regulators and the consumers will

have a say in what the utility is doing before they spend any money. The order needs to be issued before the utility starts construction. It does not mandate it and the rates will not change until there is a rate case. **Mr. Gale** said he believes this is a good regulatory process and a good tool to have in today's economy.

Senator Darrington said as he understands the process it will be reviewed by the PUC, and at the same time the financial applications will be made to fund it. The hope is that it would have a successful conclusion in a timely way to have the funding and a competitive interest rate. He asked **Mr. Gale** if that is correct. **Mr. Gale** answered in Iowa the utility goes to the regulator first for a decision, then they get the financing. They do have to do certain things first, such as determining the costs. After that determination is made they go back to the regulator for final approval and then finalize the terms and conditions. **Mr. Gale** said if they bring the plant under the actual cost, that is the cost that goes into the rates. If they go over, then the utility has to prove in a rate case that the additional cost was prudent and reasonable. If the cost overrun is not prudent, the utility does not recover it.

Senator Kelly asked **Mr. Gale** if MidAmerican has any projects currently where they would use this process? **Mr. Gale** replied not currently. They are building renewables at PacifiCorp. MidAmerican will not be going forward with a gas plant in Idaho. It is just too expensive at this time. If they were to build a coal plant they would definitely use this process and any plant that would have a construction cycle of five years or more would use this. **Senator Kelly** asked **Mr. Gale** what is the benefit to the public when the decision making risk is shifted from the utility to the consumer? **Mr. Gale** responded even though MidAmerican has access to funding they use this process because it is just good public policy. The customer does not make the investment, the shareholders do. **Mr. Gale** stated that this process does not shift risk to the customers. The process is the same whether or not the Commission uses it. The only thing that is shifted is the timing and the customers are at less risk as a result of the process. The regulators are in control of this process and if there is a shift in risk, they will deal with it through the rate making process.

MOTION:

Senator Stegner made the motion to send **S1123** to the floor with a **do pass** recommendation. **Vice Chairman Pearce** seconded the motion.

Senator Kelly stated that she opposes the motion. They are being asked to put a lot of trust in the PUC to put in place parameters that will protect rate payers in the future. The process shifts the risk from the decision makers and the utilities who should be assuming that risk. It is not a voluntary process for the PUC. The legislation prescribes very clearly that they need to respond to these applications.

Senator Stegner said he views this as an assurance for the utility companies to have an opportunity to have some commitment from the PUC. When things change down the road the PUC can't simply say we disagree. They are more involved in the process which has tremendous value for everyone who benefits from the effort of the utilities.

The motion carried by **voice vote**.

Senator Kelly requested it be recorded that she opposed the motion.

S1133

Teresa Molitor presented **S1133** to the Committee. **Ms. Molitor** said she would like to turn her time over to **Mike Ryals**, who is the President of the Idaho Association of Professional Driving Businesses.

Mr. Ryals said that he own Ryals Driver Education Business in Eagle, which provides driver training to mostly teenagers. He has taught driver education both public and private for thirty-seven years and he has owned his business for the past seventeen years. In the past five years there have been three supervisors of driver education. Some had no practical experience of teaching driver education, another had not instructed behind the wheel and none had any experience at operating a business. All the while he has remained optimistic and attended and participated in administrative meetings, regarding the programs and rule changes. **Mr. Ryals** said the process started two years ago to move the driver businesses out from under the Department of Education to the Idaho Bureau of Occupational Licenses (IBOL). Moving this program to the IBOL will establish a self governing board. Under the Department of Education there is one person who sets the instructor training curriculum, licenses the instructors, licenses a business, evaluates your business, makes the decision if you can contract with a public school, and this person also determines sanctions. Within the IBOL policies and procedures will be established and the outcome will be defined by code and rule.

Mr. Ryals stated this bill provides for a hands-on apprenticeship that will be completed in the classroom and behind the wheel under the supervision of a licensed instructor. Programs need to be developed to give the instructors tools and experience to be safe while teaching safety. Idaho needs good instructors in order for the private driver businesses to grow. Only twenty percent of schools nationwide offer driver education today which is down ninety percent from the 1980's. Parents are being asked to take an active role in teen driving as State funding is being reduced or omitted for driver education programs. The Transportation Department reports that licensing for teens aged fifteen through seventeen in Idaho has declined. Last year the enrollment in public driver education lost twenty three percent while seven thousand students and their parents chose a private business. Although these numbers represent challenges, the private businesses will make adjustments to provide instruction in their communities. **Mr. Ryals** said the private driver businesses want to move away from the Department of Education and establish their businesses as private. They want to improve driver education in the State and be governed by people who are in the driver education business.

Senator Fulcher asked **Mr. Ryals** if he is uncomfortable with the standards that exist in the various driver entities? **Mr. Ryals** responded that the standards could be improved and ensure safety for the students and everyone on the highway. **Senator Fulcher** asked if he has been

involved in this process with the Department of Education. **Mr. Ryals** replied he has for many years. **Senator Fulcher** asked if those discussions led to an impasse and in turn led to this bill? **Mr. Ryals** said that he worked diligently and this has not progressed to the point that the private businesses would like. This move will allow them to be governed by those who are doing the job.

TESTIMONY:

Robert Fenn testified and stated that he has been in the driver education business for about one year. Last year he did hear about the conflicts between the two programs. As he sees this, the biggest problem is that there hasn't been a lot of communication. He did ask why this was being done and the answer was because they didn't get along with some of the previous administrators. **Mr. Fenn** said his concern is that five years of training to be a driver instructor will eliminate a lot of people. The other concern is that one member on the five member board can be someone with no experience in driver education. **Mr. Fenn** asked the Committee not to support **S1133** until some decisions and agreements can be made.

Michael Finnegan, the owner of ABI Driving School in Boise, testified in support of **S1133**. **Mr. Finnegan** said he thinks the bill is good and that he supports it for the simple reason that it will provide him the opportunity to run his business the way he wants to. He urged the Committee to vote yes.

Roy Eiguren stated that he is here on behalf of Eiguren Driving School. This bill will fundamentally shift public policy in the State. In Title 34 of Education, there are no charter or proprietary schools that are self regulated. State policy is that the Board of Education sets policy for Education. There is no compelling need to change this for driver education or any special set of circumstances to warrant this. Secondly, **Mr. Eiguren** said there is a difference of opinion between the private driver education schools that support this bill and those who do not. Third, there has not been a compelling demonstrated need for this type of program. The proponents suggest that the private programs will make the program safer than what is currently operated by the Department of Education. There is no evidence of that. Fourth, this bill brings about substantial uncertainty and sets up a new governmental entity at considerable cost, with board members yet to be appointed and rules to be promulgated. The current terms are clear and certain as to how the Department operates the driver education program. Finally, **Mr. Eiguren** said, in this economic environment costs are a major factor and this legislation would substantially increase the costs of doing business for the private driver businesses. This is not appropriate at this time, there is no consensus, and it will shift State public policy.

Hubert Hogaboam stated that he and his wife own a private driver business, Gem Star Driving. He has been to Boise several times in the past year in support of **S1133**. **Mr. Hogaboam** said that he has taught in nine different counties throughout Idaho in twelve school districts. For two years he taught instructor certification courses at the University of Idaho in Coeur d'Alene and Moscow. Additionally, he does testing for class D licenses and motorcycle endorsements. He is aware of national

trends in the surrounding states. This bill will align the State with the direction the public has been enthusiastically supporting and will benefit businesses that support traffic safety.

Senator Geddes said with **Mr. Hogaboam's** many years of experience in the driver education programs does he see a need for the public program to continue. There are many rural areas in the State that cannot generate enough interest to support a private driver school. There needs to be some consideration to allow the public programs to continue. He asked **Mr. Hogaboam** if he simply just wants to come out from under the Department of Education? **Mr. Hogaboam** responded that he is an avid supporter of public education and it does have a role to play. Parents are requesting and are appreciative of any opportunity to have a private driver program. There is a lot of need that the private driver businesses provide that the public programs are stepping away from. In the twelve districts that he has taught in, not once did he ever have an administrator of driver education ask about curriculum, quality, performance or how the job is going. The owners of the private schools care about what they are doing. There is a need for both programs and this bill will facilitate that.

Kelly Glenn a commercial driver instructor testified in opposition to **S1133**. **Ms. Glenn** stated there is a system that currently works and there will not be any benefit to having two separate programs. It will not create safer drivers and the increase in fees will shut down some small businesses and instructors. The Idaho Association of Professional Businesses admits that there are more students than both the public and private schools can provide instruction for. **Ms. Glenn** said how will this proposed legislation increase the availability of instructors and schools and increase public safety. She has not been given an opportunity with the Idaho Professional Businesses to provide any comment to this legislation. Motor vehicle crashes are the number one killer of all children age one to twenty four. **Ms. Glenn** stated that she has serious concerns under this proposal, that her personal future as a commercial driving instructor has been threatened by the supporters of this legislation.

Vice Chairman Pearce asked **Ms. Glenn** if she is an instructor or does she own a driving school? **Ms. Glenn** responded that she is an instructor for a professional driving school in Twin Falls, Boise and Burley. He asked **Ms. Glenn** if she was representing the entire school, or just where she works. **Ms. Glenn** replied her comments are hers and that her employer is well aware of them.

Jason Jerome testified in support of **S1133** and stated that he has been in business for six years in Coeur d'Alene. There will be choices for both public and private programs. The standards will not be lowered and he asked the Committee to support the bill.

Brian Eichler, the owner of Cracker Jack Driving in New Plymouth, stated that he opposes this bill. If this legislation had been in place when he started his business he would not have been able to meet the criteria. Every community has a need that will be hindered if **S1133** passes. **Mr. Eichler** stated he disputes all of what this bill purports to do. When he

became an instructor it cost him one hundred dollars, he spent three hours of class time and behind the wheel observing under his instructor's guidance. Rural Idaho will regret the passage of this bill and it will only benefit big businesses and the highly populated areas.

Chad Arnell an owner and instructor of Excel Driving School stated that he has been in business for seven years and that he is also a public school teacher. **Mr. Arnell** said the majority of those who testified in opposition have not been in business for very long, and most of them say they do represent private business, but they have only instructed for a very short period of time. The private driver businesses welcome regulation. He supports this bill and the private businesses.

Senator Fulcher asked **Mr. Arnell** what is his opinion on the standards between the two entities, are they the same or similar? **Mr. Arnell** replied in the past, the coordinator of the program put in place a summer program where the public instructors had to complete thirty hours of instruction. The private instructors had to complete forty-two. Standards need to be aligned with who you are working for. The private schools can better meet the needs of the families with the flexible schedules that they can provide. **Senator Fulcher** asked if he believes the standards are different now between the public and private programs. **Mr. Arnell** responded that he believes they are different.

Vice Chairman Pearce asked **Mr. Arnell** to address the requirements for the driver instructors and if he believes they are steep. **Mr. Arnell** said they way it is set up now an instructor only needs eight credits to be certified. The time it would take now to be certified is considerably longer.

Jan Sylvester testified in opposition to **S1133**. **Ms. Sylvester** stated that she is a parent of two teenagers and she is appreciative of the driver education program. She agrees with the intent of the bill but her concerns are with the exemptions in the bill. This exemption limits it to certain religious groups and others that are not specifically listed in code.

Dave Mason, the owner of Dynamic Driving School in Idaho Falls testified in support of the bill. **Mr. Mason** said that he is interested in finding better ways to serve the teens and their parents as it relates to driver instruction. Private businesses fill a need in the community for parents whose teens have difficulty with after school schedules and they need more flexibility to meet those schedules. The private driver businesses need to be governed by themselves rather than under a State agency that has never run a driver business. **Mr. Mason** asked the Committee to support **S1133** to move his business to the IBOL. He is willing to pay higher fees to be self governed. The change will also be beneficial to the public program to allow them to continue in the same direction they desire to go.

Dave Eiguren stated that he did some calling on his own and there are twenty one businesses that are in favor of this, nineteen oppose it and six are undecided. **Mr. Eiguren** said the comments he heard are that many are happy, there is not enough information regarding the bill, it could be too expensive, and the board is unknown as well as the rules and

regulations. There are too many unknowns and that is why he opposes **S1133**. Additionally, there is a fear of retaliation. The instructors have not been included in this process and the fee increase is a big concern for them. The opt out is not included in the bill as originally promised and the Department of Transportation (ITD) has not been included in this process either. ITD works with all the licensing procedures which is the testing and permits. **Mr. Eiguren** said he believes the grandfather clause should be included in the bill.

Mike Arnell a certified fraud examiner testified in support of **S1133**. **Mr. Arnell** stated this process began approximately five years ago when a license was unjustly revoked for a private driving school, by a driver education coordinator. Since then he has concluded that the private driver schools are governed and managed by their competition. Second, the private driver schools are controlled by public rules and regulations developed by public administrators. Third, in order for the private driver schools to reach their full potential they need to be moved to an unbiased State agency to promote success. **Mr. Arnell** said this legislation will not affect the public driver program, their instructors, and there is no fiscal impact to the general fund. Eleven of the western states have already moved their private driver education businesses out of the Department of Education for the same reasons that have been heard today.

Debbie Cottonware provided a copy of her testimony to the Committee. **Ms. Cottonware** is an instructor for a commercial driving school. She testified in opposition to the bill and stated that there has been no compliance reviews completed by the Department of Education under the last two program coordinators. What has been done are investigations of complaints to the Department of Education with regard to both the public and private programs. Since May 2004 there have been twenty nine complaints and twenty four involved the commercial driving schools.

Jolynne Cavener, the owner of Cavener Driver Education, testified in opposition to **S1133**. **Ms. Cavener** stated that her husband is a police officer and he would not get behind the wheel and teach her students based on his limited experience of driver education. The standards have not been shared and the legislation was not presented to everyone. If this is such a great plan it should be put together in order to provide public safety for the teenagers of the State.

Chairman McKenzie stated that the remaining testimony on **S1133** will be on Friday, March 6.

ADJOURN:

Chairman McKenzie adjourned the meeting at 10:22 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 6, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, and Kelly

MEMBERS ABSENT/ EXCUSED: Senator Thorson

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.

S1133 **Superintendent Luna** addressed the Committee regarding **S1133**. **Mr. Luna** stated that he does not oppose the intent of this bill. He has tried to work and bring consensus to this issue to provide a bill that would meet a minimum level of expectation. Through testimony it was learned that other states around the country house their driver education programs in various departments. Seventeen have their private driver education programs under their state department of education, twenty-five states house their programs under the department of motor vehicles and transportation, three states are under unique departments like revenue or law enforcement, and no state houses private driving schools under self governing agencies or the department of occupational licenses. Out of the western states, three house their program under the department of education, four including Idaho. Some of the issues testified to at the previous hearing on Wednesday happened prior to this administration.

Mr. Luna said he does not oppose this bill, but he still has concerns. One is that there isn't a consensus and it will create disadvantages for the parents and the students who rely on driver education, whether it is private or public. The second issue is one of the great challenges that is faced in education today. Too often the decisions that are made are based upon what is best for the providers and not what is best for the customers of education. The customers of driving schools are not the owners of the schools, instructors, teachers, or public schools, but the parents and their children. This bill does not go far enough to assure that there is a guarantee of a minimum level of performance from driver education schools, regardless if they are private or public. Parents assume that the content and curriculum standards are consistent as well as instructor qualifications. This bill does not assure that and there is nothing to prohibit the programs from going in two different directions.

Simple language could be added to ensure that they would be the same. In current form, **Mr. Luna** stated he cannot support **S1133**.

Senator Fulcher asked **Mr. Luna** if he has the suggested language he is proposing to the bill for the Committee to take a look at. **Mr. Luna** said that he does.

Senator Geddes said whatever happens with this legislation there will still be a significant need for the Department of Education to continue doing what they do. Driver education as currently authorized will still be necessary in the rural areas. The parents expect that their children will be instructed to be good, safe drivers. The difficulty is how do we continue to do this.

Vice Chairman Pearce asked **Mr. Luna** to explain why he doesn't think this program will work under a board. **Mr. Luna** responded it could operate well under the Idaho Bureau of Occupational Licenses (IBOL). The point he was making is that a number of states have moved their programs to different departments and none are under occupational licensing. If there is simple language added, it will provide the assurance to the customers that regardless of which program they choose, there will be a minimum of standards that are consistent between the two.

Senator Davis asked **Mr. Luna** where in writing are the current established standards? **Mr. Luna** responded they are in rule, just like all curriculum standards. **Senator Davis** asked if he was suggesting that the Legislature is not capable of reviewing the rules to ensure consistency. **Mr. Luna** replied no, but there isn't anything in this bill to ensure that they are consistent. Everyone assumes that they are consistent and some simple language would ensure that it would be in the future.

Senator Stegner said at the first hearing **Mr. Luna** suggested that the bill should have an opt out provision. He asked **Mr. Luna** if he still has that concern? **Mr. Luna** replied that is a concern, and if there was consensus there wouldn't be a need for it. This bill creates two entities and if there was a consensus there wouldn't be a need for an opt out. **Senator Stegner** asked if the suggested language that **Mr. Luna** proposed was included, would he no longer have opposition to the bill. **Mr. Luna** answered the language would satisfy his concerns about the customers of education. When discussions initially started the opt in or opt out had support among even those who wanted to move to the IBOL. That provision is not acceptable to the drafters of this bill, but he does understand that the Legislature does this often when looking at regulatory bodies. **Mr. Luna** stated that if action is not taken today, with time a bill could be crafted and it would not require the opt in or out provision.

Senator Geddes said he has read the suggested language that **Mr. Luna** has proposed. It appears that the components for the driver education courses be aligned with the standards of the State Board of Education. A lot of that can be taken care of through the rulemaking process. Anyone and everyone can participate in that process and then the Legislature

ultimately has the oversight to approve them, and determine that there will be a level of minimum standards met on both sides. **Senator Geddes** said he believes that Idaho is unique because it is under the Department of Education. Most states have it under their department of motor vehicles to administer the testing requirement to review and study. Safety establishes the minimum requirements of driving by a minimum number of hours with supervision. All the comments that **Mr. Luna** has made seem to be straightforward and fundamental in the rulemaking process as this develops.

Mr. Luna commented that the information he provided was just that and he does not have a problem with moving this. Through rule the minimum standards for curriculum and instruction can be consistent. What he wants to see is language that they will be consistent in the future. Content standards are used by the public and private schools that are close. They are so close that they are currently creating one document for both. There is nothing to stop them from going in different directions unless there is language to that effect in this bill.

Senator Kelly said if the language was added there isn't anything regarding the discipline or enforcement that would correspond. There is still going to be two government systems regulating the provisions of these services. She asked **Mr. Luna** if that was correct. **Mr. Luna** said that is correct. What is handled by one government body is now divided among two. Public driving schools will continue because the whole program is not being moved to the IBOL. There will be two separate entities spending time and effort that one is doing today.

Teresa Molitor addressed the Committee and stated there has been a lot of discussion on this bill and she has learned a great deal about driver education. **Ms. Molitor** said that **S1133** is good public policy for the State. It addresses a need in Idaho for the customers of driver education who want more choice and options, that the public driver program cannot provide due to the waiting lists. The majority of private driver programs support this legislation and both the public and private programs can function at their very best. In January all private driver businesses were invited to sit down and discuss this. They have been very transparent and open with everyone involved in the scope of this legislation to explain exactly what this bill will do. The process has been thorough, as they have worked with the Department of Transportation, the State Police, Education and the Bureau to craft the very best bill possible. After the first hearing on this bill, **Ms. Molitor** said they took those suggestions to improve this. One thing they did was to change the structure of the board to include a customer of private driver education.

IDAPA is cited in the bill and it is clear that rules will be promulgated through that process. The business owners have years of experience as well as frustration because of the loss of income and other things that have occurred over the years. **S1133** will allow private businesses to operate and improve the driver education program in the State.

Senator Fulcher asked **Ms. Molitor** if she has seen the proposed

language that **Mr. Luna** provided. **Ms. Molitor** replied that she has not seen it, but she is aware of the content from the hearing today.

Senator Geddes stated that a lot of time has been spent on this issue. Many may think this is his legislation, but it is not. This legislation is well vetted and he is confident that the Legislature as well as those who negotiate rules, will ensure that there is consistency between the private and public driver schools. How instructors are trained, certified and licensed and the minimum standards for vehicles and safety will also be consistent. **Senator Geddes** said there may even be some competition among these programs and if that competition focuses around safety and education, that will be a good thing for both driver programs. Under other areas of self governing agencies expectations have exceeded and improved. There will still be a need for the public driver education program at various regions in the State.

MOTION:

Senator Darrington said this parallels a group that for twenty-five years tried to be licensed. Two years ago it finally was approved and both groups did not like or trust each other. The rules were so bad and so unworkable that the Senate voted to abolish that license board. This will not be any different. **Senator Darrington** moved to **hold S1133** in Committee and **Senator Kelly** seconded the motion.

SUBSTITUTE MOTION:

Senator Geddes made the substitute motion to send **S1133** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion.

Senator Fulcher stated the one thing that stands out to him is that it has come to this point. He is disappointed in the stakeholders of this, and now the Legislature is being asked to solve something they were not willing or able to do.

Senator Davis stated that he supports the motion, but some of the proponents of this have indicated that they would punish the opponents if this passes. If that happens and those individuals propose to be on the board, he will not vote for them. He is not suggesting those statements are true, but some believe it to be true. **Senator Davis** said that he served on the Commerce Committee for many years and **Senator Darrington** is right, sometimes they don't work but many times they do, when compelled to work together. When any business has to be regulated by its chief competitor, it troubles him. The consistent standard is not the right one, he only cares about excellence. There should be minimum levels of performance as **Superintendent Luna** suggested. He is however troubled by the suggested language that states the curriculum components and course of instruction "shall be aligned with the standards established by the Board of Education." This industry will now be regulated by two boards, its own, and the Board of Education. This legislative body approved the administrative rules for the driver education courses that are in place. They are certainly capable of reviewing and determining if the new rules are at least consistent with the minimum standards.

Senator Kelly stated she opposes the substitute motion. We have heard

that some of the small businesses will go out of business if this bill passes. That is a concern especially in this economy. It should be taken into account. What is being created is a parallel track of government regulation and rules which is never a good thing at any time. The safety issues are the biggest concern. Idaho lacks standards as far as teen drivers are concerned. We allow fourteen year olds to enter these programs. **Senator Kelly** said she is surprised that no one from the insurance industry hasn't weighed in on this. She does not believe this issue is ripe for the Legislature to enact and given more time the parties may be able to resolve their differences.

Senator Stegner said that he supports the substitute motion. There is nothing more difficult than these licensure bills. They encompass the passions of our citizens and it is always uncomfortable to be put in this place to solve these issues. Ultimately it is what the Legislature has to do. There is a history of allowing industries to regulate themselves in their licensing. It has worked very well in the State of Idaho and there is no reason why it can't work well for this particular industry. **Senator Stegner** stated that if this bill passes, this industry will be starting a very difficult process of trying to work together to develop rules and establish precedent for the regulation of their industry.

Chairman McKenzie stated that he will explain his vote for the benefit of both sides. He previously assumed that the Department of Transportation regulated this industry because they set the standards for getting a license. He is happy that public education provides this program but he views it as an independent function. **Chairman McKenzie** said he is comfortable with this being in a self governing agency because it is a private business. It does not make sense for an opt out provision. If it is going to be self governed, it should have uniform standards. He is not troubled however, if public schools impose additional requirements. When you are a student in a public school, they can set standards that go beyond what is required to simply get a driver's license. He will support this based on the principle of self governing.

The substitute motion to send **S1133** to the floor with a **do pass** recommendation carried by **voice vote**. **Senator Kelly** requested it be recorded that she opposed the motion.

RS18578C1

Chairman McKenzie stated this RS is a request from the Resources and Environment Committee to print this, and send it to that Committee if it is the will of the Pro Tem. **Senator Kelly** asked if it was by unanimous consent of that Committee. **Chairman McKenzie** said this letter does not indicate that. **Vice Chairman Pearce** commented that he is on that Committee and it was discussed in Committee.

RS18578C1 relates to the Department of Fish and Game.

MOTION:

Senator Fulcher moved to print **RS18578C1**. **Senator Kelly** seconded the motion.

Senator Davis asked if there will be discussion on the RS. He doesn't believe this bill will go anywhere during this session. He is not happy to

print this as it is not perceived well in the House or in the Senate.

Senator Fulcher said he will withdraw his motion. **Senator Kelly** withdrew her second on the motion and asked **Vice Chairman Pearce** why is this RS before this Committee? **Vice Chairman Pearce** stated that it was discussed for over a week and the Director of Fish and Game will get to justify what is being done. In defense of the original motion, the Director would like the opportunity to have this heard and to make his appeal.

MOTION: **Senator Stegner** stated that he does vote to print just about anything. It is a revenue generating bill that started in the House. If the House needs the Senate to kill this before they do their duty that is fine as well. He moved to print **RS18578C1**. **Senator Geddes** seconded the motion.

Senator Darrington commented that this is not unusual or extraordinary. We do print bills from time to time that won't even be heard, but they are printed to be circulated among interest groups. Printing this is a matter of courtesy in his view.

Senator Geddes said this bill has been in the Committee's hands for a long time. What **Senator Davis** said is very accurate and he also agrees with **Senator Stegner**. This legislation needs some movement. In all likelihood there will be some changes to this legislation before it becomes a serious issue or before it is taken up in Committee. We need to print this so that discussion can occur and whatever may happen will happen as a necessary process.

Senator Davis commented if this is the desire of the Resource Committee then he will support the motion.

The motion carried by **voice vote** to print **RS18578C1**.

RS18757C2 **Bill von Tagen** stated that **RS18757C2** relates to the State's Open Meeting Law.

MOTION: **Senator Davis** said this has been discussed before and the proposed changes have been provided to the committee. He moved to print **RS18757C2**. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

RS18541C2 **RS18542C2** relates to the proceedings before the Public Utilities Commission.

MOTION: **Senator Davis** moved to print **RS18541C2** and **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

RS18770 **Paige Alan Parker**, from Legislative Services presented **RS18770** to the Committee. **Mr. Parker** stated that this RS is a Concurrent Resolution regarding the fee rules. All germane committees have held hearings on the rules and submitted letters to the relevant bodies. There are four fee rules that have been rejected pursuant to the Administrative Procedures Act (APA). Fee rules do not go into effect unless they are approved and

one rule has a different effective date. It deals with the Department of Environmental Quality (DEQ) regarding ground water quality. This Resolution will approve the fee rules and it will reject the specific ones that were objected to.

Senator Kelly asked **Mr. Parker** if the effective date of the ground water rule was the same date proposed in the rule? **Mr. Parker** responded that it was in the rule.

Senator Geddes said that rule deals with ground water and the mine sites. The reason it has a different effective date is that it provides time for the DEQ and the mining companies to develop a point of compliance.

MOTION: **Senator Darrington** moved to print **RS18770**. **Senator Stegner** seconded the motion.

Senator Kelly said she understands that we are approving fee rules and rejecting some. She opposes the motion because of the rule in the Resolution relating to ground water safety.

The motion carried by **voice vote**.

RS18781 **Paige Alan Parker** presented **RS18781** and stated this Resolution will approve the temporary rules. Temporary rules do not go into effect unless approved and there are no temporary rules that have been rejected.

MOTION: **Senator Geddes** made the motion to print **RS18781**. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Darrington** stated that he has read the minutes of February 25, and he moved to approve them. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

Senator Kelly moved to approve the minutes of February 23 as corrected. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

ADJOURN: **Chairman McKenzie** adjourned the meeting at 9:10 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 9, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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 9:05 a.m. He turned the gavel over to **Vice Chairman Pearce** to present **S1132** to the Committee.

S1132 **Chairman McKenzie** stated that **S1132** is similar to a proposal from last year regarding energy efficiency in schools. The suggestions and concerns from last year were incorporated into **S1132**. This bill will provide a voluntary program for school districts to participate with integrated design and commissioning of new school buildings. It will allow the school districts flexibility with a portion of the maintenance fund that the school districts pay if they participated in integrated design and fundamental commissioning. This bill comes from the Interim Energy Committee as there will be an increased demand for generation and transmission for every area of the State, regardless if they are served by an investor owned utility or through the municipalities. There will be increased demand on the user side and on the generation side, as we compete for generation and use of transmission. As the utility companies look to the future and how they will meet the demand, they project that a large portion will be through energy efficiency. In order to meet that increase in demand we need efficiency. The members of the Interim Committee have worked hard to put together a plan to promote energy efficiency in school buildings , which will provide a cost savings to the State.

Chairman McKenzie said this program will be totally voluntary and there is a sunset. After ten years they can look back and see if this was useful or not and whether to continue it. There will be no added cost to the general fund by freeing up money from the school districts portion of required matching. The State will continue to pay into the maintenance fund, and the school districts will have a portion of their amount forgiven. That amount would ramp down over a five year period. There isn't a

specific target to qualify and it shouldn't add any additional costs to the building. Most companies that do integrated design provide guaranteed contracts.

Chairman McKenzie said the first section of the bill is the intent language. It clarifies the intent to build more energy efficient buildings and direct more resources to the classroom. Section 2 creates the voluntary incentive which requires the use of integrated design and fundamental commissioning to qualify for the voluntary incentive. There is an annual optimization review to ensure that the systems are performing at the maximum level. This section also directs the Division of Building Safety (DBS) to provide assistance with technical support and a list of the third party commissioning agents. The DBS indicates that they have the expertise to do this and it will not add additional resources. The rules will be put together by DBS and they will define the process and publish the list in order for the school districts to get fundamental commissioning done. Rules will be promulgated by the DBS for each of these standards and certify to the Department of Education that a school district qualifies for the incentive. They would also certify the amount of square footage to be forgiven. Following the first year the DBS will certify to the Department of Education that the building has undergone an annual optimization and re-qualifies for the incentive.

Senator Davis said he is having a hard time with all the duties and responsibilities that the DBS has and if they can do them within their existing budget. He doesn't believe that there won't be a fiscal impact based on that section of the bill. He asked **Chairman McKenzie** to help him with that. **Chairman McKenzie** responded that the DBS will not be the entity that goes out and certifies the parties, they only provide the list of those who are certified. In a letter dated March 2, 2009 from the DBS, the administrator **Kelly Pearce**, indicated that his staff can easily provide whatever assistance the school districts need to gain access to the technical and educational support needed to implement this process. Providing a list of third party agents who do fundamental design and commissioning would not be a problem for the DBS. It is within their authority to do this. The DBS will not be asked to do a highly technical rule making process.

Senator Geddes stated that it seems to him that every school district should be looking for ways to save on energy costs. The incentives in this almost seem to be mandatory rather than voluntary. He asked **Chairman McKenzie** to explain the nature of the voluntary process. **Chairman McKenzie** replied over time without any incentive this will make sense to do. The cost savings in the first five years will pay for it, but not all school districts are currently doing this. The school districts that use this process have guaranteed contracts to ensure that the savings is in place. This process will make it easy for every school district to do this to save the State and the rate payers money. Long term it is better for everyone. Some schools are outdated and the mechanical systems are failing, which is one of the biggest issues for saving the State money. Over time everyone will be doing this and if it makes sense the school districts will do it too.

Chairman McKenzie stated in section 3 of the bill new language is added which defines the incentive. The flexibility the school districts will have ramps down, so in the fifth year they are not hit with a huge drop in funding. There is a cap that is used to calculate the flexibility. Their portion is based on the bond levy equalization, and there won't be a huge disparity between the school districts. The School Facilities Improvement Act was passed in 2006, and a big part of that was the maintenance requirement. This bill forgives a portion of the school districts, in order to create a more efficient building. Over time they will not have the maintenance requirements that they have today. It is a wise use of funds up front rather than building a less efficient building with mechanical failures over the long term. Section 4 of the bill requires the Department of Education at the end of the sunset period to do a report, detailing the extent of use and benefits from the incentive. The Legislature can evaluate and decide whether or not to continue the incentive.

Chairman McKenzie said as far as integrated design and fundamental commissioning, there are a few people here today to talk about that. Integrated design is the process where the entire team works together in all areas of the building process. Fundamental commissioning involves third-party oversight of the design and building process to ensure efficiency. In 33-356 it requires the school districts to set aside two percent of the value of their buildings for maintenance. This bill forgives a portion from the school district that will ramp down over time and they would continue to get the State match. There is a provision in the bill if the State's portion is stopped for funding reasons, then the school districts can pick it up later and not lose the incentive.

Senator Davis said if there are adjustments made this Legislative session on the bond levy equalization fund, how will this affect the bill. **Chairman McKenzie** responded for example if the portion of the maintenance fund is forgiven this year, the school district can use the funds however they want. The incentive under the bill wouldn't go into effect and the monetary incentive of the bill wouldn't be affected until then. **Senator Davis** asked why would a school district do this knowing that may happen. **Chairman McKenzie** replied if that happened this year, they would know it going into it. When the bill goes into effect they wouldn't be able to access it this year. If the bill passes there will be a stay on the incentive. When it goes into effect and the school district has taken advantage of this program, then the incentive will kick back in.

Senator Geddes asked **Chairman McKenzie** if the bill has a retroactive component in it for schools that were built six years ago? **Chairman McKenzie** responded that it applies to schools beginning in fiscal year 2010, so it wouldn't be retroactive. Under the bill the State's portion would still go into the maintenance fund. Districts that receive a fifty percent or more match from the State, will dedicate fifty percent or more from the maintenance fund each year. After the fifth year it will ramp down to zero percent. This will more than cover the cost of the commissioning. With the energy savings it will cover the return on investment in about ten years. This year's bill provides better incentives, it is voluntary, and the funding source is directly related to building more

efficient schools while protecting the maintenance fund.

Senator Darrington asked **Chairman McKenzie** if the language on the last paragraph of page five is existing language, or is it intended to be a new section? **Chairman McKenzie** stated that it is a new requirement, not a statutory change.

TESTIMONY:

Bruce Poe, an architect in Boise, testified in support of **S1132**. **Mr. Poe** said that he has been involved in the design of high performance buildings for ten years. The one thing his firm consistently does is to use the integrated design process when designing high performance buildings. That primarily impacts the engineers, architects, owners, and the occupants in a different way than the normal design process. It doesn't require any additional investment or money, but it does require a change in the approach to the project.

Mr. Poe said in a traditional design process there is the initial building program where it is defined. Then it is handed off to the design team. The architect will have them sketch ideas and to come up with solutions and ideas along with some input from the owners and occupants. That process can sometimes be very inefficient because not everyone agrees and then it may have to be redesigned. With the integrated design process, it requires that everyone come together up front in a work shop where they define their goals. During this process everyone has input which is the fundamental basis of the integrated design process. This session may last a day or so, and from that the goals are documented and then the design process begins. **Mr. Poe** stated that the strength and the power behind this process is that everyone has input, your time has been efficiently used, and the end product will be much better because everyone understands and agrees with it.

After the building is designed this is where the commissioning agent comes in. The commissioning agent is broad in his knowledge and adds to the success of the end product. Once the project is under construction the agent is checking the system all the time to ensure that everyone is doing what they are supposed to be doing. Once the building is ready for occupancy, a report is issued stating that the building was constructed according to the specifications, and that it is operating the way that it was intended to. **Mr. Poe** said these two things are the most fundamental important pieces of the puzzle.

Senator Geddes commented that the information that **Mr. Poe** has provided is very beneficial. He asked if everything **Mr. Poe** described is just good engineering and architecture. **Mr. Poe** responded that it is, but the difference is the approach to the design process. Bringing it up front and involving everyone is inclusive, not exclusive. There is communication at the beginning and it is a constant process throughout the entire project. **Senator Geddes** asked if this is good engineering, designing, management, and good architectural practice, do we really need a law to enforce it? **Mr. Poe** answered sometimes you need to shake things up and get people to view things differently and sometimes it has to be done through law, because the private sector will continue to

do things the way they have always done it. **Senator Geddes** said his concern is the duties that will fall on the DBS. They are not typically the younger, more progressive new way of thinking individuals, but people who have either retired from their businesses as architects, plumbers, and electricians. They are from the older school who work there supervising the younger sector to maintain the status quo. **Mr. Poe** replied that he shares his concerns, but the different State agencies are aware of what is happening out there.

Ken Baker, representing the Association of Idaho Cities, stated that the Association supports **S1132**. **Mr. Baker** stated that school buildings represent the largest non-residential building square footage in most of our communities. They are important economically as well as for our children and the people who work in them. He provided a handout to the Committee of actual case studies of schools that have used this process. There is energy savings and a lot of times it costs less per square foot to build because of the integrated design process. It is a good approach for the public schools to take. Currently it is not being done in approximately ninety percent of the building in the State. Some architects are beginning to practice integrated design. **Mr. Baker** said it is not just up to the architects, it is up to the school districts and the administrators to say that they want this process.

Last week, the administrator for the Office of Energy Resources, **Paul Kjellander**, proposed twenty four million dollars to be spent on energy efficiency. **Mr. Kjellander** also proposed about sixteen million dollars for existing schools to provide tune ups to operate more efficiently. **Mr. Baker** said this bill is very complimentary to that, because it will make new schools operate at higher efficiency levels.

David Naccarato who represents McKinstry, a fifty year old design firm based in Seattle testified in support of the bill. **Mr. Naccarato** stated that he is here to speak from an industry perspective regarding the value of integrated design. Integrated design fundamentally means that you shift away from lowest first costs to lowest total costs of ownership in a building. School buildings typically have a life cycle of eighty to one hundred years. The major mechanical systems will last forty. When integrated design is used to identify higher performance in terms of energy and how the building is managed, it equates to millions of dollars in savings over the lifetime of the building. This is a savings to taxpayers. As a business person he looks at dollars and benefits. What are the savings, what are the benefits, and what is the impact to the school districts and the taxpayers. Over ninety percent of brand new buildings are built without integrated design. From day one they are twenty to thirty percent less efficient than those that do. **Mr. Naccarato** stated that it is not uncommon to find that new buildings will benefit from retro-commissioning. But the difficulty is changing concrete and metal. So by implementing this process at the front end, the cost savings over the lifetime are substantial. The districts that have implemented this either in retrofitting existing buildings or in new construction are showing cost savings. Integrated design is a sound business benefit and this bill provides a broader incentive for more school districts to take advantage of

this process.

Senator Geddes asked **Mr. Naccarato** if the design is only as good as the designer? **Mr. Naccarato** responded it is true. But today the bricks and sticks or the shell of the building are the easy part. The most complex part is in the energy system. With integrated design it includes everyone from the very beginning to ensure energy efficiency.

Senator Fulcher asked **Mr. Naccarato** if most contractors have the skills to go through this process? **Mr. Naccarato** replied some companies today are ready to do this. His company is a construction company and they can and do. A lot of companies will have to play catch up. Once schools say they want to use this process the burden will shift and it will force them to respond.

Leif Elgethum, an engineer who represents the Idaho chapter of the United States Green Building Council (USGBC) testified in support of **S1132**. **Mr. Elgethum** stated the Council includes architects, engineers, interior designers, landscape architects, government officials, developers, private business owners, manufacturers, attorneys and students. The mission of the Council is to accelerate the implementation and building of high performance buildings concepts and practices through education and advocacy. Currently buildings in the United States account for about thirty nine percent of energy use, seventy percent of resource use consumption, twelve percent water use, and they consume forty percent of raw materials globally. Buildings play a major role as Idaho confronts higher energy costs, higher water use and depleted natural resources. The Council supports this bill because it provides a voluntary incentive to school districts who use integrated design and fundamental commissioning.

Mr. Elgethum said the Council believes that these two techniques provide the foundation for high performance buildings. It will have fast pay backs, it produces a building that functions as designed, and it will reduce operating costs for schools. The result will be that school districts can divert money from operations and energy costs to classroom needs over the long run.

John Stancliffe, a commissioning agent for Hill International, testified in support of **S1132**. **Mr. Stancliffe** stated that he considers himself to be an expert in building operations and construction. When he walks into a building he typically looks around and thinks about ways to solve the energy problems. The majority of the time when he goes to a school he observes that classrooms are hot, some are cold. He has daughters in the Meridian school district in brand new schools. They tell him the lights are turned off because the school cannot afford the power. The classrooms are hot, the cafeteria is freezing. Through commissioning you can achieve about twenty percent savings and the pay back is 4.8 years for the energy commissioning. Commissioning ensures and enforces the specifications in the drawings. **Mr. Stancliffe** stated that as a commissioner he has developed a checklist that he presents to the contractors. Nine out of ten times the contractors do not read the

specifications or the manufacturers instructions. Basically they just install the equipment based on the design of the engineer. The equipment will not last if they are not installed correctly or if the automation system is not set up properly. **Mr. Stancliffe** said that he supports this bill as a taxpayer and he would like to see his tax dollars go towards a more efficient building.

Chairman McKenzie commented that **Senator Geddes** makes a good point, if this is a good thing, do we even need the voluntary incentive. His answer to that is it is like exercise. It is a good thing, but a lot of us don't do it. School districts teach children but they don't build buildings. This will help the school districts to save money, so a short term voluntary program is a good one. In the long run, the industry is going this way so it also makes sense. The DBS already works with the school districts on all types of issues and they do have the expertise to do their part. It is unusual for an agency to say they can do this without any additional funds or staff.

Senator Geddes commented that **Chairman McKenzie** has worked very hard on this and he believes what they have heard today is absolutely true. This seems to be common sense and with the buildings we are building today, integrated system management should be the approach taken.

Vice Chairman Pearce asked if there was any input or feedback from the schools. **Chairman McKenzie** responded there has been and there are some endorsements from those who were most concerned.

MOTION: **Senator Kelly** moved to send **S1132** to the floor with a **do pass** recommendation. **Senator Thorson** seconded the motion. The motion carried by **voice vote**.

ADJOURN: **Chairman McKenzie** resumed the gavel and adjourned the meeting at 10:22 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 11, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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: **Wendy Lively** addressed the Committee regarding her reappointment to the Bingo Raffle Advisory Board. **Ms. Lively** stated that this is her fourth year on the Board. The second year she was the Vice Chairman and now she is the Secretary of the Board.

Chairman McKenzie asked **Ms. Lively** if she is still the Bingo Manager for the Fraternal Order of Eagles (FOE). **Ms. Lively** responded that she is.

Senator Davis asked **Ms. Lively** if she could speak to her role as the manager at the FOE and if she has any conflicts? **Ms. Lively** stated that she doesn't feel she has any conflicts with being on the Board and operating as the bingo manager. It does help because she has a lot of knowledge relating to the bingo games. **Senator Davis** asked if the rules for the industry have helped her to remain independent and to do what is appropriate. **Ms. Lively** replied that the rules, Title 67, Chapter 52, are written very well. The Lottery and the Board rewrote many of the rules to coincide with each other. **Senator Davis** asked **Ms. Lively** if there are other changes that she would suggest to provide oversight in this area? **Ms. Lively** responded at the present time she does not have any recommendations. **Senator Davis** asked **Ms. Lively** if the current economic situation is impacting the bingo games. **Ms. Lively** said at the FOE it has affected them very little. They have been able to maintain the same amount of money and attendance.

Senator Kelly asked **Ms. Lively** if her job as the bingo manager was full time? **Ms. Lively** answered that it is, due to the set up and the clean up afterwards, as well as the other administrative work that goes along with

it. **Senator Kelly** asked if there have been any illegal operations. **Ms. Lively** responded that it does not fall under her jurisdiction. There have been bingo operators that have not followed the rules, and that is handled by the Director of the Lottery.

RS18791

Chairman McKenzie said this RS relates to transportation. He has a letter from the Chairman of the Transportation Committee with a unanimous consent requesting that we print this. **Senator Winder** presented **RS18791** to the Committee. **Senator Winder** stated that he has worked with the Transportation Department and various engineering groups that would satisfy the recommendations of the Office of Performance Evaluations (OPE) audit. This will add an alternative means for delivering a project called Design-Build. **Senator Winder** requested the Committee to print the RS and that it be referred to the Transportation Committee.

MOTION:

Senator Darrington moved to print **RS18791**. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

HCR21

Senator Heinrich presented **HCR21** to the Committee and stated that **HCR21** states that the Legislature supports the planning and construction of the fiber optics communication link between Riggins and Grangeville. It also requests the State to support this not by funding, but by the expedited processing of permits and licenses. The Central Mountains have been a barrier to commerce within the State and it forms a border to telecommunications. Microwave transmission exists for some State transmissions but it is limited in capacity and availability for non-State government use. Telephone calls and traffic have to go through three states and cross several Local Access Transport Areas (LATA) when going from north to south Idaho. Because of this inadequate activity, certain areas lack the ability to use 911 for public safety. The Clearwater Economic Development Agency (CEDA) has taken the lead in developing a plan to start this project. The plan is for forty-five miles between Grangeville and Riggins and it would be the last connecting link in Idaho. Although it would be nice to have a grant to fund this, the opportunity is slim. **Senator Heinrich** said he is asking for support of this Resolution to discuss with the boards of telecom companies, Federal agencies and other potential users, that may help bring this project to fruition.

Senator Kelly said there is a Constitutional provision that precludes local or special laws and that it may not apply to Resolutions. She asked **Senator Heinrich** if that issue ever came up? **Senator Heinrich** responded that it hasn't to his knowledge.

Richard Jayo, the General Manager for Frontier Communications, stated that Frontier entered into a private public partnership with CEDA, the Idaho County Commission and other economic organizations to make this a reality. Previously he was the general manager with Qwest Communications in 2000. At that point in time this particular project was scheduled to be built. It was part of an exchange sale to Frontier Communications. Unfortunately that sale was never consummated. **Mr. Jayo** stated that as **Senator Heinrich** pointed out, it is the last major telecommunications link within the State of Idaho. There are a number of

issues associated with this request. They do have the support of the Governor and the House of Representatives. This is an important initiative and a difficult one due to the density of population. **Mr. Jayo** asked for the support of the Committee to make this happen.

Senator Davis asked **Mr. Jayo** if one of the communities has this ability, and if so, which one? **Mr. Jayo** replied that the telecommunication infrastructure in Idaho has always been a little spotty due to the density and the distance to traverse. There are twenty-four telecommunication companies in Idaho, the three largest being Verizon in the north, Qwest in the south and Frontier. Right now the north is not connected to the south. It isn't a matter of having or not, it is connecting. A number of states have provisions in law for traffic that is destined for another portion of the state, that it has to remain in the state. The reason for that is that it is along the lines of commerce. **Mr. Jayo** said the Governor supports an Idaho Educational Network. In order for there to be a Network, the north and south must connect. That is really what this is all about.

Vice Chairman Pearce asked **Mr. Jayo** if the Governor is on board and supportive? **Mr. Jayo** said the answer to that is yes. He personally visited with the Governor and there have been town meetings in the rural areas as well. In addition to that, he has discussed this with the Division of Financial Management and **Wayne Hammon**. They are looking for funding, but this is a request for support.

MOTION: **Senator Stegner** made the motion to send **HCR21** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

H14a **Melissa Vandenburg**, Deputy Attorney General from the Department of Administration (DOA) presented **H14a** to the Committee.

Senator Davis asked **Ms. Vandenburg** what is the intent of the word "public" on line 11 and 14 of the bill, does it refer to college or university? **Ms. Vandenburg** responded that it is only intended to apply to college. **Senator Davis** asked if it would have a limitation to a private university. **Ms. Vandenburg** said from a technical aspect that appears to be correct. It was the intent however, to only apply to a public university.

Ms. Vandenburg stated that **H14a** amends Idaho Code 67-5767, which allows the director of the DOA to extend or provide group insurance to school districts, or other political subdivisions. It adds public college, university, or community college to the types of entities that the DOA can extend group insurance coverage to. The DOA seeks to amend this portion of the code, so that it is clear that group insurance can be extended to entities such as the College of Western Idaho. When the employees of Boise State were transferred to the College of Western Idaho, they requested that they be included in the group insurance plan of the DOA. Based on the first interpretation of the code, it appeared that coverage could not be extended to them. However, coverage was extended to the College of Southern Idaho and not to Northern Idaho College. This will make it clear that coverage can be extended to

community colleges and that is the intent behind the language in the code.

Ms. Vandenburg said the second portion deals with changing “other government entity” to “other political subdivision.” Government entity is not mentioned anywhere in this code. Subsection 1 refers to other political subdivision and subsection 2 defines what it is supposed to be. A “government entity” isn’t found anywhere in Title 67, Chapter 57. It was unclear why the code was defined. There is no fiscal impact to add this entity to the group insurance plan. Entities that are added by contract to the group insurance have to pay an actuarial amount, determined for what their claims will cost the State. They have to contribute to the reserves, pay their employees’ share, and then the employees pay their own share.

Senator Davis said if this was written today it should read school districts, community colleges, and public colleges and universities. He asked **Ms. Vandenberg** if she agrees with that? **Ms. Vandenberg** responded that is correct.

Senator Kelly said there is language in the preceding sections of the code that addresses this language. She asked **Ms. Vandenberg** why didn’t they use that language? **Ms. Vandenberg** replied that they attempted to use language that met other code sections that would define a public college, state university or a community college.

Chairman McKenzie said if he was rewriting this he would probably do what **Senator Davis** suggested. He does however have some comfort from the phrase at the end that states “or other political subdivision of the state.” That does give the impression that each item listed are all political subdivisions of the State. Public limits college in the phrase before it.

MOTION:

Senator Davis made the motion to send **H14a** to the **14th order** for possible amendment. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

RS18772

Chairman McKenzie turned the gavel over to **Vice Chairman Pearce** and presented **RS18772** to the Committee. **Chairman McKenzie** stated that this is a recommendation from the Governor and it was developed by a task force involving legislators, industry participants, cities, counties, the Idaho State Police (ISP) and others. This legislation will create two types of liquor by the drink licenses, along with administration and enforcement. The language is fairly lengthy because it involves sections that addresses the issue of how the State licenses liquor by the drink. There are four areas of the bill and the most significant one deals with licensure. It will remove the State from issuing a new license and empower the cities and counties to issue a license for restaurants, eating establishments, and lodging facilities in the future. They will have the right to determine within their jurisdictions issues related to liquor by the drink. It will grandfather in the licenses at the State level and no more will be granted. The existing licenses and the specialty licenses will still be in place. It provides for the administration and regulation by creating a new division, the Division of

Alcohol Licensing. The ISP will enforce the laws and the administration will provide consistency throughout the State for all the counties and cities.

Chairman McKenzie stated there are significant changes in the area of server training. It will mandate training for servers in establishments where alcohol is consumed on the premises. For establishments that sell alcohol for consumption off the premises, the training would be voluntary. This is an incentive for businesses to take the training because penalties for violations will be different if they have not done the training. There is a fee schedule that provides for the distribution of the fees at different levels of government. The statement of purpose reflects about \$270,000 but it is actually closer to \$150,000, with the projections from DFM. The difference is the distribution to the ISP.

Senator Davis said there is a limitation on the specialty license and the right to transfer them. The definition is similar to other code sections. He asked if the current owner of the specialty license has the right to transfer it today. **Chairman McKenzie** responded there isn't a change with regard to the specialty license. **Senator Davis** asked if the transfer of ownership of an existing property is still preserved? **Chairman McKenzie** replied that it is. **Senator Davis** asked if the language in the grandfather clause is expanded and perceived as a property right. **Chairman McKenzie** said the license is a property right and it will be modified if this legislation passes. The value of existing licenses will be balanced by removing the State and allowing the cities and counties to make that determination. The existing State licenses will be transferable throughout the State except for the specialty license. The State licensee will be eligible for a ten percent discount when they purchase liquor from a State store. The other licenses would be prohibited from that discount. All licenses will be required to purchase liquor through the State stores which is a benefit.

Senator Davis asked if there is a current statutory limitation on the geographic area in which a license can be transferred, and if so, what is that standard? **Chairman McKenzie** responded that he doesn't know, but he will get that information. **Senator Davis** asked if the seventy-five percent gross is the current standard? **Chairman McKenzie** replied that is a different standard and one that they struggled with. The current standard is not based upon the facility that is built, it is based on actual sales. It is a new standard and easier to administer.

Senator Kelly asked **Chairman McKenzie** how many licenses will be grandfathered in? **Chairman McKenzie** stated that he does not have the exact number. **Senator Kelly** asked if those licenses will be floating licenses and could they be used for bars. **Chairman McKenzie** replied those licenses could be transferable and the municipal license will only be for eating establishments and lodging facilities. A new bar would have to acquire one of the State licenses and they are freely transferable.

Senator Stegner asked **Chairman McKenzie** if there is an estimate as to what the ten percent discount will amount to? **Chairman McKenzie** stated that there was discussions on the task force, but he doesn't

remember what the amount is.

MOTION: **Senator Stegner** moved to print **RS18772** and **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

Chairman McKenzie resumed the gavel to chair the meeting.

MOTION: **Vice Chairman Pearce** moved to approve the minutes from March 2. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

Senator Stegner moved to approve the minutes of February 27 with one correction. **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 8:45 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 16, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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.

RS18682C1 State Treasurer, **Ron Crane**, presented **RS18682C1** to the Committee. **Treasurer Crane** stated that this RS deals with the credit rating of the school districts, The School Bond Guarantee Fund. In 1999, the State extended credit to the school districts to allow them to access capital markets using the State's full faith and credit as a guarantee. The sales tax is used as the first backstop and the second backstop is the cash from the Public School Endowment Fund. In addition to that, there is an intercept mechanism that allows the State to step in and intercept funds that flow from the State to the school district, i.e. the public school appropriation from the State. The county commissioners in each county are required to levy against the property owners in any particular school district that defaults on the loan, in order to make the State whole.

Treasurer Crane said the cash pledge for the Public School Endowment Fund remains at two hundred million dollars. That amount has been leveraged four times that amount in school bond issuance. Two years ago a twenty million dollar cap was placed on the amount that a school district can access the triple A rating of the State. The reason that was done is to prevent the larger school districts from using up the capacity and preventing the smaller schools from accessing it. With the cap all schools can participate up to twenty million dollars and still receive the triple A. Given the current financial situation in the markets today, school districts are having trouble accessing the capital markets because there aren't any bond insurance companies. The Department of Education, State Treasurer, Endowment Fund, a member of the bond council and some of the underwriters met to discuss ways to assist the school districts that have used up the capacity at the triple A rating. This legislation creates a second tier for the school districts to come under a double A. The first twenty million in the triple A category can be used and the

remainder can be a double A level, which is a significant change in the interest rate. This could amount to a 3.5 percent savings on the issuance of the bond. As it extends out toward maturity it remains at a significant savings to the school district.

At the double A the school district would not be accessing the guarantee from the Endowment Fund. **Treasurer Crane** stated they would be using the State's sales tax as the guarantee. There isn't any pressure on the sales tax, it is their payment not the entire bond, and this is a default on the payment. The sales tax would be used to repay the bond holders on a default. The capacity will remain high in the billion dollar range. There are a number of technical corrections that deal with the clarification of the guarantee limits and revisions to the process used to determine and monitor the school districts solvency. There is a clarification of the interest rate and other terms of purchase by the Endowment Fund Investment Board. Bonds may be purchased from other funds in addition to the Public School Endowment Fund. Revisions to the school district's application process is included in the RS as well.

MOTION:

Senator Davis stated that this is an important piece of legislation to consider. He moved to print **RS18682C1** and **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

H32a

Roger Hales representing the Idaho Bureau of Occupational Licenses presented **H32a**. **Mr. Hales** said that **H32a** is brought forth by the State Athletic Commission. The primary purpose of the bill is to broaden terms and definitions and to provide for "combatants" rather than any specific sport. It clarifies that the Commission has authority over both amateur and professional events and competitions, and that they can revoke or suspend a sanctioning permit. Additionally, the purpose of **H32a** is to allow the Commission to annually review the sanctioning authorities that have the ability to sanction events. There are some general technical changes regarding the number of rounds in an event. The Commission will be able to allow other forms of security for the promoter beyond just a bond. **Mr. Hales** stated that last year a statute was passed to create a fund from the taxes paid by a professional promoter. Language is added to that provision for various entities to make an application for those funds. On page 9 "rounds" is deleted and at the bottom of the page, line 36, extends the period of time for a physician to examine the fighters.

Senator Davis said if an individual is not participating in good faith and they are willing to do anything to win, would the statute on page 2 regarding a contest apply to them. **Mr. Hales** responded typically the referee has a lot of authority to measure an individual's participation in any contest. In this context if they were not earnestly striving to win, the referee could disqualify that individual.

Chairman McKenzie asked if the intent of that language is to distinguish between mixed martial arts and pro wrestling exhibitions on television. **Mr. Hales** said he believes that it is. Professional wrestling is a unique sport and typically it is not viewed as boxing or mixed martial arts. It also makes the distinction between a contest and an exhibition.

Senator Stegner asked **Mr. Hales** what was the nature of the amendment in the House? **Mr. Hales** answered on page 9 section 54-414, rounds in excess of twelve is deleted. In addition to that the language regarding the weight of gloves on line 30 was added. **Senator Stegner** asked if the Commission reviewed the language in the amendment and do they think it was helpful or friendly? **Mr. Hales** responded that the Commissioner, **Tom Katsilometes**, has approved the language.

Chairman McKenzie said he has questions regarding the amendments in section 2 and 3. He asked if the language regarding amateur and professional is a clarification of the existing authority of the Commission, and was there a concern that jurisdiction extended to both? **Mr. Hales** replied that jurisdiction over both of them is being clarified. In this State in order to hold an amateur event, there is the ability to go to a few non-profit organizations to sanction those events. However, this clarifies if you want to go through the Commission to sanction an amateur event you could do so as well.

MOTION: **Vice Chairman Pearce** moved to send **H32a** to the floor with a **do pass** recommendation. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

RS18732C1 **Senator Jorgenson** presented **RS18732C1** and stated that this bill may be considered controversial by some. This bill is about enforcing employers to hire legal citizens only. A Ninth Circuit Court opinion and U.S. Code states that the State has the right to pass and enforce this type of legislation. This is about having the authority to enforce the law. Section 1 of the bill states that this conforms with Federal law 8 U.S.C. section 1324a(h)(2). Section 2 deals with false impersonation and the penalty is a misdemeanor. A new chapter is created in section 3 entitled Employment of Unauthorized Aliens Act. There are definitions, one of which is E-Verify.

Senator Davis said his understanding of E-Verify is that the information is not provided until the individual commences employment. He asked if that is the standard today? **Senator Jorgenson** answered in the past there have been problems. An overview of the E-Verify system was provided to the Committee. The overall accuracy of E-Verify is 99.5 percent and 93 percent are verified instantly, within five seconds. **Senator Davis** said his concern is that the information from E-Verify is not available until an employee is hired. **Senator Jorgenson** replied that E-Verify should be conducted within one to three days and can be used for pre-employment. The possibility of hiring someone on the first interview isn't the usual practice today.

Senator Jorgenson said in section 44-403 sets out the penalty for hiring an unauthorized person. With the use of E-Verify there is an affirmative defense and the business owner is free of prosecution and penalties. All employees have to be verified, not just illegal aliens. Many states use this system and this has passed in Arizona because of the spread of illegal workers. A business license is suspended for three days and when the

correction is made the suspension is lifted.

Senator Davis asked “where is that in the bill?” **Senator Jorgenson** said it is on page 4, line 14, which refers to the violations. **Senator Davis** said when it speaks to all licenses subject to this chapter, what are they.

Senator Jorgenson responded they are the licenses that are held by the employer at the employer’s primary place of business. **Senator Davis** said some communities in the State do not require a business license. How will this apply to liquor licenses, a contractor, plumber, hairdressers, and what will the suspension be for them? **Senator Jorgenson** replied that this will not apply to out of state businesses, only to businesses that operate within the State at their location. This will apply to all licenses with the exception of professional licenses and the Department of Water Resources.

Senator Jorgenson said a first offense would have a maximum fine of three days suspension or less. The second offense can amount to a ten day suspension, and the third offense could be a complete suspension. The suspensions would be handled by a county prosecutor or the State’s Attorney General. Federal compliance and mandatory use of E-Verify are provisions of the bill, and it will not go into effect until October 2009 for the purpose of new hires. In section 4, page 8 addresses the issuance of driver’s licenses. The State of Idaho does recognize a license issued by other states and this will no longer be granted to illegal aliens. Section 5 provides for a sanctuary policy. This provision applies to cities that may be sympathetic with this issue and declines to enforce the law. If they do not comply with this policy the State would cease funding to them.

Senator Jorgenson asked the Committee to print the RS and said that he has reports and studies as to how this affected Arizona.

Senator Davis said the fiscal note indicates that there are some costs for noncompliance. He asked what is the cost to implement this policy, and has the Attorney General’s Office looked at this and provided what they estimate the cost for compliance to be? **Senator Jorgenson** responded he did, and they don’t know.

Vice Chairman Pearce said what have been the costs to other states that have implemented this. **Senator Jorgenson** said in terms of actual costs he doesn’t know.

Senator Kelly said she appreciated the handout regarding the Ninth Circuit Court opinion for Arizona. She asked if the language in the bill had been reviewed by the Attorney General’s Office for the purpose of defending the provisions for possible litigation. Or have they given an opinion as to whether or not this could be challenged? **Senator Jorgenson** said it has been reviewed by the Attorney General a number of times. Their view is that it is constitutional.

Senator Davis said he believes that the Federal E-Verify is set to expire. He asked when is the expiration date and if Congress is inclined to extend the E-Verify program. **Senator Jorgenson** responded that **Senator Jeffers** is an advocate of E-Verify. He has spoken with him and E-Verify

is to expire in September, but he believes the program will be funded and that it will continue. **Senator Davis** said wouldn't it be wise to wait until Congress re-authorizes the E-Verify program. **Senator Jorgenson** replied that he does not have a lot of faith in the Federal government to do something, and that is why the states are doing this. So many of our neighboring states are currently passing this type of legislation. The Federal government uses E-Verify for employment purposes, so he believes it will be funded.

MOTION: **Vice Chairman Pearce** moved to print **RS18732C1**. **Senator Davis** seconded the motion and said he has some questions especially regarding the re-authorization of the Federal Act, and **Senator Jorgenson** is not certain either.

Senator Kelly commented that she has some real concerns with regard to due process, and she is not clear about what licenses are exempt.

The motion carried by **voice vote**.

H65a **Senator Winder** presented **H65a** to the Committee and stated that the Federal Gun Control Act of 1968 allowed citizens to purchase a rifle or shotgun in states contiguous to their own. Idaho's current code conforms to this Act. In 1986 the Federal Firearms Owners Protection Act was enacted by Congress. The Federal Act allowed for the purchase of a rifle or shotgun from a licensed dealer in another state, but not those contiguous. Idaho law has yet to conform to this Act. **H65a** will allow Idaho to conform and permit the lawful purchase of rifles and shotguns in Idaho by citizens from other states. It will clarify that citizens of Idaho can purchase rifles or shotguns from other states in the United States that conforms to the Federal regulation. Clearance will be required by passing the Federal background check. All licensed dealers will be allowed to sell shotguns to residents of other states not just the ones contiguous to Idaho. This bill will not affect the current sale or regulation of hand guns, or to any rifle or shotgun less than twenty six inches of barrel length. **Senator Winder** said there is no fiscal impact to the general fund and there may be an increase to the State sales tax with the increased sales.

MOTION: **Senator Darrington** made the motion to send **H65a** to the floor with a **do pass** recommendation. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

S1142 **Bill von Tagen**, the Deputy Attorney General, for the Attorney General's Office addressed the Committee regarding **S1142**. **Mr. von Tagen** said that **S1142** proposes amendments to the State's Open Meeting Law, Chapter 23, Title 67 of Idaho Code. This bill updates language but more importantly, it proposes a different approach to enforcement. The entities that are governed by the Open Meeting Law are public agencies, which is an entity created by or pursuant to statute or an ordinance. Meetings are defined as the convening of a governing body of a public agency to make a decision or to deliberate toward a decision on any matter. The definition of "decision" is fairly easy, but the word "deliberate" is sometimes harder to grasp. Deliberation is defined as the receipt or exchange of information relating to a decision. The Open Meeting Law says that all decisions and

all deliberations of governing bodies of public agencies, are to be made at public open meetings. The meetings have to be properly noticed and properly memorialized.

Mr. von Tagen stated that the current Open Meeting Law was adopted in 1974, and that law contains the framework of what the law is today. In 1974 there were no penalties and no real remedies for a violation of the Open Meeting Law. The Legislature inserted remedies and penalties in 1977 and in 1992 additional amendments were added to the present structure of the Open Meeting Law. There is a provision for civil fines of \$150 for a first violation, and up to \$300 for a second violation. Decisions made in violation of the Open Meeting Law are null and void or if a deliberation was in violation according to law. There continues to be a great deal of argument over the Open Meeting Law, with regard to the language and the scope of enforcement. The confusion and disagreement is amongst the members of the governing boards, the attorneys of the boards including prosecutors, and members of the Attorney General's Office. **Mr. von Tagen** said there has never been an appellate court decision where the appellate court has upheld the enforcement provisions of the Open Meeting Law.

It has been thirty-five years since the original act was passed, thirty-two years since the first penalty provisions, and seventeen years since the 1992 amendments. The problems within the act are particularly in the area of enforcement and there is a good deal of confusion over the language. Idaho is a big state made up of different boards and many of the local government and boards do not have attorneys. The source of confusion comes from the language of the act which is ambiguous, and at times, archaic and confusing. There are different interpretations regarding amending the agenda "up to and including the hour of the meeting." The Attorney General's Office interpretation allows the agenda to be amended after the meeting has commenced. Others disagree and say an amendment cannot be made after the meeting has started. **Mr. von Tagen** said other areas of confusion are over the minutes of an executive session, and the use of the term "knowingly" in the penalty provision. Other problems are in the statute of limitations for enforcement actions. The penalty provisions were originally provided for in the 1977 amendments to the law. The Legislature said that these acts taken at an illegal meeting could be set aside. Two things have to occur to do that: 1) there must be an illegal meeting; and 2) there must be a decision reached at the illegal meeting. The problem is that decisions are not reached at meetings but most likely at a subsequent meeting, and sometimes decisions are reached months later. The Court held that there is nothing to set aside unless a decision is made at illegal meetings.

In 1992 the Legislature amended the statute of limitations to provide that matters could be set aside if a legal case is brought within thirty days of an illegal meeting, which results in a decision. This solved some of the problem, but it still remains in cases where the decision and illegal act did not occur within thirty days of one another. If the legal action is not brought within thirty days of the illegal meeting, then the courts have held that the challenge is not timely. If a decision is not reached at the illegal

meeting, and the decision is made more than thirty days following the illegal meeting, the action has no standing. **Mr. von Tagen** stated that **S1142** seeks to address these problems and the lack of enforcement at the appellate level, by changing the approach to enforcement. With the new approach, the governing body will be notified of the illegal meeting so that the defect can be repaired in most cases. An instruction book will be provided to all bodies with the intent to avoid enforcement actions in most cases.

Idaho Code Section 67-2343 addresses the issue of noticing meetings and the agenda. This reflects the interpretation of the present Open Meeting Law by the Attorney General and the majority of prosecutors. Agendas can be amended even after the start of the meeting if they are made in good faith. The proposed changes to Idaho Code Section 67-2344 contains the requirement for written minutes. These changes pertain to executive sessions not minutes "of" the executive session. On page 2, line 29 of the bill requires a reference to "specific statutory" authorization for the executive session. The requirement that the governing body is to identify the purpose and the topic is on line 31. The code section that deals with executive sessions is found in Idaho Code 67-2345. On lines 40 through 43 the definition of "executive session" is made clear by stating that an executive session is a meeting from which the public is excluded. **Mr. von Tagen** stated that the issues of employment are addressed on page 3, lines 3 through 6. This applies to executive sessions that are identifying and discussing specific employees, not discussing the need for staffing requirements.

The penalties have considerable changes to Idaho Code Section 63-2347. This bill aims for compliance and openness, not punishment. The present approach has not been effective in enforcing the law. The monetary penalties are on page 4 of the bill. The old statute had one type of monetary penalty, and in those cases the penalty could not be imposed unless specific intent was proven for entering into an illegal meeting. On lines 1 through 5, the fine has been lowered to \$50, and the second type of monetary penalty is on lines 6 and 7 for a fine up to \$500. This penalty is for the "knowingly" committed violation, which is an intentional violation. The third type of monetary penalty is on lines 8 through 10. If the Open Meeting Law is violated twice within a twelve month period, the fine can be up to \$500. The first and third violation can be cured. The statute of limitations provisions are on lines 27 through 28. In the area of planning and zoning, deliberations may take place over a period of months. This simple change says that the action must be brought within thirty days of the decisions, not within the thirty days of the deliberation. Until a decision is made, attempting to challenge an illegal meeting is not going to stand.

Mr. von Tagen said that the "cure" provisions are important and reflect the change in this law. They are found on page 4, lines 31 through 45 and into page 5. To cure a violation, an agency must recognize the violation and they have fourteen days in which to fix it. If the agency is notified by a citizen, a prosecuting attorney or by the Attorney General that it has violated the law, it has fourteen days to recognize the violation

and another fourteen days to cure it. The agency cures it by declaring the decision is void. The results of the cure are on page 5 and the agency can cure the first violation with no penalty. If it is "knowingly" it can be cured, but it is at the discretion of the prosecutor or the Attorney General as whether or not to fine the agency \$500. A repeated violation can be cured if the agency recognizes the violation. **Mr. von Tagen** stated the Open Meeting Law is working in the vast majority of cases not because of statute. It is due to the commitment of local government, cities, counties and the State government and boards along with the prosecutors, city attorneys and the Attorney General's Office to ensure that the law works. **S1142** will provide a statutory framework that is equal to the commitment of the Open Meeting Law.

Senator Davis asked **Mr. von Tagen** after the cure will the enforcement relate to the prior decision, or does it apply to the date it is recognized? **Mr. von Tagen** responded that it applies to the date they acted properly. To cure it the agency states it is void and they are going back and starting over again. **Senator Davis** said why not just stay the action and that it is void until the cure, does that make sense? **Mr. von Tagen** responded that event is unlikely because they have fourteen days to recognize it and to cure. If they don't recognize it in the first fourteen days the action can proceed. In order to cure it in the second fourteen days and the agency decides not to cure it, the action can proceed. **Senator Davis** said if they fail to recognize it then why would they stay the enforcement. **Mr. von Tagen** replied the action could go forward in the first fourteen day period if the agency said there wasn't a violation and they do not intend to do anything about it.

Vice Chairman Pearce asked **Mr. von Tagen** if he views this as being unfriendly to the individuals who are willing to serve on the boards in our communities? **Mr. von Tagen** replied "no" because we are moving away from an illegal act and a penalty to an illegal act that can be fixed. This is a large and diverse state where agencies and boards may meet on a daily or weekly basis, who have counsel there all the time. Other entities do not have that ability who are small and made up of volunteers. This is not meant to discourage them, but if they violate the law potentially there is a penalty, and it can be cured by recognizing it. The State does not want to discourage the citizen government because the State relies upon them. People from all walks of life may not be sophisticated in the way of Idaho Code, but they bring their experience to bear on public problems.

Senator Geddes commented that he had several opportunities to meet with **Mr. von Tagen** to discuss this proposed legislation. He has done a fine job of addressing the balance. A lot of our elected officials have little if any procedural experience of managing government and the open meeting process. The importance and the necessity of conducting open meetings has not been deviated from. **Mr. von Tagen** has also balanced the issue of a mistake with a solution, and a way to correct it without an excessive fine. In light of the fact that most of our representatives are lay people, this goes a long way to make the entire process balanced and well defined. The cure process is a great opportunity for improvement and learning.

TESTIMONY:

Betsy Russell, President of the Idaho Press Club and President and co-founder of Idahoans for Openness in Government (IDOG) testified in support of **S1142**.

Senator Davis asked **Ms. Russell** if she is a registered lobbyist? **Ms. Russell** answered that she is not.

Ms. Russell stated that most of the Committee probably know her as a newspaper reporter for The Spokesman-Review. Last year she filed an open meeting complaint against the State Board of Education. After a thorough investigation by the Attorney General's Office, they concluded that the Board may have violated the law, but they couldn't prove that it was done so "knowingly." In the Idaho Supreme Court decision of *State of Idaho vs. Yzaguirre* the meaning of "knowingly" had never been used before in interpreting Idaho's Open Meeting Law. Essentially, this blew a giant hole in the law preventing its enforcement. If a public official knew nothing about the Open Meeting Law, then he or she couldn't "knowingly" violate it. Under this interpretation, boards could argue that they didn't think they were violating the law, so therefore they were not violating the law.

Ms. Russell said after that case, the Attorney General contacted various entities to work on improvements to the Open Meeting Law. The goal was to: 1) fix the "knowingly" problem with a workable, enforceable law ; 2) to clarify exemptions that are being construed over-broadly; and 3) to make the Open Meeting Law simple and clear for any public official or member of the public to understand what is required, what is forbidden, and what the sanctions are. The result is what is before the Committee today. **Ms. Russell** stated that although she can't say she loves every piece of the bill, it does have balance. It is a good package of reforms that takes important steps toward improving the Open Meeting Law. The changes will be workable and enforceable and it will provide incentives for compliance rather than the incentive for ignorance. IDOG supports **S1142**.

Ben Yursa, the Secretary of State, testified in support of **S1142**. **Secretary Yursa** stated that he does not believe this will discourage citizens from participating in government. The cure provision is for compliance not punishment. The public's business needs to be conducted in public. **Secretary Yursa** said he supports this as a board member of IDOG and as the Secretary of State.

Senator Davis asked **Secretary Yursa** if anyone can file a written complaint? **Secretary Yursa** responded he believes that is correct.

Justin Ruen who represents the Association of Idaho Cities testified in support of **S1142**. **Mr. Ruen** stated that this bill makes important improvements to strengthen the Open Meeting Law.

Dan Chadwick, Executive Director for the Idaho Association of Counties, addressed the committee regarding **S1142**. **Mr. Chadwick** stated that the Counties have no objections to this legislation. The counties have two

immediate interests in this legislation as counties. Number one, the boards of county commissioners and all the voluntary agencies or boards at the local level are affected by this bill. The prosecuting attorneys are responsible for the enforcement of the Open Meeting Law for all local jurisdictions. **Mr. Chadwick** said **Mr. von Tagen** did a nice job of upholding the standard and getting everyone together to reach an agreement. The law has been fine tuned and down the road it may need more work. The bill is useable for all the volunteer leaders in our communities.

Elinor Chehey, who represents the League of Women Voters, stated that she is a volunteer, not a lobbyist. The League of Women voters of Idaho speaks in support of **S1142**. The revisions clarify the law regarding notice of public meetings, agendas and conduct of executive sessions. The League believes that governmental bodies must protect the citizens' right to know by giving adequate notice of proposed actions, holding open meetings, and making public records accessible. **Ms. Chehey** said the revisions in **S1142** clarify the law and she asked the Committee to vote in favor of the bill.

MOTION: **Senator Davis** made the motion to send **S1142** to the floor with a **do pass** recommendation. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

RS18849C1 **Senator Davis** presented **RS18849C1** to the Committee and stated that this RS is brought forward from the Majority and Minority Leadership of the Senate. The intent of this legislation is to provide for the entire disclosure of potential conflicts that may exist for public officers, namely constitutional officers and legislators.

Senator Kelly stated that this bill includes candidates and it is a great first step that will affect us personally.

Senator Darrington asked **Senator Kelly** what did she mean by first step? **Senator Kelly** responded it is a first step in the sense that we are one of three states that do not have this requirement in statute. **Senator Darrington** asked what is the second step. **Senator Kelly** said that will be for future legislators to decide.

MOTION: **Senator Stegner** moved to print **RS18849C1** and **Senator Fulcher** seconded the motion.

Vice Chairman Pearce said this type of legislation usually comes forward because of a problem. He asked **Senator Kelly** if there is a problem that motivated this? **Senator Kelly** replied if there is a future hearing more details will be provided. This is a conflict of interest and disclosure law for elected officials and candidates to provide the public with more information, regarding the actions they take as public officials.

The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: **Chairman McKenzie** said the confirmation vote of **Wendy Lively** to the Bingo-Raffle Advisory Board is before the Committee.

MOTION: **Senator Davis** moved to confirm the appointment of **Wendy Lively** with a **do pass** recommendation. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Fulcher** stated that he reviewed the minutes of March 4 and found them to be in order. He moved to approve them. **Vice Chairman Pearce** seconded the motion.

Senator Kelly stated that she proposes two small corrections to the minutes.

Senator Fulcher amended his motion to accept the minutes with the changes that **Senator Kelly** suggested. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote**.

Senator Geddes moved to approve the minutes of March 6 with one suggested change. **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 9:48 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 18, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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.

GUBERNATORIAL APPOINTMENT: **Scott McLeod** who was appointed to the Idaho Lottery Commission addressed the Committee regarding his appointment. **Mr. McLeod** said he is from Lewis County and he has served on the Commission for two years. He is a farmer and grows wheat and lawn seed and he raises some cattle.

Chairman McKenzie asked **Mr. McLeod** what is his role on the Commission and does he regularly attend the meetings? **Mr. McLeod** said the Commission meets every other month in Boise. It is an oversight Commission that deals mostly with issues or problems involving the lottery games. The staff and people who run the Lottery do a great job for the State.

Vice Chairman Pearce asked **Mr. McLeod** what does he contribute to the Commission? **Mr. McLeod** responded last year no lottery tickets were sold in Lewis County because it is on the Nez Perce Indian Reservation. As of a few months ago they have now started selling lottery tickets. His contributions are really just oversight to ensure that things are done responsibly.

Chairman McKenzie advised **Mr. McLeod** the Committee will vote on his appointment at the next meeting.

RS18861C1 **Senator Thorson** presented **RS18861C1** to the Committee. **Senator Thorson** stated that this proposed legislation will amend Idaho Code Section 50-2101 to allow the naming of cities at election to combine. This code has never been used in the State and it has been on the books since 1960. The use of this code has been discussed for twenty years in the cities of Sun Valley and Ketchum. This legislation will enable the

voters of both principalities to combine and decide on the name of the city.

Chairman McKenzie said just to clarify, if the two cities consolidated they would be required to use the name of the city with the larger population. This proposes that the voters will decide the name of which city to use.

Senator Thorson responded that is correct.

MOTION:

Senator Kelly moved to print **RS18861C1**. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

H201

Representative Lake addressed the Committee regarding **H201**. A few years ago **H196** was introduced and held in this Committee because it only had two election dates. Last year a considerable amount of time was spent to develop legislation, but technically it was not ready so the sponsors did not request a hearing on it. **Representative Lake** said that earlier this year **H68** and **H69** were introduced. **H68** dealt with the contents and consolidation and **H69** was the funding mechanism. After a series of meetings the parties came to some resolution and those ideas were put together in **H201**. **Tony Poinelli** from the Association of Counties was instrumental in making this happen. **Tim Hurst** from the Office of Secretary of State (SOS) put the bill together and **John Watts** contributed as well. If **H201** moves forward, **Senator Hill** will be the sponsor in the Senate. The bill is technically correct, but they have discovered a few areas that will need to be corrected. One of which the Water Users will speak to and a trailer bill will be needed for **H201**. If other amendments are needed we can do that next year as implementation of this begins in 2011.

Representative Lake said pages 86 through 88 of the bill outlines the funding mechanism to finance elections. Three million one hundred thousand dollars will be distributed to election funds to the various counties on the formula set out in code. Two million five hundred thousand dollars of that will come from the general fund through sales tax dollars, four hundred thousand will come from the cities, two hundred thousand will be contributed by local government. In addition to that, the counties are now paying approximately 2.5 million dollars a year to run the two elections that are required. They will continue to do that. Schools will be expected to pay for the two election days that are specific to them in March and August. On the November and May election dates the school districts would not incur any costs. The earlier drafts of this legislation did not have a cost to schools because the funding mechanism was not finalized. To make this work it became apparent that the schools needed to be a part of the solution.

Senator Thorson asked **Representative Lake** if all parties were involved in the funding? **Representative Lake** replied the parties that were involved are the cities and the counties. It did not include both entities of the government and the school districts.

John Watts stated that he has been deeply involved in this issue for the past two years. His interest is in elections, participation and campaigns.

Senator Kelly asked **Mr. Watts** who is he representing? **Mr. Watts** replied he is representing himself, an interested citizen. He is not representing the Library District.

Mr. Watts continued and said that he had a vision and it is captured in **H201**. There are three objectives and five main components of the bill. One thing he has heard over and over in his role as a political consultant and campaign opportunist as well as an individual, is that most people don't know where to go, when elections are being held, what is on the ballot, and they have to go multiple places. It is all about information and participation. The three objectives they set out to meet in creating **H201** are one, predictability, so that the voters know when an election is coming, where they will go to vote, and what to expect on the ballot. Secondly, the information for consistency about election content, and lastly, participation. Participation will increase when a voter knows when an election is taking place, where to go to cast their vote, and knowledge of what they are voting on.

Mr. Watts stated the proposal does five things. In all even years the partisan elections will be held for the county, state and federal. Those elections will be held on two days, the traditional primary date in May and the general election day in November. The May date has been moved up before the holiday weekend to enhance participation and turnout. The odd years will be for the non-partisan races for the city, district boards and any bond or levy questions for local governments and the schools. There will be a total of four election dates: the second Tuesday in March, the third Tuesday of May, the fourth Tuesday in August, and the first Tuesday of November. The March and August dates will be specific for the schools, but they can use the other two days if they choose. The waiting period has been changed from six months to five for bond questions to accommodate this new schedule.

The administration of the bill is the main provision. The county clerks will assume the role of election administration throughout the State for consistency, reliability and accuracy. The county will administer all elections for the taxing districts, cities, counties, and the schools. They will be responsible for voter notification, handling the ballots on election day, and basically all the responsibilities that they currently have on election day. The polling places will be set by the county commissioners for the various races, and they will determine which ones are appropriate in order to administer the election. The key is that these election polling places will be the ones that everyone is used to going to for each election each year. The passage and turnout thresholds will remain unchanged in **H201**. **Mr. Watts** stated the time has come to make elections predictable and to increase voter participation.

Senator Thorson asked **Mr. Watts** if he had any hard evidence that voter participation will increase. **Mr. Watts** answered he could demonstrate that when people know when to vote, where to vote, and they are informed, that voter participation would increase.

Representative Lake commented that the state of Michigan has done

something similar to this and their voter participation has increased sixty three percent. Other states are in the process of doing this in one form or another.

Tim Hurst, Chief Deputy for the (SOS) addressed the Committee regarding **H201**. **Mr. Hurst** stated that the SOS has always been an advocate of election consolidation if there were certain conditions. Those conditions are a limited number of dates, all elections are conducted by the county clerks, and that they be properly and adequately funded. **H201** is an attempt to do those things. Although they haven't agreed on everything they have had discussions. This bill is not about election reform and it will not change any of the procedures, just the dates and who is responsible for it.

The funding of the bill will start in 2010 at the beginning of fiscal year 2011. The counties will start receiving money for conducting consolidated elections in 2011. It does not include all taxing districts and some water districts are not included in election consolidation, as they will still conduct their own elections.

Senator Kelly asked **Mr. Hurst** to explain the exemption for the water districts. **Mr. Hurst** said the reason for the exemption is that they don't require voter registration. This bill only deals with elections that require voter registration in order to participate. **Senator Kelly** asked if some require voter registration? **Mr. Hurst** responded that some do, but they also have other requirements such as the water rights. They have to sign a voter oath that they live within the district and that they own water in the district. Voter registration is not the main purpose of voting in their election, it is their ownership of water rights.

Vice Chairman Pearce asked if anyone knows the total dollars spent for elections in the State? **Mr. Hurst** responded they have accurate figures as to what the counties are spending. They have an idea what the cities spend, but they do not know what the schools or special districts spend because they do not report it. This bill will put the responsibility of elections in the hands of the counties. **Vice Chairman Pearce** said it appears from this consolidation that overall it should save the taxpayers money. **Mr. Hurst** commented that some tax districts currently do not spend anything for elections. One district asked if they could use the same ballots from a previous year and just change the date. Districts try to conduct elections as inexpensive as possible but it isn't always the best to do it.

Senator Kelly said if a district doesn't hold an election every year, under the funding mechanism, would all districts have to contribute annually to the county? **Mr. Hurst** said they would if they are receiving sales tax dollars, a portion of that would go to fund elections. **Senator Kelly** asked would they have to contribute even if they don't have elections once every fifteen years? **Mr. Hurst** said that is true, but they believe that part of the reason is due to the fact they don't know when to file for an office. With election consolidation notices will be timely noticed and they will be more aware and possibly have more elections.

Senator Stegner asked **Mr. Hurst** if there are more than two new sections of code in the bill regarding the payment of election funds and expenses to the county? **Mr. Hurst** replied the bill is amending existing sections and there isn't a lot of new things. In fact, it repeals a number of sections, especially the ones that deal with city elections and other special districts. **Senator Stegner** asked **Mr. Hurst** to explain the funding formula in the bill. **Mr. Hurst** said every county will receive forty thousand dollars which is equalized. That money will help pay for a full time election staff. **Senator Stegner** asked if that is the one million seven hundred sixty thousand dollars? **Mr. Hurst** said that is correct. **Senator Stegner** asked how will the 1.34 million dollars be distributed? **Mr. Hurst** said it would be based upon the population. **Senator Stegner** asked if that is in section 34-1401? **Mr. Hurst** stated that on page 87 line 4, it states that the remainder shall be equally divided among the forty four counties based upon population.

Chairman McKenzie asked when will the distribution begin, and will an election be held before the funding? **Mr. Hurst** replied that the funding goes into effect on January 1, 2010. This will not affect any elections that are held in 2010. **Chairman McKenzie** said it looks like the distribution to the counties begins fiscal year 2011, but will they be administering elections in 2011 before July 1? **Mr. Hurst** stated they would not be administering elections before 2011. The money will go into the election fund and can only be used for elections. **Chairman McKenzie** asked if the distribution will begin on July 1, 2011 or before then? **Mr. Hurst** said it is July 1, 2010. Fiscal year 2011 begins on July 1, 2010.

Senator Kelly asked **Mr. Hurst** how is the population calculated? **Mr. Hurst** responded that it is all part of the sales tax distribution and it is done by the State Tax Commission. **Tony Poinelli** may be able to clarify that.

Senator Stegner asked if the four hundred thousand dollars to the cities is a sales tax distribution reduction, and is that part of the 3.1 million dollars that is distributed to the counties for elections costs? **Mr. Hurst** said that 2.5 million dollars will come from the general fund to fund the election, four hundred thousand dollars from the cities, and two hundred thousand dollars from the other taxing districts. **Senator Stegner** asked if the money will flow into a new account established by the counties, and then will they use that to pay for election costs? **Mr. Hurst** answered that is correct. This will create a dedicated fund for elections. **Senator Stegner** asked if there is a mechanism for escalation over time? **Mr. Hurst** said that the SOS and the counties will submit a report to the legislature annually, to see if the costs are being covered. **Senator Stegner** asked where is that stated in the bill? **Mr. Hurst** said on page 98, line 6.

Senator Kelly asked if there is a new funding source, or money that is already distributed? **Mr. Hurst** responded that is correct for the cities and special districts. The 2.5 million dollars is new money from the general fund.

Ben Yursa, Secretary of State, addressed the Committee regarding **H201**. **Secretary Yursa** stated that he has been working on consolidation since the 1980's. There is concern about the election dates for the schools, but participation is the essence of democracy. This bill will promote participation and voter turnout. At times the elections are willful. The administration by the county clerks will not necessarily be cheaper, but they will be more efficient. With the counties running the elections they will be better. The worst thing the State can have is stealth elections. **H201** promotes participation and that is the key.

Senator Davis asked **Secretary Yursa** how will this bill impact independent charter school districts? **Secretary Yursa** answered it will not impact them. **Senator Davis** asked if that has been accounted for in the funding formula? **Secretary Yursa** responded that he cannot answer that question.

TESTIMONY:

Karen Echeverria, who represents the Idaho School Board Association (ISBA) testified in opposition to **H201**. **Ms. Echeverria** stated in the past ISBA has opposed any form of election consolidation. This year the Association voted to allow participation in the drafting of this bill. They agreed to some concessions as long as two additional dates were included for school districts to conduct bond and levy elections. During discussions regarding the funding at the last meeting, there was an understanding that the bill would be funded by using sales tax receipts. Initially there were two bills proposed **H68** and **H69**, one for the legislation and the other for funding. That legislation failed and **Representative Lake** informed her that a new bill was being drafted and that the school districts would be required to pay for elections held on the two additional dates. ISBA was not included in that discussion. ISBA agreed to one thing, only to have another one printed. The school districts are facing possible cuts due to the education budget. **Ms. Echeverria** said although there isn't a fiscal impact in the first year of this bill, there will be in 2011. Adding an additional two million dollars to school districts becomes an unfunded mandate and one that they cannot afford right now. How can the State face a possible ten percent cutback to the budget and justify spending an additional 2.5 million dollars. The implementation of this bill should be delayed for two years and any additional funding be funded by the State. **Ms. Echeverria** asked the Committee to vote no on **H201**.

Dan English, a county clerk from Kootenai County testified in support of **H201**. **Mr. English** stated he is here on behalf of the Clerks Association. This bill will bring to reality a long held dream of most election officials in Idaho, to have one unified set of election laws and procedures. Kootenai County conducts more elections for other taxing districts than any other county in the State. Since 2000 their election office has conducted forty-six elections for fire, highway, school and college, cities, hospitals, special districts, sewer and water, and library districts. When you add the countywide regular and special elections they have conducted a total of fifty-eight elections. This was partly due to the SOS's encouragement and direction that it is a proper and healthy role for the county clerks. The current system is voluntary on the part of the county election offices and

the other districts. The county clerks assist in the elections when asked because of the resources they have. By conducting elections the county clerks have gained a level of trust and expertise that is helpful for all concerned. **Mr. English** stated that it is helpful and efficient for the voters to have one place to go for all election questions. It is a common practice for the county election offices to be the primary source and the office to run elections. Oregon, Washington and Nevada all use the county for elections. In Montana, the county does all elections except for the schools. Utah and Wyoming are like Idaho who use the local option between the county and local districts.

Mr. English said in addition to being a county clerk for fourteen years he was a school board trustee and a city councilman in Coeur d'Alene. Increased public confidence in elections leads to increased public confidence in election outcomes and the decisions that are supported by elections. This is a worthy goal for public policy and a worthy priority to spend public dollars on. Funding issues always come down to priorities. He asked the Committee to consider **H201** and the funding it requires as a priority this legislative session.

Phil Homer, who represents the Idaho Association of School Administrators (IASA) testified and stated that the IASA opposes **H201**. Two years ago he was told that consolidated elections are coming. The previous bill only had two election dates which would make it difficult for the school districts. **Mr. Homer** said IASA went to the table and arrived at four dates and they would be paid for by the county. His responsibility was to tell all the superintendents it was a good deal and that the IASA should support it. As time went on **H201** was brought forward and the school districts are left out of the March and August election dates. March is an important date because it is supplemental levy time. **H201** is an unfunded mandate and as a result the IASA cannot support this.

Senator Fulcher said Mr. Homer referred to an unfunded mandate. He asked **Mr. Homer** if he was suggesting that he would be mandated to run an election in March? **Mr. Homer** said in that context it isn't a mandate, but if an election is not run in March, it will be difficult to make his budget work in the process.

Vice Chairman Pearce asked **Mr. Homer** if he had an idea what the school districts spend annually for overrides and bond levy elections in comparison to this? **Mr. Homer** responded that he doesn't know. **Vice Chairman Pearce** asked if this bill will increase or decrease the amount of elections that the school districts run. **Mr. Homer** replied it may not, but IASA was told there would be four dates and that they would be paid for. Now the school districts are responsible for paying for two dates and that is the issue.

Mark Mitton, City Administrator from the city of Burley testified and stated that he likes the objectives of **H201**, but he is in opposition to it because of the funding. This will cost the city of Burley over two hundred percent more to run the same elections that they currently run now. **Mr. Mitton** said when they run their election every other year it is professional with

one polling place, and the results and turnout is average. The city will now have to cut other expenses because the funding of this comes directly out of the distribution of the sales tax. Based on the funding he cannot support this bill.

Lynn Purvis, a concerned citizen, testified in support of **H201**, and stated as a voter she is tired of stealth elections. She is a resident of the Ada County Library District and she never knows when elections are held. Since she has been a registered voter she has never missed a primary or general election, and she has almost never missed a school election. **Ms. Purvis** said that she voted no in the last bond election in Meridian to make a statement. There was virtually no publicity and if it had been run during a general election the public would have been informed. The poll workers told her one hundred sixteen people had voted. The absentee voter process for district voting is a nightmare, the school districts will not fax or mail it, and it has to be notarized at the district office.

Ms. Purvis stated that voters are not informed and with a notification there would be a much better turnout. When she first came to Boise twenty-five years ago, she was the Director of the Public Library. The Ada County District was established several weeks before that with about three hundred votes at a special election. When the tax bills starting arriving the public was outraged. They ran every election in that district which cost time, money, and time away from the service they could provide. A bill was passed and a dissolution election was held. The Library District was saved by a vote of two to one, which was a mandate for library service. The schools are against **H201** and say they cannot function with two election dates. **Ms. Purvis** said she disputes that as a voter and a former director of a public agency.

ADJOURN:

Chairman McKenzie stated there are four others that have signed up to testify and that testimony will be deferred until Friday. **Chairman McKenzie** adjourned the meeting at 9:27 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 20, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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.

GUBERNATORIAL APPOINTMENT: **Larry Crowley** addressed the Committee regarding his appointment to the Idaho Energy Resources Authority (IERA).

Chairman McKenzie asked **Mr. Crowley** if he was one of the original appointees when the Authority was created? **Mr. Crowley** responded that he was, and this is a reappointment.

Mr. Crowley stated that it is a pleasure to serve the State of Idaho. The IERA has established a good relationship with the power administration in the hopes of providing third party financing for transmission projects in the State and other parts of the Northwest. In addition to that, the IERA has developed relationships with developers of power who are also interested in transmission projects between Idaho and Southern Nevada. Small developers have come to the Authority asking for assistance in financing their projects as well. **Mr. Crowley** said with the changes that are coming with more interest and emphasis in renewable projects, the Authority is hopeful that efforts will be expanded and projects developed through the IERA. The IERA is not pleased in terms of getting actual projects completed because it has been difficult with the market issues, but they are encouraged as they look ahead. The IERA will be a viable entity for the development of energy projects both in the public and private sector.

Chairman McKenzie asked **Mr. Crowley** if he foresees the Authority needing additional legislative changes to help facilitate what they are trying to do with transmission and generation projects? **Mr. Crowley** replied that he is not aware of any additional modifications needed for generation or transmission. There is always a chance that something may come up and then the Authority may want to revisit some parts of the

current legislation.

Chairman McKenzie advised **Mr. Crowley** that the Committee will vote on his reappointment at the next meeting.

Jeffrey Bowen spoke to the Committee regarding his appointment to the Bingo-Raffle Advisory Board. **Mr. Bowen** said he is the last original appointee to the Board and he has been on the Board since 1992. The bingo games were closed in Soda Springs this past year which raises money for charitable purposes. The majority of the money that is raised goes right back into the local communities and a major share of that is for scholarships. **Mr. Bowen** stated that the Board meets several times a year and recently they have done more teleconferencing to hold down costs. The current Lottery Director and his staff are doing an excellent job who are very supportive of the Board. **Mr. Bowen** stated that he is very proud of the work that charitable gaming does for the State and the people of Idaho. Even though the operation in Soda Springs is closed, they are doing a raffle to raise money to keep the scholarship program going.

Senator Geddes commented that **Mr. Bowen** is pretty typical of his constituency and he represents a lot of good sense and experience. The Bingo-Raffle games do a lot of good things and he is most impressed by how they work with other organizations in the community to pool the fund to make the contributions more significant. That is the hallmark of what bingo has done in the community of Soda Springs. Whether or not you agree with bingo or not, it does provide some recreation and entertainment for the people who support it. **Mr. Bowen** has done a fine job and he is thankful for his willingness to serve. In addition to that, he owns the only theater in Soda Springs, and every Saturday the kids in the community can go to the movies for free. This is typical of what he has done for the bingo games as well.

H201

Chairman McKenzie said they will continue with the testimony from the last meeting on **H201**.

TESTIMONY:

Jayson Ronk, Vice President of the Idaho Association of Commerce and Industry (IACI), testified in support of **H201**. **Mr. Ronk** stated that IACI has been a long time supporter of this concept. They believe that **H201** has many positive attributes that will increase the predictability of elections, which will ultimately elevate voter participation throughout the State. The more people that participate in democracy the better the system will be and the outcome will be better represented. The current system can be confusing to the general public and often times results in a small minority of the population making decisions for our community, due to the lack of understanding or a lack of understanding of the timing of a vote. **Mr. Ronk** said that **H201** provides a clear framework that will make it easier for the average voter to understand the information and when the election will be held. IACI asks for the support of **H201** as a positive step for the State.

Kent Lauer, who represents the Idaho Farm Bureau testified in support of **H201**. **Mr. Lauer** stated that the Bureau supports election consolidation

and they agree with the other supporters of this measure. It is a voter friendly bill and a good government bill that will increase predictability in elections, and ultimately it will increase voter participation.

Tony Poinelli, from the Idaho Association of Counties (IAC) addressed the Committee regarding **H201**. **Mr. Poinelli** stated that the handout he has provided is an outline of the duties that the county clerks go through when conducting elections. **Representative Lake** did a lot of work to pull everyone together to meet numerous times over the year to work on this. **H201** is the result of that and the changes that were suggested by the county clerks. It is a technically sound piece of legislation. The counties did vote to support the bill and the legislative committee unanimously voted to support **H201**. **Mr. Poinelli** stated on page 54, section 62 outlines what the counties responsibility will be in performing elections. Their responsibility is to administer the elections, but the taxing districts still have the responsibility to hold a public hearing before conducting an election. They order the county to conduct the election after the hearing.

When there are multiple elections, consolidation of noticing and publication will provide savings and help to inform the public. The IAC believes this is in the best interest of the voter which will make elections more efficient and professionally run. There are questions about the costs, and it will cost more to conduct elections because there will be more polling places and staffing requirements for them. They will be handled the same way that primary and general elections are run. **Mr. Poinelli** stated that in the Statement of Purpose regarding voter guides, the counties do not and have not done voter guides, and it is not contemplated in this bill that they will do voter guides. The Secretary of State does voter guides for constitutional amendments during the general election, but it doesn't prohibit the use of voter guides. The funding is distributed by population and the Tax Commission handles that as they distribute the State sales tax. That is based on a provisional census that is done every two years, so it will fluctuate.

Senator Kelly said she is trying to get a handle on optical scan versus paper ballots. Currently most of the taxing districts do their elections with paper ballots. Optical scan costs approximately three times as much per ballot. **Mr. Poinelli** said that cost is for punch cards and paper ballots are definitely less than that. **Senator Kelly** said from a cost perspective how will this work for the taxing districts, because separate ballots will have to be printed. **Mr. Poinelli** responded there aren't any restrictions and the counties will be able to use paper ballots. From a cost standpoint, it may be easier and better for the vast majority of people to use paper ballots. If a precinct had five different taxing districts they might use colored ballots to make it clear what taxing district was up for that election. That way an individual would go through the process at the poll, indicate what entity they were voting for, and then they would be given multiple ballots. That is the only way he can see this using a paper ballot. They could be provided four different colored ballots. **Senator Kelly** asked would the voter that we are trying to make it easier for punch some of the ballots? **Mr. Poinelli** said this would not occur at a primary or general election. If counties are going to use a punch card they would use it all the way

through the process. The optical scan would be used in a taxing district election, but if they are going to use a paper ballot they would use it for all of those actions during the odd years. **Senator Kelly** asked how would this work in the even years. **Mr. Poinelli** replied during the even years you wouldn't have the other taxing district elections. It will be the partisan elections and they will use the machinery that they currently use. Twenty one counties are using optical scan and they will use those during those elections.

Chairman McKenzie said at the last hearing **Norm Semanko** from the Idaho Water Users had signed up to testify in support of **H201**, but he is not here today. **Representative Lake** said he can speak to that. **Mr. Semanko** sent an email to the members of the Committee. The water districts wish to be excluded from this and there is a trailer bill to do that. **Representative Lake** stated that they will support **H201** with a trailer bill. The testimony we have heard has been interesting and there is very little opposition to the content in the bill. The only opposition to this is in the funding. The City of Burley indicated that they can run an election cheaper than the county by utilizing one polling place. The bill before the Committee is about good government. The Superintendent and the school boards oppose the bill because of the costs they may incur for the March and August election dates. If this bill fails, they will have to pay for all elections including the trustee elections. With this bill they have a choice to run their election on a date they will not have to pay for.

Representative Lake stated that this issue has been ongoing for thirty years. It is time, the constituents want this to happen, and they do not want anymore obscure elections. They want everything up front and noticed. **H201** will solve this problem. The effective date of funding is fiscal year 2011, and the effective date for implementation is calendar year 2011. If there are issues with the funding, they are open to amending the bill or to postpone the implementation date until additional funding can be made.

Senator Geddes asked **Representative Lake** if public hearings are a requirement before an election is held with respect to taxing districts, or a bond levy? **Representative Lake** responded no they aren't, but he would like to defer that to the Secretary of State. **Tim Hurst** commented that some do especially on the creation of districts.

MOTION:

Vice Chairman Pearce made the motion to send **H201** to the floor with a **do pass** recommendation. **Senator Geddes** seconded the motion.

Senator Darrington stated that he has seen this for many years and he is one step away from supporting it. He knows what work has been done and this is a movement that is progressing, and the sponsors need to cross that last threshold.

Vice Chairman Pearce stated this is one of the very first bills he heard ten years ago in the House State Affairs. He has read this bill thoroughly and the sponsors should be congratulated for the excellent job they have done.

Senator Thorson commented this bill is superb and it is needed. He has participated in city government and this bill can be of great help. However, he does have heartburn over the costs. To use monies that would diminish interaction between students and teachers and to use money that could better be used elsewhere makes him uncomfortable. **Senator Thorson** said he would like to suggest discussion about the opportunity to delay implementation in some way, so that funding could be used more effectively for other issues. The election process is cumbersome and could be vastly improved. Funding is the issue for him not the bill.

Chairman McKenzie asked if that was a request for discussion and not a substitute motion to hold the bill. **Senator Thorson** responded that he would like to hear discussion from members of the Committee if that is an appropriate suggestion.

Senator Geddes said this is the year that every penny counts. As he looks at this bill, elections will still occur throughout the State. Every community, county, school district, and taxing district will hold elections. This bill will not reduce or expand the costs for elections. In some cases it may shift some of the funding responsibility to the State instead of the local entities. In reality, those same people will have to pay the cost. **Senator Geddes** said elections are the cost of democracy and they need to look at what is necessary to allow people to be better informed and to participate in elections. As elected officials, they should promote every effort for informed voters and participation in elections. The voter turnout in recent elections have been decided by nine percent of the population, which is nine percent of the population that even bothers to register to vote. This effort is probably the best approach that he has seen. **Representative Lake** stated, the cost of democracy is significant and what better way is there for the people to be involved in the process and make voting an informed decision.

Chairman McKenzie requested the Committee Secretary to take a roll call vote on **H201**.

Senator Darrington - Nay
Senator Geddes - Aye
Senator Davis - Nay
Senator Stegner - Nay
Senator Fulcher - Aye
Senator Thorson - Nay
Senator Kelly - Nay
Vice Chairman Pearce - Aye
Chairman McKenzie - Aye

The motion **failed**.

S1143

Senator Geddes presented **S1143** and stated that this legislation is a work in progress. He has looked at some of the Public Utility codes and identified that Idaho is the lowest common denominator that allows the Commission time to investigate, evaluate and determine what the best

approach is for setting rates and tariffs for the utilities. In drafting this, he utilized the assistance of the Attorney General's Office and recently he identified some concerns that developed as a result of combining two antiquated sections of code. Concern has been raised by parties on all sides so at this time he would ask the Committee to support the decision to hold **S1143** in Committee.

MOTION: **Senator Geddes** moved to hold **S1143** in Committee. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

ADJOURN: There was no other business before the committee. **Chairman McKenzie** adjourned the meeting at 8:46 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 23, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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: **Chairman McKenzie** said the confirmation votes on **Scott McLeod, Larry Crowley, and Jeffrey Bowen** are before the Committee.

MOTION: **Senator Davis** moved to approve the appointment of **Scott McLeod** to the Idaho Lottery Commission. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

Senator Kelly made the motion to approve the appointment of **Larry Crowley to the Idaho Energy Resources Authority**. **Senator Thorson** seconded the motion. The motion carried by **voice vote**.

Senator Geddes moved to approve the appointment of **Jeffrey Bowen to the Bingo-Raffle Advisory Board**. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

S1148 **David Hensley**, legal counsel to the Governor's Office presented **S1148**. **Mr. Hensley** stated that an executive summary has been prepared and provided to the Committee detailing the components of the bill. The Task Force has been in place since 2007, and it is comprised of legislators and various representatives from the Idaho State Police (ISP), Idaho Liquor Dispensary (ILD), the Association of Cities and Counties, Idaho Licensed Beverage Association, Idaho Retailers Association, Lodging and Restaurant Association, Beer and Wine Distributors, Wine Commission and the Governor's Office. Over the past two years the Task Force had goals to work towards. First and foremost, the Governor asked the Task Force to identify problems with the current system. In addition to that, he asked them to look at balancing economic development with the Constitutional mandate preserving morality and temperance. The Governor asked them to develop legislation for this session with the

problems identified and to minimize the impact to the existing license holders.

Mr. Hensley stated that the Task Force identified six problems: 1) the existing quota system; 2) the lack of new licenses; 3) the piece meal approach with legislative exemptions for specialty licenses; 4) problems in the administration of licenses; 5) the need for funding for administration and enforcement; and 6) increased accountability and responsibility for those who serve alcohol. **S1148** was developed to address these problems and it will remove the State from issuing new licenses while grandfathering in the existing licenses, the State licenses. **Mr. Hensley** said the cities and counties will issue non transferable liquor-by-the-drink licenses without reference to a State imposed population quota system or legislative exceptions. In accordance with the economic development needs of the community, the character of the community, and providing for local control puts that decision in the hands closer to the people where it belongs. **S1148** will change the way the State licenses liquor-by-the-drink; change the way the State administers liquor licenses; change the way the State pays for law enforcement and administering State liquor licenses; and provide a uniform approach for server training and education. The four main components of **S1148** are licensure, administration and enforcement, server training, and dedicated fees.

Mr. Hensley said currently there are three ways to obtain a liquor license: 1) you can buy one; 2) get on a waiting list; and 3) you can ask the Legislature for an exemption to the population requirement. Those specialty licenses have primarily revolved around licenses in the county for golf courses and ski resorts. With that understanding, the Task Force looked at two things. How can the State structure licensure so that it meets economic demand without infringing on the Constitutional mandate, and preserve morality and temperance. The best way to do that would be to build on existing code, and allow cities and counties to issue liquor-by-the-drink licenses, but they are limited by the population. Under **S1148** those restrictions are removed and a new restriction is replaced. It will allow the cities and counties to issue a license to eating establishments and lodging facilities. Definitions clearly define what an eating establishment and lodging facility is so there won't be a proliferation of bars. These licenses cannot be transferred to another person or location, and in order to have a valid State beer license, it requires a background check by the ISP.

There are currently one thousand one hundred State liquor licenses. Two hundred thirty five of those are specialty licenses. The existing State liquor license holders will receive a discount of ten percent on purchases, which has been increased from five percent. Over the long term, it represents a return on their investment and hopefully minimizes the impact of additional municipal licenses. **Mr. Hensley** said eight hundred seventy licenses can be transferred or sold anywhere in the State where liquor-by-the-drink is allowed. The remaining ones, the specialty licenses cannot be transferred under **S1148**. **Mr. Hensley** stated in order to provide a market for the State licenses by restricting licenses to the eating and lodging facilities, all other licenses will have to be purchased from an

existing licensee to operate in Idaho. These establishments are not eligible for a municipal license and the State will no longer issue a liquor-by-the-drink license.

The last distinction between the municipal and existing licenses is the amount of money a person could anticipate paying annually to renew their license. **S1148** sets forth a renewal fee at \$3,000 in comparison to \$1,500 for the existing State license. The requirements for a municipal license is issued to those who currently have a State beer license. That is important because a background check will still be required. That license provides the State oversight by stating specifically that any suspension of a license causes the suspension of a liquor-by-the-drink license, including a municipal license. If the licensee has a municipal license and the State beer license is revoked, the municipal license will be revoked. **Mr. Hensley** said **S1148** addresses economic development in a responsible fashion that recognizes the character of the community, and it empowers the cities and counties to make that decision. The Legislature is removed from the awkward position of having to issue exemptions to the law, and it does away with the profiteering that is involved in the quota system.

The administration and enforcement of State licenses is currently housed at the ISP. One concern the Governor had was the fundamental fairness of that system. The Task Force believes it is best to bifurcate them and **S1148** will preserve the authority of the ISP as it relates to enforcing liquor laws in the State. **Mr. Hensley** said it also establishes a new division within self governing agencies that will be responsible for administering and renewing licenses, and conducting the process associated with violations, which will be separate from the enforcement arm of the State. This new division will promulgate rules pursuant to the Administrative Procedures Act (APA). Most of the changes in **S1148** provides consistency for all of the licenses

Mr. Hensley said currently server training has no uniform approach or requirement for the people who serve alcohol to patrons in establishments. The Governor stressed that they need to be responsible and accountable. One way to do that is to require training of servers who serve alcohol on the premises. It is important for them to have the education and training to recognize not only underage patrons, but patrons who may be over intoxicated. **S1148** sets out that anyone who is a server or oversees anyone who serves alcohol, has to be trained under an approved training program. Programs are available on line or a class can be obtained in person from a certified trainer. Training is mandatory for on premise servers and there is a penalty for those who fail to receive training. If servers are trained and there is a violation, a warning will be issued for the first and second offense for a period of three years. After that they face a fine and administrative action. If servers are not trained, the license holder is immediately fined and administrative action proceeds. The training of clerks who sell alcohol at a convenience store is not required but encouraged, and the licensee receives the same benefit of a warning for the first two violations.

Senator Geddes asked **Mr. Hensley** if this bill is passed will there be a

need for the Legislature to approve and allow some entity to receive a liquor license? **Mr. Hensley** responded he cannot say never. As the previously law has shown, there is always someone who will ask for an exemption. **S1148** provides the Legislature and the Governor with an answer. If it can't be issued by the city or the county, they should go into the market place and buy one. **Mr. Hensley** said they want to adhere to the Constitutional mandate of morality and temperance and prevent the proliferation of bars.

Vice Chairman Pearce asked **Mr. Hensley** to explain the discount on liquor bought by the State licenses? **Mr. Hensley** replied the discount applies to the license and lasts for the life time of the license. **Vice Chairman Pearce** asked what will this cost the State in terms of liquor revenue. **Mr. Hensley** said in order to explain that it is important to explain how revenue flows through the ILD. There is direct purchase from consumers, the non-discount purchases. The non-discount purchases will include anyone who holds a municipal license. All licensees pursuant to the law have to purchase from the ILD. Within that group there are really two groups. In comparison, those discount purchases are decreasing based on the economy. People are not frequenting bars and going to the State Liquor Stores to purchase alcohol. This reflects an increase in total sales of the non-discount purchases. The ILD projected almost eight million dollars more between fiscal year (FY) 2008 and 2009 in terms of total sales. If the discount purchases decline and the non-discount purchases increase, there will be a balance and possibly an increase in the total sales.

Vice Chairman Pearce said in reality when this goes into effect in 2010, what will it cost the State in terms of loss of sales? **Mr. Hensley** responded currently the trend they are seeing is an increase in revenue from sales. That increase will more than cover any potential cost associated with the discount. Normally the cost could be calculated at \$600,000 to 1.6 million dollars. They are seeing more than eight million dollars in total sales, which will more than cover that. **Vice Chairman Pearce** asked if those sales drops, then what will it cost the State? **Mr. Hensley** said it is important to remember that we have not included the revenue that will be generated from the municipal license, and the discount that is taken at the register shouldn't impact the general fund.

Vice Chairman Pearce said the PTA is not happy with the reduced penalties to minors who consume alcohol. He asked **Mr. Hensley** to speak to that. **Mr. Hensley** responded Title 23 deals with alcoholic beverages and Chapter 9 deals with liquor-by-the-drink. There are similar provisions in Chapter 6 for the penal provisions. What the Task Force tried to do in **S1148** was to consolidate the criminal acts that apply to minors in Chapter 6. There are amendments to Chapter 6 that address much of the same language. It is still illegal for a minor to consume alcohol or to be served alcohol. Those criminal penalties associated with that have not been lessened, it was only moved to another section.

Senator Kelly asked if there is a mechanism to measure what the ten percent discount will cost the State? **Mr. Hensley** said the ILD keeps

track of that now and will do so in the future.

TESTIMONY:

Brian Donesley, an attorney and former State Senator, testified in opposition to **S1148**. **Mr. Donesley** provided a detailed summary and analysis of **S1148** including a fiscal analysis to the Committee. **Mr. Donesley** stated he believes there is a Constitutional problem with the bill. The system does not need a major overhaul and this bill will create more problems than it will fix. The Constitution states we have to regulate, and encourage temperance, sobriety, morality and family. In 1935, the Idaho Legislature by statute enacted a liquor commissioner to make decisions, to regulate and to rule. Reasonable qualifications have been established, but **Mr. Hensley** tells us this is an economic development bill. State regulation mandates and delivers the fairness, equity, and the protection to the people of the State through our Constitution and statutes. **Mr. Donesley** said the fiscal impact only addresses the general fund. There will be lost revenue, the ILD confirmed that to him, and the mitigated cost to the taxpayer will be from increased sales. Now the State is in the business of promoting liquor sales to substitute for lost revenue due to the enhancement of the availability of liquor licenses.

Senator Davis said he is struggling with the property rights issue that he raised in his analysis. He asked **Mr. Donesley** if he believes that the ownership of a liquor license constitutes a property right in the State of Idaho? **Mr. Donesley** responded the right to do one's business is a property interest under the U.S. Constitution and the State. There are U.S. Supreme Court cases that address licensing. The Idaho cases are unclear so he cannot say for certain that it is a property right. **Senator Davis** asked if there was a notice of appeal filed in the Clearwater case? **Mr. Donesley** said he believed that there was. **Senator Davis** asked if the notice was filed by the business owner. **Mr. Donesley** said he believes that it was filed by the non-prevailing party, and it will proceed to the Appeals Court.

Bill Nary, City Attorney for the City of Meridian, stated that he also represented the Association of Cities on the Task Force. **Mr. Nary** said the number one thing is the issue of rights. Most opponents believe there are property rights that exist in a future sale of a commodity in a process that can be changed annually. There really aren't property rights to a system that can be changed through specialty licenses, and there is no guarantee that the licenses has some property value. **Mr. Nary** stated that the cities and counties will not have a free for all over this. **S1148** will not change the process that is in place, and the same requirements are still there in order for a liquor license to be issued. The cities and the counties support this legislation and the opportunity for cities to have a competitive economic opportunity that does not exist today.

Wesley Harris, a resident of Star, Idaho, testified in opposition of **S1148**. **Mr. Harris** says he does not support this bill because he doesn't believe there is a need for it. The bill that is being proposed is a way of increasing the amount of licenses as there is an assumed shortage. It is also promoted as an economic stimulus program that will increase the

sale of alcohol and encourage new businesses to open. There are many liquor licenses for sale in the State. **Mr. Harris** said the real purpose of this bill is to reduce the price of a liquor license and make them available to almost every restaurant in the State. The proliferation of licenses will increase the amount of bars from four to five hundred percent. The goal of this bill is to increase the sale of alcohol and encourage more bars and restaurants. In states where the quota system was abolished there was an increase in alcohol related incidents such as DUI, underage drinking, alcohol related accidents, and death. **Mr. Harris** asked the Committee not to support the bill as it will be detrimental to business and the safety of the people of Idaho.

Dan Chadwick, Executive Director for the Idaho Association of Counties (IAC), testified in support of **S1148**. **Mr. Chadwick** stated the Association was an active participant on the Task Force. There was representation from all aspects of the industry. **Mr. Settles** the owner of the Bardenay made it clear as to what he had at risk by participating. It wasn't easy at times but they have an excellent bill that the cities and counties can support. **S1148** provides a tool for the local entities to manage within their own jurisdiction. The potential for economic development is there, and at the same time it allows for control. The regulation of liquor sales is ripe for a clarification and cleanup.

Jan Sylvester, who represents the Idaho PTA, stated that there are parts they support and some they do not. **Ms. Sylvester** said there are negative effects of alcohol on minors. The PTA supports increasing the penalties for those who provide alcohol to minors. **S1148** appears to be going in the opposite direction. The new section on violations will actually be less stringent if this bill passes.

Ron Swearingen, Director of Economic Development for the City of Mountain Home, testified in support of **S1148**. **Mr. Swearingen** stated that he believes the bill will encourage economic development and investments and create new jobs. There are fifteen liquor licenses in Mountain Home and only three are affiliated with restaurants, one of which is located on the golf course. This proposed legislation provides a vehicle for economic development and also gives some value protection to State license holders. Those State licenses carry lower annual renewal fees, they may be sold and transferred, and the owners get a substantial discount at the ILD.

Phil Roderick, a concerned citizen from Moscow, testified in opposition to the bill. **Mr. Roderick** stated liquor sales are down in the State. Adding more liquor licenses will dilute the market and cause more bankruptcies. There is a glut of licenses available in the marketplace. **Mr. Roderick** said he bought a liquor license and a building so that he could build a business. He has invested his life savings, it is his retirement plan, and this bill will take that away.

Richard Riggs, a concerned citizen, testified in support of **S1148**. **Mr. Riggs** said his son is an alcohol trainer in Washington state. Being responsible and taking preventative measures is an important part of this

bill. Server training is a preventative measure that takes place before any real problem starts.

Susan Jenkins, testified in opposition to **S1148**. **Ms. Jenkins** stated that she is from Emmett and she is a retired school teacher who holds a liquor license. She and her husband have taken their life savings to buy and refurbish an old historic building. They have a wonderful establishment. There is nothing in the bill that she agrees with other than the educational side of it. She urged the Committee to vote no on **S1148**.

Vice Chairman Pearce asked if the five percent discount will provide some compensation to her? **Ms. Jenkins** replied she is not interested in that and it won't make a difference.

Jerry Russell, Director of the ISP, stated that he stands before the Committee in support of **S1148**. **Colonel Russell** said he served on the Task Force and there was an opportunity for all the parties involved to come together with a product that serves the best interest of everyone. The law enforcement function and administration is something that he believes in. It will only help to improve the manner in which this is dealt with. **Colonel Russell** said the provision for a dedicated funding source for the ISP will provide better law enforcement services with regard to alcohol beverage control.

Larry Jenkins, a business owner from Emmett, testified in opposition to the bill. **Mr. Jenkins** said his wife testified earlier and he would like to add a few comments. This bill will not help small businesses like theirs. They do train their servers and deal with it everyday.

Hadley Rush, who represents the Boise Metro Chamber of Commerce, said that she has provided a letter to the Committee which details their position on **S1148**. The members of the Boise Chamber support this bill.

Larry Hansen, the owner of Cowgirls, testified in opposition to **S1148**. **Mr. Hansen** stated that his written testimony details his feelings on this matter. He is opposed to the bill in its current form even though it has many provisions that will fix a lot of problems. The biggest problem is that it is detrimental to the existing license holders. He manages two family licenses and a property with seven other licenses in the State. Most of them are having difficulties just to operate. The five percent discount will take approximately thirty to forty years to recuperate the value that some have paid for their license.

Butch Morrison, who owns The Crescent "No Lawyers" Bar and Grill in Boise, stated that he and his wife bought their license from her father. He is also the President of the Idaho Licensed Beverage Association (ILBA). **Mr. Morrison** said he has about fifty employees and they are owner operators. The ILBA consists of two hundred fifty members and they endorse **S1148**. Not everything is perfect in the bill, but in general they support it.

Pug Ostling, owner of Noodles Restaurant, testified in opposition to

S1148. Mr. Ostling stated that he has been in the business since 1971. He has created twelve different restaurants and has employed between eight to nine thousand people over the years. He would never take the risk of not training his employees. Personally he is at the tail end of his career and has closed several of his restaurants. **Mr. Ostling** said he would like to hang on to his liquor license which is the last of his assets.

Pam Eaton, President of the Idaho Retailers Association (IRA) and the Idaho Lodging and Restaurant Association (ILRA), stated that both groups support **S1148**. **Ms. Eaton** said before the Task Force was even formed there were several groups that wanted this worked on. There is no perfect solution to this issue. **S1148** is a good bill and the majority of the members are independent license holders.

Senator Kelly asked what is the public policy reason for requiring a server to have mandatory training versus those who work at a convenience store? **Ms. Eaton** said the reason is that the training programs that exist today focus on liquor-by-the-drink. The training for off premises is few and far between. All major chains and grocery stores in Idaho already have their own training programs. The IRA encourages the independent stores to provide training to their clerks. **Senator Kelly** asked how old does a clerk have to be in order to sell alcohol? **Ms. Eaton** responded nineteen. **Senator Kelly** asked if an unsupervised nineteen year old can sell beer at a convenience store? **Ms. Eaton** replied that is not totally accurate. Clerks under twenty one have to have supervision and someone to okay the sale.

Kevin Settles, owner of the Bardenay Restaurant and Distillery, testified in support of **S1148**. **Mr. Settles** said he was on the Task Force and he has been involved at least five years with this legislation. The current regulations in the State are a horrible way to do business. Five years ago he would agree that it is a personal property right, but the State of Oregon overturned the quota system in late 1980. They did not pay anything to the owners who refused to cooperate. The quota system will go away someday, and he just wants to do the best that he can for himself and the industry. Taking the license out from under the control of the State will allow it to be treated like a business, and the ISP can focus on enforcement. **S1148** provides some protection to him. The five percent discount provides some incentive and over time there is a chance the value of the license will increase. **Mr. Settles** said he likes that it will discourage third party profiteering. He has a problem with someone getting in the middle of his transaction with the State and his right to sell liquor. That is between him and the licensing agency, not some guy who was smart enough to get on the list years ago. Finally, he is a huge proponent of the server training and he has been doing it for years at the Bardenay. The training programs are easy, inexpensive and readily available. This will ensure that the person who serves a minor is brought into the game and held accountable. Currently the server is not liable for serving a minor, but as the license holder, he has to pay the penalty. **Mr. Settles** urged the Committee to vote yes on **S1148**.

Senator Kelly asked **Mr. Settles** to comment on the municipal license

provision and why he would not qualify for one. **Mr. Settles** replied under this proposal, food must be served at all times if you are serving alcohol. The kitchen is generally shut down two hours before the bar is closed. Staffing the kitchen is labor intensive, so with the added cost for alcohol it would not be worthwhile for him to sell his license.

Vice Chairman Pearce asked **Mr. Settles** if he has any plans for expansion? **Mr. Settles** said at this point in time he does not. If he did it might be outside of Idaho. **Vice Chairman Pearce** said it seems to him that the smaller businesses are opposing this and the more up and coming are not. He asked **Mr. Settles** to speak to that. **Mr. Settles** said the difference that he sees is that maybe they haven't been as close to this issue. The current regulations are so bad they will get overturned. There are too many licenses in the City of Boise and the communities that are growing rapidly do not have enough. The quota limitation does not allow for cities to catch up with their population growth. Getting on the waiting list for a license is not the way to start a business. **Mr. Settles** said he understands their concerns, but this issue will not go away, and they should take advantage of the discount that is being offered by the State and move forward. His liquor licenses are his biggest asset and he is still paying for one license on a leased purchase option, which will not change after this bill is passed. **Mr. Settles** stated that he would not be here if he didn't believe that it was the best option.

Cathy Staneart, a concerned citizen, testified in opposition to the bill. **Ms. Staneart** stated that she is a small business owner in Idaho City. She has been in business for seven years and this bill will affect the small business owners.

Mr. Hensley said there are three issues that he would like to touch on that were brought up during the testimony. First, in 2003 the Idaho Supreme Court upheld in *BHA Investments v. State of Idaho* that an Idaho liquor license is not a right of property. It is not a property in any constitutional sense, and that a liquor license is simply the grant or permission under governmental authority to the licensee to engage in the business of selling liquor. Such a license is a temporary permit to do that which otherwise would be unlawful, it is a privilege rather than a natural right, and it is personal to the licensee. It is neither a right or property, nor a contract or a contractual right. The Court further stated that there may be a property right between an individual and others, but not between the State and the licensee.

Second, the notion of "obviously intoxicated" was mentioned. **Mr. Hensley** stated that the Task Force drew its information from a Magistrate Court opinion in Ada county that looked at the terms "apparently and obviously intoxicated." That decision was issued in February 2009. **Mr. Hensley** stated that given the every day meaning of obviously and intoxicated, the statute is clear and provides an understanding that if you are obviously intoxicated, you are manifesting signs that you are drunk or under the influence of alcohol. They tried to change the law and remove the words "apparently" so that it was clear to the ISP and from a licensee's perspective. Finally, the fees will not

necessarily increase. The \$1,500 reference was an estimate. The executive summary on page 2 talks about the fees. Fees have not been reversed based on population. It was increased by twenty to twenty five percent to cover the administration and law enforcement.

Senator Fulcher asked what happens to the individuals who are on the waiting list for a license and the fees that they paid? **Mr. Hensley** replied there are currently five hundred eighty four on the list. The ISP has an account holding those fees and the intent is to refund those funds to those individuals.

Senator Kelly said the language on page 8, line 35, and on page 9, line 6 addresses the training for "all employees," not servers. She asked **Mr. Hensley** to speak to that. **Mr. Hensley** responded the language on page 43, line 38, states any person employed as a server must complete an approved alcohol training program. Likewise, clerk is defined, so the people who are targeted pursuant to this provision must have the necessary training. This is to ensure that those who are serving alcohol are doing so responsibly and within the law. **Senator Kelly** said the term "all employees" seems confusing to her. **Senator Kelly** asked if a lodging facility would have to serve food to qualify for the municipality license? **Mr. Hensley** replied the eating establishment definition is for a bonafide restaurant. The requirements for a lodging facility is based on people staying the night and have rooms that are available. People staying at a facility and going to their room should not be a problem. **Senator Kelly** asked if a city or county could issue a license to those facilities if they had a bar? **Mr. Hensley** answered "yes." She asked if it would include a breakfast facility. **Mr. Hensley** replied the definition on page 11 defines it as a facility with overnight accommodations to the public. If a bed and breakfast facility has beds, they could do that.

Senator Fulcher asked how many licenses currently exist that were issued by an exemption? **Mr. Hensley** answered there are two hundred thirty five licenses that have been issued pursuant to an exception by the Legislature. Not all of those came to the Legislature because they qualified under an exception that was issued by the Legislature.

Senator Stegner said it seems unlikely that a bed and breakfast would apply for a license, but if they wanted to, could they? **Mr. Hensley** replied that is correct and they would also have to have a State beer license.

Senator Kelly asked if the language on page 7, lines 31 through 36, include restaurants. **Mr. Hensley** said those sections were formerly housed in section 23-943. They were imported into this section to provide clarity and consolidation for criminal penalties. Within restaurants there are often areas that are considered a bar and it is illegal for minors to enter those areas. There are exceptions that are in sub set 3. On page 8, lines 1 through 6, provides that a minor cannot enter, remain or loiter in or about any place. That is defined as a room of any premise licensed for the sale of liquor-by-the-drink exception.

MOTION:

Senator Stegner made the motion to send **S1148** to the floor with a **do**

pass recommendation. **Senator Thorson** seconded the motion.

Senator Stegner stated as the maker of the motion he has been concerned with this particular issue for some time. He applauds the committee and their efforts to try and resolve this. It is a well balanced plan and well thought out for the improvement of State policy.

Chairman McKenzie said in the interest of disclosure, he had represented a party who applied for a license and was denied. It was appealed and it has been resolved. He served on the Task Force for the last couple of years that helped put this together. He commends everyone who worked on this.

Chairman McKenzie requested a roll call.

Senator Darrington - Aye
Senator Geddes - Aye
Senator Davis - Nay
Senator Stegner - Aye
Senator Fulcher - Aye
Senator Thorson - Aye
Senator Kelly - Nay
Vice Chairman Pearce - Nay
Chairman McKenzie - Aye

The motion **carried**.

ADJOURN:

There was no other business before the Committee. **Chairman McKenzie** adjourned the meeting at 10:43 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

- DATE:** March 25, 2009
- TIME:** 8:00 a.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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** said there are two gubernatorial appointments today that will be heard via telephone. Before those hearings the Committee will approve the minutes.
- MOTION:** **Senator Thorson** said that he reviewed the minutes of March 9, 2009 and he moved to approve them. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote**.
- GUBERNATORIAL APPOINTMENT:** **Carla Campo** telephoned the Committee regarding her appointment to the Bingo-Raffle Advisory Board. **Ms. Campo** said that she is married with two children. They own an oil company and operate two convenience stores. She has worked with the Idaho Lottery for eighteen years. **Ms. Campo** stated that **Jeff Anderson** and his staff are the best that she has worked with. The Lottery is fair and they care about the rules and regulations of the games. This year she was appointed president of the Board, she has some great ideas and learning how the government works. **Ms. Campo** said her total volunteer hours for 2008 to her church and community amount to nine hundred fifty hours.
- Chairman McKenzie** asked **Ms. Campo** if she operates the Corpus Christi Bingo? **Ms. Campo** responded yes. They have bingo once a week and the money that they earn goes towards the building fund, and to numerous community organizations. They operate a food bank, a temporary shelter, they pay for utility bills, infant care, and prescriptions for those in need. Bingo is a fun community gathering where people become friends.
- Senator Kelly** asked **Ms. Campo** why couldn't she be here today? **Ms. Campo** responded that her company was involved in an audit for the past two to three weeks, and last Friday she ended up in the hospital with a

gall bladder attack. She is at home now for two weeks.

Chairman McKenzie stated they appreciate her service and the typical practice of the Committee is to vote on her appointment at the next meeting on Friday.

MOTION: **Senator Thorson** said he had read the minutes of March 11 and moved to approve them. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Pearce moved to approve the minutes of March 16. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

RS18856 **Pam Eaton**, President of the Idaho Retailers Association and the Idaho Lodging & Restaurant Association, presented **RS18856** to the Committee. **Ms. Eaton** said that **Senator McGee** asked her to present the RS to the Committee. These three industries in Idaho represent about one third of the work force and approximately sixty percent of the general budget through the collection of sales and excise taxes, along with payroll and corporate income taxes that they pay.

Ms. Eaton stated that the Senate Joint Memorial urges the Congressional Delegation to vote no on the passage of the misleading named Employee Free Choice Act (EFCA), or more commonly known as the Card Check Act. This is the number one issue at the Federal level this year. Idaho retailers and restaurateurs are spending a great deal of time and effort to relay the dangers of this Act. This bill will create burdens and costs on job creators, invite intimidation and coercion in the work place, devastate small businesses and result in the loss of jobs. America's highest priority is job retention and the survival and growth of our small businesses, which create the most jobs in our country.

Ms. Eaton said EFCA will dramatically change U.S. Labor Law. Today employees are entitled to a private ballot election when deciding whether or not to join a union. The elections are overseen by the National Labor Relations Board which has numerous procedures in place to ensure fair elections. If Congress passes EFCA, employees will lose their right to private ballot elections. The bill will establish a so called "card check" union organizing system, in which the majority of employees simply sign a card in favor of union representation. The measure would also require a government mandated arbitrator to force a contract if the employer and the union cannot reach an agreement within twenty days. The three main reasons to oppose EFCA are: 1) the card check process increases the risk of coercion; 2) private ballots are a basic American right; and 3) the employees decision to join a union should be made private.

Ms. Eaton stated that this issue is important to the people in Idaho, the Legislature, and that it is important to the businesses who operate in Idaho. This Memorial should be sent through the legislative process and then on to our Congressional Delegation as quickly as possible. Other groups and associations in Idaho oppose EFCA and urge the support of this Memorial. Twenty one other states have introduced similar

resolutions or memorials across the nation asking Congress to vote no on this Act.

Senator Kelly asked if there is a similar Memorial in the House? **Ms. Eaton** responded that it was just introduced in the House, but **Senator McGee** had already drafted this RS and wanted to go forward with it.

MOTION:

Vice Chairman Pearce moved to print **RS18856**. **Senator Fulcher** seconded the motion.

Senator Kelly asked if the intent of the motion is to print the RS and then send it to the floor. **Chairman McKenzie** said he believes that would be the effect of it. **Senator Darrington** commented that any motion to print a Memorial automatically goes to the floor, unless the Chairman requests that it be referred back to the Committee. **Senator Kelly** said that she is opposed to the motion. When our economy is in the shape that it is, they should be doing whatever is necessary to help labor and the workers.

Senator Davis said that he didn't believe he would quote with approval the words of **George McGovern**. But he has to and **George McGovern** is a strong opponent of EFCA. **Senator Davis** read that quote to the Committee. "To my friends supporting EFCA I say this, we cannot be a party that strips away working Americans of the right to a secret ballot election." **Senator Davis** stated that **George McGovern** got it right this time.

Senator Kelly requested a roll call vote be taken on the motion.

Senator Darrington - Aye
Senator Geddes - Aye
Senator Davis - Aye
Senator Stegner - Aye
Senator Fulcher - Aye
Senator Thorson - Nay
Senator Kelly - Nay
Vice Chairman Pearce - Aye
Chairman McKenzie - Aye

The motion **carried**.

HJM3

Representative Hagedorn presented **HJM3** to the Committee and stated that **HJM3** is a House Joint Memorial that deals with our Second Amendment Rights of the Constitution of the United States. Article 1, Section 11 of the Idaho Constitution states that no law shall impose licensure, registration or special taxation on the ownership or possession of firearms or ammunition. **Representative Hagedorn** said that guns and ammunition are tools of use and sport that are enjoyed by the citizens of Idaho. Those tools are and have been under attack in Washington for the past few years and currently there was a Supreme Court case that was decided. That case is District of *Columbia v. Heller* which clearly decided that the people of the United States have the right to bear arms and keep weapons for individual use and protection. Since that time there have been a number of bills introduced. **HR45** has several requirements that

the Idaho Constitution is against. There has also been attempts to bring back the Federal gun ban, the Brady Bill, which will be reintroduced.

Representative Hagedorn said the White House supports making the expired Federal Assault Weapons Ban permanent. The NRA worked with Democrat leaders in the House and sixty five of them sent a letter to the Attorney General asking them to back off on the Federal gun ban. The public wants to know why a Memorial is needed when they have Second Amendment Rights. It has become apparent that there are things happening in Washington that we didn't expect. There are bills before Congress that concern our citizens and that is why this Memorial is necessary. Idahoans do not want the Federal government mucking with the laws anymore than they have.

MOTION: **Senator Darrington** made the motion to send **HJM3** to the floor with a **do pass** recommendation. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote**.

H194 **Representative Gibbs** presented **H194** to the Committee. **H194** will enhance the opportunity for people to start or maintain shooting ranges, including cities. **Representative Gibbs** stated that since the bill passed in the House some concerns have been raised. The Attorney General's Office offered an opinion on the Worker's Compensation issue for public employees. The issues have been worked on and **Senator Pearce** has a new RS. Through the work of the National Rifle Association (NRA) and **Senator Pearce**, **H194** is now a better bill.

Senator Kelly asked if the RS is on the agenda? **Senator Darrington** commented that it is a suggested amendment that will go to the fourteenth order. **Vice Chairman Pearce** added that the amendment is the RS and that **Matt Dogali** from the NRA will explain.

Matt Dogali, who represents the NRA, stated that the original intent of this legislation was to provide a safe place for the public to shoot. There was resistance, so the purpose of the amendment is to ensure that no particular group is being attacked. If someone were to volunteer as a range officer they would be given protection in the event of an accident that was outside of their control. That is the intent of **H194**. Accidents at ranges do happen and there are situations where the range officer should be protected from a lawsuit. The amendment is to ensure that Worker's Compensation issues are not affected and the integrity of the original legislation is actually stronger. Anyone involved in shooting sports are protected from suit, but they will be subject to gross negligence, which is raising the standard.

Senator Kelly said the definition of volunteer range officers seems broad to her. **Mr. Dogali** answered the bill defines them as an NRA certified instructor, a member of the U.S. Practical Shooting Alliance or any other licensed trained organization like the State police. If a State police officer is a licensed instructor and they volunteer they have to meet the minimum standard set by the organization, if not they would be subject to suit. This is the amendment that the Idaho Trial Lawyer Association (ITLA) wanted

in the bill. **Senator Kelly** asked if the original bill that applied to owners and operators of a sport shooting range, will it still apply to them with the amendment? **Mr. Dogali** replied the standard of care has been adjusted dependent upon their operation. In the previous version, the range officer that is on duty at the time was on the same standard of care as everyone else, it was raised to gross negligence. At the request of the ITLA the standard of care was adjusted dependent upon what the range officer is currently doing on the range. If the range officer is monitoring the range the standard of care has changed. A range officer who is a shooting participant or not monitoring the range would be protected under the gross negligence.

Senator Geddes said it seems that the new language takes away the effort to protect the volunteer. A sport shooting official will have to be a certified instructor. He asked **Mr. Dogali** if that is correct? **Mr. Dogali** said yes according to many different levels of certification. There are many other quality organizations throughout the United States, not just the NRA. That is why the State police, NRA, Practical Shooting Organizations, and the International Sport Shooting are included. These organizations all use the minimum standard set by their organizations. **Senator Geddes** asked if it covers a boy scout merit badge counselor who is instructing scouts to shoot a rifle. **Mr. Dogali** replied that he is not familiar with their training protocol, but they must have some level of certification in order to instruct a child with a firearm. If that instructor is certified then they would be covered under any other nationally recognized organization that does certify. The NRA would never authorize someone to take minors out with a firearm unless they were properly trained.

TESTIMONY:

Sharon Kiefer, Assistant Director of the Idaho Department of Fish and Game stated that she is here to testify on **H194**, and that they were unaware that the bill was being amended. **Ms. Kiefer** said that hunting and sport shooting safety is an integral message of the Department for youth and experienced hunters. **H194** creates a limitation of liability for shooting activities at sport shooting ranges, providing immunity for any injury, including death, to a participant engaged in sport shooting. The Department understands that this bill is specific to those participating in sport shooting at the range. This does not expand immunity in the circumstance of nonparticipants, who may be off-site and encounter an injury due to sport shooting activity at a range. Shooting ranges are important to the Department. They own, operate and sponsor ranges by providing financial grants. Their employees and volunteers serve as both operators and instructors at shooting ranges.

Ms. Keifer stated that the Department finds lines 41-42 of page 2, have relevance to the Department by defining the exception to a governmental liability. Although they do have certain immunity protections under the State Tort Claims Act, **H194** would expand immunity for claims arising out of the operation of a sport shooting range, because sport shooting activities are not specifically mentioned in the Tort Claims Act. Fish and Game supports the bill for the additional protections provided for shooting activity at sport shooting ranges.

Senator Geddes asked **Ms. Kiefer** if the volunteers that provide training to those who go through the young hunters safety course, are certified under one of the provisions in the amendment? **Ms. Kiefer** answered that the instructors that actually lead the class and have the responsibility on range day, are hunter education certified. However, the Department does have volunteers who assist at the range and she would have to look into whether or not they are certified. The Department has assistants that are post trained, but whether or not they have a hunter education certification she is not sure if the immunity would apply to them under the proposed amendment.

Paul Jagosh, who represents the Idaho Fraternal Order of Police (FOP) stated that being proficient with a firearm is a perishable skill that needs continuous training to remain proficient. The importance of accurate shot placement is paramount and can only be obtained through consistent training. **Mr. Jagosh** said that being involved in a shooting is one of the most stressful situations a person can go through. It wreaks havoc on your physical ability to shoot accurately. Your heart rate explodes, you have tunnel vision which limits your ability to see clearly, and hand eye coordination is negatively affected. One of the best ways to relieve these physical impairments is through consistent training. Many officers use shooting ranges to supplement their training and sometimes their range is not available for the tactical training that is needed. Several law enforcement agencies loan or rent their ranges to law enforcement groups. **H194** protects police officers and departments from unnecessary liabilities, which in turn provides more training opportunities for them. Some officers often volunteer their time to assist citizens with responsible gun ownership and training. It is becoming more and more difficult to find officers who are willing to do this because of the liability. These training opportunities ensure that the officers are well trained to handle life and death situations, which in turn ensures a safer community for all. The FOP is satisfied with the amendment regarding Worker's Compensation and they support H194.

Chairman McKenzie asked **Mr. Jagosh** what was the Worker's Compensation issue? **Mr. Jagosh** replied in the original bill if a police officer is working at a range and an accident happened, there was a possibility they would not be covered. With the language change in the amendment they would indeed be covered by Worker's Compensation should an accident happen.

Senator Geddes asked **Representative Gibbs** if the amendment goes far enough or too far as to who is covered under the volunteer status? **Representative Gibbs** responded he has shooting ranges on his property and it is not the reason why this was brought forward. His range is mostly used by boy scouts for merit badges and hunter training classes. In his mind they do meet the certification requirement, but volunteers need to have the protection that is being offered in this bill.

Senator Geddes asked **Vice Chairman Pearce** if it is practical to extend that volunteer provision to someone who is working under a certified instructor? **Vice Chairman Pearce** responded he believes that as long

as there is a certified instructor there, that the immunity would also be passed onto them. **Mr. Dogali** added that if they were participating in the shooting event, they would be protected. If they are assisting the instructor that may be questionable, but he is not an attorney so this is just his interpretation. Someone who is certified under a hunter training course would be qualified as an instructor. If that instructor has an assistant it would depend on what capacity they are assisting in. The NRA supports parents who take their children out shooting. Their issue is where will the immunity lie.

Senator Kelly said that there has been a lot of discussion about the volunteers, but the bill is clearly more broad than that. **Representative Gibbs** said this bill is trying to enhance shooting range development and safe places to shoot. It needs to be broad to cover people who have ranges for profit, for unattended ranges, and to promote safe shooting. When there is a certified event there is always a range master who directs everything on the range. **Senator Kelly** asked if there are for profit shooting ranges in Idaho? **Representative Gibbs** said there are. **Senator Kelly** asked if there is appropriate insurance required for protecting the patrons of that business against problems that may occur? **Representative Gibbs** replied that he believes they are required to have insurance. **Senator Kelly** asked if any actions have been filed by anyone that we need immunity against? **Representative Gibbs** said he doesn't know the answer to that.

Senator Davis asked if the same standard of care and immunity protection will be the same for a profit as a not for profit business. **Representative Gibbs** answered that is a legal question that he is not qualified to answer. **Senator Davis** said he believes they are the same and that is the reason that for the first time both the NRA and ITLA are in agreement.

MOTION: **Senator Davis** moved to send **H194** to the floor with a recommendation that it go to the **fourteenth order** for possible amendment. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

S1145 **Michael Kane**, who represents the Idaho Sheriff's Association, presented **S1145** to the Committee. **Mr. Kane** stated that this is a sheriff's bill which deals with disclosure.

Senator Davis said this is a pretty straightforward bill. It appears that the intent is to exempt from disclosure the application and information contained on it for a concealed weapon permit. He is having a hard time understanding why a non police officer should be entitled to this protection. The way it is written it could apply to everyone who has a concealed weapon permit or an application. **Mr. Kane** responded the way the law currently reads the exemption is for police officers and sheriffs. This language will exempt it for retired law enforcement officers. That is the reason for the bill. **Senator Davis** asked if that language is on page 1, line 12? **Mr. Kane** replied that it is.

Senator Darrington asked if retired officers retain their post certification

through retirement? **Mr. Kane** said yes they do. There is also a national data base for retired peace officers who can carry their concealed weapons in other states and this will make that happen.

MOTION: **Senator Darrington** made the motion to send **S1145** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion. The motion carried by voice vote.

RS18662
RS18675 **Senator Fulcher** said that **Dave Radford** is not here but he can speak to **RS18662** and **RS18675**. These bills come primarily from the county commissioners. **RS18662** deals with minimum automobile insurance requirements. This legislation was passed last year and vetoed by the Governor. **Senator Fulcher** said that **RS18675** deals with truth in advertising for insurance. Both these issues are pretty significant. There has been discussion between some of the stakeholders and the Governor's Office. The Governor's Office has indicated a willingness to engage in further dialogue once there are printed bills available. The intent is to print the RS's with no commitment to hear them this year. **Senator Fulcher** stated that he spoke with the Chairman of the Commerce Committee. He is aware of what we are doing and he is in agreement.

Senator Davis said it is the usual practice that if an RS should come to a privileged Committee after the cut off date, it should be with the unanimous consent of that committee. The reason we are deviating from that this time is because of the intent to only print them, so they can serve as discussion between now and the next time the Legislature meets. There will not be any effort to advance them so as a courtesy we are going to print them. His only worry is that the Chairman of Commerce may not be part of that commitment.

MOTION: **Senator Fulcher** moved to print **RS18662** and **RS18675**. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote**.

ADJOURN: There being no further business before the Committee, **Chairman McKenzie** adjourned the meeting at 9:08 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 27, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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 8:01 a.m.

GUBERNATORIAL APPOINTMENT: **Rayelle Anderson** who was appointed to the Bingo-Raffle Advisory Board addressed the Committee via telephone conference. **Ms. Anderson** said she has worked at North Idaho College since 1992. In 1993 the College started a raffle which grosses \$500,000 a year in ticket sales. They serve as a role model as they are contacted all the time wanting to know how to run a successful raffle. She was contacted last year by **Lynette Craven** from the Lottery to serve on the Bingo-Raffle Advisory Board. Her question to her at that time was what role did the Lottery expect her to play. Some board members have experience with bingo, but not raffles. **Ms. Anderson** stated that she shares the nuts and bolts and her marketing, accounting and management experience to the Board. She is a resource in that regard for Region 1 and to assist them.

Senator Kelly asked **Ms. Anderson** to explain why she is not here today, and whether or not she attends the meetings. **Ms. Anderson** responded that she lives in Rathdrum and works in Coeur d'Alene. She has attended all the meetings via telephone conference. So whether or not she is there in person, she is contributing. She could not be here in person today because of her family. When first approached regarding her hearing she asked if it was possible to do her hearing this way. Due to travel costs the Board is cutting back like everyone else. **Ms. Anderson** said serving on the Board is a great honor and her real reason is simply financial.

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

Chairman McKenzie asked **Senator Charles Winder** to talk about his role on the Idaho Endowment Fund Investment Board. **Senator Winder**, who is currently serving in the Legislature, addressed the Committee and

stated that he sees his role as someone who brings thirty five years of business experience to the Board. In dealing with investments he has served on a variety of committees over the years and he continues to do that. He has a lot of experience as an advisor to the Land Board because of his real estate matters and he brings that expertise to the Board and provides advice that the Land Board requests.

- MOTION:** **Chairman McKenzie** said the confirmation vote of **Carla Campo** to the Bingo-Raffle Advisory Board is before them. **Vice Chairman Pearce** moved to confirm the appointment of **Ms. Campo** and **Senator Darrington** seconded the motion. The motion carried by **voice vote**.
- RS18860** **Chairman McKenzie** stated that he has a letter from the Chairman of the Education Committee indicating that his committee members unanimously request them to print this and return it to the Education Committee.
- RS18877C1** **Senator Darrington** asked if all the RS' on the agenda are by a unanimous consent request. **Chairman McKenzie** replied that **RS18860** is by the request of the Education Committee and the second one, **RS18877C1** is by a unanimous request of the Commerce and Human Resources Committee. The remaining three are the water bills.
- MOTION:** **Senator Darrington** moved to print **RS18860** and **RS18877C1** and **Senator Davis** seconded the motion. The motion carried by **voice vote**.
- RS18886**
RS18887
RS18888 **Clive Strong**, Attorney General for the Natural Resource Division presented **RS18886**, **RS18887** and **RS18888** to the Committee.
- Senator Geddes** stated that he would like to thank the Attorney General's Office and the others who worked closely with **Mr. Strong**. These RS' will establish a benchmark of understanding with respect to the Swan Falls Agreement. This is something that they can finally put behind them. If printed the intent is to refer them to the Resources and Environment Committee, who will hold a joint meeting with the House to get them moving through the process.
- Mr. Strong** said with him today is **Jim tucker**, Senior Counsel for Idaho Power and **David Hensley** from the Governor's Office. The three of them have been working collectively for six months in bringing this Agreement today. **Mr. Strong** provided a copy of the Framework Reaffirming the Swan Falls Settlement to the Committee. The existing Swan Falls Agreement is not being altered or changed. It resolves some difference of opinions over the intent of the agreement and to confirm it in writing. The framework is a template and does not set forth the full settlement. The settlement consists of a number of legislative, judicial and administrative actions that need to be taken. If these actions are taken then it will be acceptable to the State and Idaho Power.
- Mr. Strong** stated that Article II sets forth the current actions that are contemplated to finalize the settlement. The objective is to reaffirm the three core principles that were set forth in the original agreement. The first core principle deals with the allocation of water for hydro power to the facilities located between Milner Dam and Murphy Gage. With respect to that, this body in 1985 enacted *Idaho Code § 42-203B* which placed in

trust those water rights in excess of the minimum flows at Murphy Gage, to be held by the State for the benefit of the power company and the citizens of the State of Idaho. Through this agreement, that principal is confirmed and the court will take action to approve decrees that will reflect the State's ownership of those water rights.

The second core principal that is being reaffirmed is that these water rights have a right to call for those waters that are tributary to the Snake River below Milner Dam, but have no right to call above the Dam. That reflects the historic operation of the river as two separate rivers. **Mr. Strong** said the third principal is that nothing in the Swan Falls Agreement precludes recharge that is conducted in accordance with State law. In order to do this, the three pieces of legislation will play a role in meeting those objectives. **RS18886** intends to recognize that recharge like storage projects have an effect on stream flow conditions, and they need to be accounted for in a broader public policy. With regard to large managed recharged projects, the proposal is treat them like a large reservoir and require approval from the Water Resource Board to ensure that those projects are consistent with the State water plan. **Mr. Strong** said that **RS18887** will amend *Idaho Code* § 42-234 and repeal 42-4201A. The reason for that is to remove language that makes reference to the Swan Falls Agreement, to make it clear that the Agreement does not preclude managed recharge that is conducted in accordance with State law.

Mr. Strong stated that **RS18888** is almost identical to the legislation that was enacted as part of the original Swan Falls Agreement. The reason for this is to make it clear that Idaho Power is not relinquishing any assets or that this Agreement is not in the public's best interest. It ensures that when it goes before the Public Utilities Commission it has protection from rate payer actions and then the actions of the State are reflected in that. This legislation is intended to confirm the benefits that already exist under the Swan Falls Agreement, and since it is being reaffirmed it is consistent with the original policy. Article III in the Agreement requires no action. That provision reaffirms the original intent of the Agreement that the river needs to be managed as a whole, and that we all have an interest in how that river is being managed.

MOTION: **Senator Fulcher** moved to print **RS18886**, **RS18887** and **RS18888**. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

HCR12 **Representative Trail** addressed the Committee regarding **HCR12**. This Concurrent Resolution seeks legislative support for the people of Latah County and the City of Moscow in bringing the community together through the Moscow Community Walk, endorsing the annual celebration of the walk, and encouraging sponsorship of similar events in other communities of the State. **Representative Trail** stated that this walk brings a cross section of citizens together to stand for a moment in friendship and celebrate their strengths, commonalities, and to promote understanding of the various groups in their community. In 2008 over four hundred people participated in the event that is sponsored by the University of Idaho, the City of Moscow, Kiwanis, Rotary, Lions Service Clubs, other civic organizations, twenty five businesses, and the Latah

Human Rights Task Force. There is no fiscal impact to the State fund.

Chairman McKenzie asked how many years has this event been going on? **Representative Trail** answered this will be the third year and it is scheduled for April 25.

MOTION : **Senator Davis** made the motion to send **HCR12** to the floor with a **do pass** recommendation. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

HCR22 **Representative Trail** stated that **HCR22** relates to the protection of privacy and security breaches. A number of legislators who are sponsors of this Resolution became aware of the increased need for protection of personal information and data of farmers, cooperators and soil conservation employees this past summer. The Idaho Soil Conservation Commission (ISCC) demanded that all of their information be sent to the Boise headquarters. The ISCC published on their website personal data concerning their members that included Social Security numbers, bank account information, and other personal information that could easily be utilized. **Representative Trail** said that he notified the Attorney General's Office and the information was removed from the website of ISCC within twenty four hours. Since then, ISCC has tightened up their security but because of the breach they started to look at this issue statewide.

There have been four major breaches over the past three years which include the National Guard, the University of Idaho, Idaho State University, and ISCC. State agencies are under constant attack. **Terry Pobst-Martin**, the Chief Security and Information Officer for the Department of Administration (DOA), informed him that over 100,000 hacker attempts are made every week. With advances in hacker expertise, devices and viruses to penetrate networks, and software vulnerability all point to the increasing problems of protecting client and employee personal and private data. This Resolution urges that all State agency Directors are encouraged to use all care and vigilance to protect the personal data and information of their employees and the citizens that they serve, for the purpose of protecting against identity theft. This would include all Social Security information, bank account information and State and Federal income tax information. **Representative Trail** stated that **HCR22** is part of another piece of legislation, **H161a**.

Senator Stegner stated that he compliments **Representative Trail** for his work on this issue. **Representative Trail** is the one that brought this to light, and he should be properly thanked and acknowledged.

MOTION: **Senator Stegner** moved to send **HCR22** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

H161a **Representative Trail** said as he previously mentioned, **H161a** is a companion piece to **HCR22**. This legislation was developed in cooperation with the Attorney General's Office and the DOA. **H161a** states that nothing relieves an agency's responsibility to report a security breach to the Office of the Chief Information Officer within the DOA,

pursuant to the Information Technology Resource Management Council (ITRMC) policies. There is also a requirement for the agency to report within a twenty four period to the Attorney General's Office if a security breach has occurred. The focus is on state agencies, the clients they serve, and their employees. Commercial entities are already covered in current law. However, since the focus is on State agencies, commercial entities are not included in the bill.

Representative Trail stated that Americans trust government officials to safeguard the sensitive financial and personal data that is placed in their hands. But research shows that the government is among the biggest sources of identity leaks and that penalties are rarely imposed on those who are negligent. Between 2006 and 2008, publically reported data breaches found that security lapses resulted in the loss or exposure of at least forty four million client records. One source indicates that identity theft cost Americans over two hundred fifty billion dollars last year alone. Some states have laws that if an agency director or employee knowingly misuses client or employee personal data, they can be subject to a misdemeanor and fine of \$500. The 2008 Farm Bill and the stimulus package have provisions that if client data is knowingly misused, that individual can be charged with a felony with jail time up to five years and a twenty thousand dollar fine. **Representative Trail** stated that he is impressed with the work of the DOA and the State agencies in working diligently on this potentially serious problem, and he is appreciative of the DOA in helping with this legislation.

Senator Kelly asked what does the Attorney General do once they are notified of a security breach? **Representative Trail** asked if he could defer that to **Bill von Tagen**. **Bill von Tagen**, Deputy Attorney General, stated that first they would look to see if there was a violation and advise the agency to keep this information and how to retrieve it. Steps would be taken to contact the individuals whose information had been compromised. In the situation at ISCC, they were unaware of that until **Representative Trail** brought it to their attention. **Representative Trail** added that ISCC notified all the individuals whose personal information might have been compromised. That is part of current protocol.

Senator Stegner commented that the incident at ISCC involved information that the farmers exchange with them in terms of contracts and grants they enter into for soil conservation and water use. That exchange becomes part of the agency file. In order to have some sort of public disclosure with regard to those projects, that information was put on the internet. He does not believe that it was done maliciously. It was in error, and this legislation will bring this more to the forefront to try to prevent it from happening in the future.

Senator Kelly asked what if the agency reported a breach after the twenty four hour deadline? **Mr. von Tagen** responded the idea is to report it within that period of time, but if they received something in twenty five hours he doubts they would fine the agency.

Senator Fulcher asked **Mr. von Tagen** to explain the process after they

are contacted. **Mr. von Tagen** replied it probably would go to the consumer division and they would take steps to contact the agency to retrieve the information. This is really about prevention because the cure and the fines can be very problematic. First of all, they really need to determine if there has been a true breach and then they need to advise the agency as to what their obligations are. If sanctions would be appropriate they would take a look at that, and finally, the individuals would be contacted.

Senator Kelly asked why aren't commercial entities and individuals included in this legislation? **Representative Trail** said the focus of this legislation is strictly on State agencies. He does plan to take a look at that for next year.

TESTIMONY:

Terry Pobst-Martin addressed the Committee and said there is a valid need for awareness. Data breaches can take on many different forms. This legislation is something that will help the agencies to follow the right course when they do have a data breach. **Ms. Martin** stated that not everyone understands that they do need to report them.

Senator Kelly asked **Ms. Martin** if she is working with the agencies to adopt specific policies? **Ms. Martin** responded absolutely and all State agencies are required to have their own policies to include data breach reporting policies, or they can use the ITRMC policies which are already available to them. **Senator Kelly** said that doesn't seem consistent with what **Ms. Martin** previously stated that the agencies don't know what to do when they have a breach in security. **Ms. Martin** replied policies are in place, it is the awareness that she is trying to ensure and they need to know the risks involved to prevent a data breach.

Donna Yule, who represents the members of the Idaho Public Employee Association (IPEA), stated that she is here today to speak in support of **H161a**. This legislation is important for the personal security of Idaho State employees. In her short time with the IPEA she has found that the State has been lax with protecting the Social Security information of the members. PERSI has contacted her in an effort to address these issues. IPEA is not a State agency but the vast majority of members are paid by payroll deduction. She receives reports electronically from the State Controller's Office which provides some personal information. She contacted them and was told it is the way their data base is set up. **Ms. Yule** said she personally redacts the information from the form, and then she shreds the original copy. The State employees need to know that their personal data is treated with respect and security.

MOTION:

Senator Stegner made the motion to send **H161a** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

ADJOURN:

There was no other business before the Committee. **Chairman McKenzie** adjourned the meeting at 8:52 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: March 30, 2009

TIME: 9:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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 9:02 a.m.

GUBERNATORIAL APPOINTMENT: **Chairman McKenzie** said the Committee will now give consideration to the appointments of **Rayelle Anderson** to the Bingo-Raffle Advisory Board and **Charles Winder** to the Idaho Endowment Fund Investment Board.

MOTION: **Senator Kelly** moved to send the appointment of **Rayelle Anderson** to the floor for confirmation. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Pearce made the motion to send to the floor and confirm the appointment of **Charles Winder**. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

H195 **Representative Bolz** presented **H195** to the Committee and stated that **H195** makes technical corrections and updates to language relating to veterans. *Idaho Code 65-101* is outdated and was written in 1921. It deals with the county memorial commission and the creation of powers to honor those who have served the country. *Idaho Code 65-602* is gender specific to "him" and was written in 1946. Today many women serve in the military and it is only appropriate to update that language to include all genders.

MOTION: **Senator Kelly** moved to send **H195** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion.

Senator Geddes asked if this bill could be sent to the Consent Calendar. **Chairman McKenzie** said with the approval of the maker and seconder of the motion they can do that.

The motion carried to send **H195** to the **Consent Calendar**.

HCR28

Representative Jaquet presented **HCR28** to the Committee and stated that this Resolution recognizes the importance of high speed connectivity to our State. There is a possibility of stimulus funding from the Department of Commerce as well as the U.S. Department of Agriculture. There is a lot of activity across the State but there are areas in Central and Northern Idaho that do not have service. This is important to Idaho because of the increase in internet sales. With broadband internet connectivity there is greater contributions to community through civic engagement and participation. **Representative Jaquet** said Deary, Idaho has seen an increase in their business due to a grant from the Idaho Department of Commerce's, the Rural Broadband Investment Program. Internet service to rural hospitals can cost as much as \$15,000 per month compared to \$6,000 with a broadband infrastructure. This broadband infrastructure is especially important for doing business in rural Idaho and that is what this Resolution is all about. It is endorsed by the Idaho Chamber Alliance, Qwest, and the Idaho Telecom Alliance.

Senator Darrington asked her to explain the language on line 28, regarding a "business climate." **Representative Jaquet** responded that was suggested by the Idaho Telecom Alliance and it is the most important part of the Resolution. Permitting needs to be expedited and that is the reason for it. **Senator Darrington** asked if she wants less business regulation? **Representative Jaquet** replied not necessarily. It is important to speed the process up and not sit on an application.

Greg Zickan, Chief Technology Officer for the Department of Administration, addressed the Committee regarding **HCR28**. **Mr. Zickan** stated that he is here today in support of this bill. He is confident that this Resolution will provide important support to people who are seeking to expand broadband to Idaho citizens. The latest data indicates that Idaho growth of uptake of broadband outpaced national growth for the previous two years. There are areas in the State where service is not available and access to fiber optics and high speed wireless telecommunication services are critical to getting access to our citizens. Supporting these organizations helps to bridge the digital divide that still exists in some parts of the State. **Mr. Zickan** encouraged the Committee to support **HCR28**.

MOTION:

Senator Thorson made the motion to send **HCR28** to the floor with a **do pass** recommendation. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

S1156

Senator Davis presented **S1156** to the Committee. **Senator Davis** stated that he was encouraged to work with **Senator Kelly** to create this legislation. With regard to public disclosure, Idaho scores well in some categories and poorly in the area of financial disclosure. If there is a conflict it is his duty to disclose that. Experience teaches him that the members of this body historically do that. The purpose of **S1156** is to provide for the pre-disclosure of potential conflicts, by providing some disclosure by public officers as well as by candidates for public office. There is a financial disclosure statement codified in the bill. In meetings

with the Governor it became apparent at the beginning of this legislative session that the Governor wanted to solve this. **Senator Davis** said that **David Hensley** and **Senator Kelly** assisted him in crafting this legislation and he is comfortable with making these minimum pre-disclosures of his financial interests. By nature we are private people and he too is uncomfortable with disclosing too much about himself. However, on balance, when he looks at the need for the public to have confidence, this is something that is in the best interest of Idaho.

Senator Kelly stated that she and **Senator Davis** are very excited about this bill. She provided some handouts to the Committee. An article dated June/July 2004 indicates that forty seven states require disclosure and Idaho is one of three that does not. **Senator Kelly** said this bill is a version of one she presented a few years ago. **S1156** does not have the degree of personal intrusion of that one and hopefully this one provides comfort with regard to privacy issues. Disclosing your residential address is not required. The disclosure requirements are for both public officers and candidates for a public office. The form that is included in the bill can be filed electronically like the campaign finance reports, or by facsimile.

Vice Chairman Pearce said he would like **Senator Kelly** to speak to the language in the last paragraph of the Legisbrief that she handed out, indicating that financial disclosure laws are a waste of time. **Senator Kelly** responded that filing this type of information is partly preventative, and disclosure laws are there for a reason. In order for the information to be useful someone has to look at it whether it is the media or opponents in an election. Federal candidates and Federal elected officials file these types of documents. In crafting this legislation they tried to make it easy so that it is not an undue burden for our elected officials and candidates. **Vice Chairman Pearce** said he does not have a concern with the integrity of the Legislators. He is not convinced that this will solve anything. He asked what are they really trying to accomplish with this, and would she support this bill if lawyers were expected to reveal all their clients who pay over \$5,000 in fees? **Senator Kelly** replied some states do require the disclosure of clients if it is some sort of income. This bill does not require that as a matter of privacy. **Vice Chairman Pearce** said he asks that question because he doesn't see a problem that needs to be fixed. What happens in a few years when they question why they did this. It is difficult to find good, honest people to run for government. **Senator Kelly** said her response to that is that it is for future legislators to decide and they could repeal this if it becomes unduly burdensome.

Chairman McKenzie asked if the disclosure applies only to Idaho businesses? **Senator Davis** responded the language "in Idaho" does appear to be inconsistent. In the definition of "financial interest" that language is not included, where it applies is in the duty of disclosure. It is consistent throughout, but he does see that maybe it should have been included. The definition of financial interest means what it says in subpart b on page 1, and the duty to disclose is not in the definition on page 2, lines 11 and 12. **Chairman McKenzie** said that is his interpretation as well.

Senator Davis added he could have resolved that uncertainty by cleaning up the definition.

Senator Darrington asked **Senator Davis** if all sources of income from employment means disclosing retirement accounts and Social Security? **Senator Davis** replied “employment” is defined as the rendering of services for compensation. Retirement funds would not fall within the definition.

Vice Chairman Pearce asked if the information that is being required, more or less than what is typically already available on Google. Has anyone looked into that? **Senator Davis** said what **Vice Chairman Pearce** is saying may be more true than not in the future. He does not believe that the answer today would be yes. Some of the information will be available to the public if they spend the time and effort to find it. Not everything that is disclosed will be available on the Secretary of State’s website. As time goes by more and more will probably be available on the internet.

Senator Geddes asked if someone could speak to the language on line 15, page 3. What is the threshold to find someone guilty of perjury? **Senator Davis** said that language is the same for other forms that are used with the Secretary of State’s Office for disclosure. **Senator Geddes** commented that he believes when a vehicle is registered you verify that you have insurance. People are convicted for not having insurance coverage but not for perjury. So perjury must have a pretty high threshold to prove, it is nice to say, but impractical to enforce.

MOTION: **Senator Davis** made the motion to send **S1156** to the floor with a **do pass** recommendation. **Senator Kelly** seconded the motion.

Senator Davis said that he failed to mention earlier that the Secretary of State looked at this and the suggestions he made are contained in the bill. In fairness to the Secretary of State, the version before them is not the version that was reviewed by the Secretary of State.

The motion carried by **voice vote**.

RS18882 **Chairman McKenzie** said that he has a request from the Chairman of the Resources Committee to print the RS along with a buckslip from the committee members asking us to print the RS as well. **RS18882** relates to the relocation of bighorn sheep.

MOTION: **Senator Davis** moved to print **RS18882** and **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

RS18895 **RS18895** is a Resolution honoring **M. Allyn Dingel**.

MOTION: **Senator Davis** made the motion to print **RS18895**. **Senator Darrington** seconded the motion.

Senator Davis commented there a lot of men and women who walk the halls of the Idaho State Capitol that similarly should be honored. **Allyn**

Dingel has provided a great deal of pro bono support to Constitutional Officers and members of the judiciary who really have no meaningful voice in the Legislature. For decades **Mr. Dingel** has petitioned for them at the Legislature to meet their needs. It is worth pausing and noting his unique contributions to the State of Idaho. It is important to preserve some of the memories that happen at the Idaho Legislature. The Pro Tem has some ideas in how to do that between now and the next session. **Senator Davis** stated that he applauds the Pro Tem for that effort.

Senator Darrington said that he concurs with **Senator Davis** and that he has worked with **Mr. Dingel** for over twenty-five years. He can't think of anyone who has given more time and effort than him in the process. **Mr. Dingel** truly believes in his heart the good of the order.

Senator Davis added there are several parts in the Resolution that are his favorites. **Rusti Horton** helped significantly with this and **Bill Roden** contributed as well.

The motion carried by **voice vote**.

MOTION:

Senator Fulcher made the motion to approve the minutes of March 20. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

The approval of the minutes of March 18 were held until the next Committee meeting.

ADJOURN:

There was no other business before the Committee. **Chairman McKenzie** adjourned the meeting at 9:46 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

- DATE:** April 1, 2009
- TIME:** 8:00 a.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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** said before beginning with our formal business he would like to acknowledge the guests that are here today.
- Senator Davis** said we are honored to have some fourth grade students with us today from Holy Rosary Elementary in Idaho Falls. Each student has been assigned or chosen a bill to watch through the legislative process. He had a conversation with them and they are very anxious to be here today and observe the Committee.
- GUBERNATORIAL APPOINTMENT:** **Blanche Weber** who was appointed to the Bingo-Raffle Advisory Board appeared via teleconference. **Ms. Weber** stated that she has been on the Board for several years. She enjoys her position and especially to see what the older people get from the bingo games.
- Chairman McKenzie** asked **Ms. Weber** to talk about her background with the bingo operation. **Ms. Weber** replied that she ran the bingo games for the Eagle Lodge and she assisted her husband with the games at the Eagle and Moose Lodges. **Chairman McKenzie** asked how long has she been on the Board? **Ms. Weber** answered almost since the beginning.
- Chairman McKenzie** thanked **Ms. Weber** for her service on the Board and advised her that the Committee will vote on her appointment at the next meeting.
- HJM4** **Representative Harwood** presented **HJM4** to the Committee and stated that when the Tenth Amendment to the U.S. Constitution was drawn up, it was really when we became the United States. A lot of states had not ratified the Constitution because they did not have that portion and they wanted sovereignty. Most people assume that the United States is a democracy, but in reality we are a republic, and basically a federated

republic. **Representative Harwood** said all states are independent with their own constitutions that govern their citizens. The states created the Federal government, not the other way around. George Washington said "it appears to me in little short of a miracle that the delegates from so many different states, which states are also different from each other in their mannerisms, circumstances, and prejudices should unite to form a system of national government with so little legal obligation to the well founded objections." What this means is that the states are the ones who created the Federal government.

Representative Harwood said the Federal government has grown and moved into state sovereignty issues where they should never go according to the Constitution. There was a bill in Congress, **H147**, which deals with Commercial Driver's Licenses CDL. Each state has their own CDL and that bill states that we have to comply with Federal regulations with regard to them. The bill also states if we do not comply, we will lose 6.5 million dollars in funding this year. Next year for noncompliance, the State could lose 13 million dollars in funding for highways. The Memorial will send a message to Congress to cease and desist mandates that are beyond the scope of the Constitution in their delegated power.

Vice Chairman Pearce asked how many states are doing this or are in the process? **Representative Harwood** answered there have been thirty one states so far that have introduced legislation, and seventeen are in the process.

Senator Darrington commented that the National Conference of State Legislatures has a cornerstone Resolution on Federal rules and regulations. It is a Tenth Amendment Resolution asking the Federal government to recognize the sovereignty of the states and not exceed the powers enumerated in the Constitution by Congress in their actions towards the states. The Resolution does not state this, but we all know the problems with Article 1, Section 8. This Memorial is compatible with that.

Jonathan Parker, Executive Director of the Idaho Republican Party, addressed the Committee and said the State Committee met as a whole in January. The Committee considered ten Resolutions and passed out of Committee four Resolutions. The one that passed by the majority is before the Committee today. It is very compatible with **Representative Harwood's** Joint Memorial to Congress that he has proposed.

Wally Butler, who represents the Idaho Farm Bureau, stated that the Bureau stands in support of **HJM4**. He encouraged the Committee to vote in the affirmative.

MOTION: **Vice Chairman Pearce** made the motion to send **HJM4** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion. The motion carried by voice vote. **Senators Kelly** and **Thorson** requested to be recorded that they opposed the motion.

HJM7 **Representative Thompson** presented **HJM7** to the Committee.

Representative Thompson stated that **HJM7** came about from the recommendation of the Legislative Council Interim Committee. After reading that report, he had a conversation with **Congressman Simpson** who encouraged the drafting of this legislation. **HJM7** will help to identify and make available funding for the delivery of a Doctor of Medicine degree in the State of Idaho.

Senator Kelly asked if he was on the committee that studied this? **Representative Thompson** answered he was not on the committee, but he had read the report. **Senator Kelly** asked if the Memorial was being brought forward by that committee. **Representative Thompson** said "no."

Senator Geddes commented in essence this purports what the committee discussed. **Congressman Simpson** sits on the Appropriations Committee and he sees the money that flows to states and universities that offer a medical degree. In an effort to comply with the request of **Congressman Simpson**, **Representative Thompson** worked closely with him and others on that committee to develop this legislation. **Senator Geddes** said he is a sponsor of **HJM7** and supports the efforts of that committee.

MOTION:

Senator Geddes moved to send **HJM7** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion.

Senator Davis said he too served on that committee. An important reason for this is because our students are capable academically to go to medical school, but they are not admitted to programs throughout the country. On lines 19 and 20 one recital speaks to the low percentage we have. The study demonstrates that our students have competitive GPA scores. This is an additional reason for this Memorial so they will have an opportunity to go to medical school. Additionally, he is hopeful that **Congressman Simpson** will facilitate this and help solve this problem.

Senator Kelly asked how much money will be needed to fund a medical school? **Senator Geddes** responded that he doesn't know how much money it will be, or if there are funds available. A lot of those funds come from the National Institute of Health. They promote medical schools throughout the country. Idaho is left out of the process because we do not offer a medical degree. With this, hopefully **Congressman Simpson** can look for opportunities to direct some funds our way if they are available. It was well documented last summer that one of the biggest concerns that we have with respect to developing a medical school, is the cost involved. **Representative Thompson** is on target. If there is an opportunity for **Congressman Simpson** to identify funds to help develop a medical school, then Idaho should be considered to receive some of those resources.

Senator Darrington said the word "allopathic" on line 22 is new to him. He asked **Senator Geddes** if he could explain it? **Senator Geddes** replied he believes it refers to a medical school or a doctorate degree.

Representative Nielsen commented that allopathic means medicine as treatment of a disease or medical therapies. In working this year on a nursing scholarship bill, he was in contact with Idaho State University (ISU) and their nursing department. They have come a long way and in their nursing department they now have one hundred students in their masters degree program, and they are close to offering a doctorate degree program. This will help to accomplish a medical school.

Senator Kelly commented she needs to point out the irony. The first Memorial requested that the Federal government leave us alone and this Memorial is requesting the congressional delegation to help with funding for the State.

There was no additional discussion on the motion. The motion carried by **voice vote**.

H229

Representative Nielsen said his son-in-law brought to his attention that the State of Mississippi was bringing forth a bill regarding martial law. A few years ago, Idaho passed a law for our citizens to have the right to keep and bear arms in the event of an emergency. When Katrina hit New Orleans it created chaos. Looking to the future we don't know what will happen. The Second Amendment of the Constitution states that the right of the people to keep and bear arms shall not be infringed. **H229** is an effort to maintain and keep our Second Amendment rights, not restore them. **Representative Nielsen** asked the Committee to send **H229** to the floor with a do pass recommendation.

Senator Darrington asked if ammunition is considered to be explosives? **Representative Nielsen** answered he believes that ammunition is something that you put into a weapon of some type, and an explosive is something that detonates and cause an explosion. **Senator Darrington** said his question is prompted from the handout in paragraph 4, subparagraph 5 (h), where the Governor would have the power to suspend or limit the sale and transportation of explosives. That is existing code and this will add to that. **Representative Nielsen** responded the handout was only to show that the language was lifted from that code and put in section 1, of 46-601 in the bill, and the words "martial law" were added. That language has withstood the test of time and was suggested by Legislative Services.

Chairman McKenzie asked **Representative Nielsen** to explain how the two chapters relate. This Committee voted to add that change in subparagraph 7, *Idaho code 46-1008*, which is under the Disaster Preparedness Act of the State. How does this relate to the chapter that is being amended, the martial law chapter? **Representative Nielsen** said in working with Legislative Services they felt it didn't belong there, but in the reference when we speak to the authority of the Governor.

Senator Davis said as he looks at *Idaho Code 46-1002*, there is a formal definition of the word emergency. Subparagraph 2 of the handout talks in terms of a disaster emergency. The word emergency is specifically defined in chapter 10. It is an occurrence or eminent threat of a disaster

or condition threatening life or property, which requires state emergency assistance to supplant local efforts to save lives and protect property, or to divert the threat of a disaster. **Senator Davis** said he remembers dealing with this before and that subparagraph 7 was going to solve this problem. He can see how **Representative Nielsen** feels that it does not specifically include the language as it relates to “martial law.”

TESTIMONY:

Rick Neathamer, a concerned citizen from Meridian, testified regarding **H229**. **Mr. Neathamer** said when the government steps in and takes control of our constitutional rights, the people are fearful of the government. He has not spoken with **Representative Nielsen**, but he believes the bill should say that all able bodied persons will report to the county sheriff with weapons and ammunition to help protect, establish, and maintain order. When we start banning things in regard to certain constitutional amendments, you can only go so far until that amendment is gone completely. We need to ensure that our rights are not taken away from us.

MOTION:

Vice Chairman Pearce moved to send **H229** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

RS18744C2

Senator Geddes presented **RS18744C2** to the Committee and stated that a few years ago, he and **Senator Stennett** worked to fine tune the redistricting efforts. The impetus of this legislation is to help give direction to our Redistricting Commission to ensure that when reapportionment is conducted again, that communities of interest are protected and preserved. As that Commission goes forward to do this very difficult task, it should be paramount to ensure that legislative districts are assigned such that various parts of districts do not feel disenfranchised by being included in the wrong district. **Senator Geddes** said he represents a district that has that impression. Teton County is a great distance away from the core of his district. They have very little in common with the rest of his district. Prior to the last redistricting, Oneida County was part of his district, but it isn't now. Their community is aligned from a judicial, school, and transportation standpoint, with a core of a different part of our State than what they are in legislative terms. This legislation will add more direction in how redistricting should occur and focus primarily on precincts where the citizens should have access to a place to vote. It will also allow that counties should be held together when possible and that only the absolutely necessary divisions of a county should be made.

The most important thing is for the Commission to take into account those counties that are not connected by a State highway or interstate. If a county is not connected to an adjacent county by a road or highway, then it would be natural to assume that there isn't a significant tie to connect the two communities. There is a provision if they have to include counties that are not connected that the vote of the Commission can override the direction, to make sure they develop a district with the necessary population. **Senator Geddes** said this legislation will add clarity for the Commission to help expedite a process where they can divide our State into thirty five legislative districts, without contention and concern over disrupting some communities.

Senator Kelly asked if this is the only change needed to the current statutes before the redistricting process starts? **Senator Geddes** replied he has been involved in this effort for several years. In addition to what is already in statute which provides for the Legislature to give direction to the Commission, this amendment will add to the direction that they currently have, and hopefully expedite the redistricting process. At this time, he doesn't believe there are any more improvements needed for the redistricting process. **Senator Kelly** asked if there are any problems with making this retroactive back to 2001? **Senator Geddes** responded that statute already states that if you serve or have served on a Redistricting Commission, you cannot serve in the Legislature for a period of five years. The change that is incorporated is that if you serve or have served on a Redistricting Commission, you would not be allowed to serve on a future Redistricting Commission. The intent is to make the Redistricting Commission a citizens Commission.

Senator Geddes read from Article 3, Section 2 of the Constitution, stating that the Legislature should enact laws providing for the implementation of the provisions of this section, including the terms of commission members, the method of filling vacancies on the commission, additional qualifications for commissioners, and additional standards to govern the commission. The Legislature shall appropriate funds to enable the commission to carry out its duties. **Senator Geddes** said in the opinion of the Attorney General's Office and as he reads this, the Legislature has a very significant responsibility of defining who shall serve, how they shall serve, and what their length of service shall be.

Senator Kelly asked if the language change from should to shall is grammatical? **Senator Geddes** answered it seems to him that it is a contradiction of terms because we say that they shall to the extent possible. Shall does not have the weight that it normally means in most legislation. This puts more emphasis in the division of counties and precincts and still allows the Commission to deviate from that, in order to comply with the other provisions in redistricting. **Senator Kelly** asked if there is a reason to believe that part of these changes will be declared invalid or unconstitutional because of the severability clause? **Senator Geddes** replied "no", the severability clause is part of the original legislation.

Senator Darrington said that he chaired the committee that wrote the criteria for the Redistricting Commission. Second on the list was the factors for communities of interest to not be divided. The Commission ignored that, thus necessitating some of the changes that **Senator Geddes** is proposing. This Legislation is necessary to give guidance to the Commission.

MOTION: **Senator Davis** made the motion to print **RS18744C2** and **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

ADJOURN: There was no other business before the Committee. **Chairman McKenzie** adjourned the Committee at 8:55 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

- DATE:** April 3, 2009
- TIME:** 8:00 a.m.
- PLACE:** Room 204
- MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Fulcher, Stennett (Thorson), 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 8:04 a.m.
- GUBERNATORIAL APPOINTMENT:** **Ruthie Johnson** addressed the Committee regarding her appointment to the Idaho Human Rights Commission. **Ms. Johnson** stated that she worked for **Senator McClure** for twenty four years and working on the Commission is a continuation of that work. The Attorney General's Office looks into the complaints that are filed and makes a recommendation to the Commission as to how to handle it.
- Senator Kelly** asked **Ms. Johnson** to speak to the recent discussions regarding the gay and transgender community. **Ms. Johnson** replied she doesn't care what someone does in the privacy of their home. She is not prejudiced against the gay community. It will change our culture if sexual orientation is added to the Human Rights Act, it will include marriage, and she objects to it. **Senator Kelly** asked if she thinks that the discrimination protections that apply to an employer should be included in the Act? **Ms. Johnson** responded employers have very little rights as to how they can deal with their employees. If someone comes to work dressed in drag they should be able to fire them.
- Senator Davis** asked if the Legislature changes that standard would she follow the law? **Ms. Johnson** answered of course, she has to follow the law.
- Senator Geddes** commented that **Ms. Johnson** has served our State in so many ways for a long time. She has made a mark and for the most part she has supported and worked hard to lift others up in every effort she has engaged in. That is the mark of a good commissioner and her desire to improve the lives of people and to help them overcome the challenges they might have. **Senator Geddes** said the best indicator is past performance and they cannot go wrong with this appointment.

Hyong Pak, who was appointed to the Idaho Human Rights Commission, stated that he lives in Twin Falls and he first came to Idaho in 1972 from South Korea. He is an attorney and has been on the Commission for approximately twelve to thirteen years. It is his pleasure to serve and he hopes to continue serving. With his background as an attorney and expertise, he has a different outlook and insight regarding the cases that come before the Commission.

Senator Davis asked if he has had any cases where sexual orientation was an allegation? **Mr. Pak** said they do not hear such cases. **Senator Davis** asked if that issue had ever been a factor or alleged in a complaint. **Mr. Pak** replied he does not recall.

Senator Kelly said one of the charges of the Commission is to make recommendations to the Legislature regarding effectuation of the purpose of the Act. She asked **Mr. Pak** how does he see his role in implementing that? **Mr. Pak** responded he assumes that **Senator Kelly** is referring to the last proposed amendment. The Commission did not support that issue as a whole, however, he did support the passage of that amendment. His position is that we are all humans, we should be treated equally, and not judged upon political or religious affiliation. He has a duty to promote and protect the rights of all individuals.

Vice Chairman Pearce asked **Mr. Pak** if there have been cases before the Commission regarding religious affiliation? **Mr. Pak** said there have been numerous complaints filed. They have been investigated, resolved, and discharged. **Vice Chairman Pearce** asked if that issue is difficult to prove? **Mr. Pak** replied if the complaining party has sufficient evidence and the respondent does not deny the allegations, the Commission can usually bring the parties together to sort it all out. **Vice Chairman Pearce** asked if discrimination for sexual orientation would also be difficult to prove. **Mr. Pak** responded each case is looked at and the evidence as to whether or not there is sufficient evidence to support that allegation. In general he cannot answer that.

Ralph Williams addressed the Committee regarding his appointment to the Idaho Energy Resources Authority. **Mr. Williams** stated that he is a utility manager from Heyburn, Idaho. He has been in the business since 1968 and although he does not have a lot of finance background he does have a lot of utility experience. **Mr. Williams** said he understands the operational and physical issues with locating generation and transmission. The Authority supports that effort and they lend money to those entities to promote energy in the future for the State.

Senator Darrington commented that he knows **Mr. Williams** quite well. It is hard for him to envision anyone having a better background and knowledge of this business than him. There are five consumer owned utilities in the area he lives in and **Mr. Williams'** power company is one of the largest for a consumer owned utility.

Chairman McKenzie said the gubernatorial appointment of **Blanche Weber** to the Bingo-Raffle Advisory Board is before the Committee.

MOTION: **Senator Kelly** moved to send the appointment of **Ms. Weber** to the floor with the recommendation that she be confirmed by the Senate. **Senator Thorson** seconded the motion. The motion carried by **voice vote**.

H265 **Jeff Youtz**, from the Legislative Service Office (LSO), presented **H265** to the Committee and stated that **H265** is a trailer bill to **S1043**, which passed earlier this session and updated and revised legislative statutes. In the original bill, there was a time table that was put in place to encourage constitutional officers to get legislation to the bill drafters in a timely manner. It was never the intent for Legislative Council to shut off access to the bill drafters. The Governor felt that time table could be an impediment for receiving those services. **H265** will eliminate the time table.

Senator Davis said that he and **Senator Kelly** participated on the committee that worked on that legislation, and that was never the intent. LSO only considered the legislation without our intent to preclude the Governor's Office and the executive branch from participating. When the Governor saw the legislation they agreed that it could be interpreted that way. They made the commitment to run this trailer bill and continue to provide in writing what has been the historical practice between the Governor and the Legislature.

MOTION: **Senator Davis** made the motion to send **H265** to the floor with a **do pass** recommendation. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

S1157 **Senator Thorson** presented **S1157** to the Committee and stated that currently when cities elect to consolidate, statute requires that the consolidated city be named after the city with the greater population. This bill proposes that electors of consolidating cities choose a city name. In 1962 Pocatello consolidated with Alameda. After that consolidation, statutes were written in 1967 and this amendment will improve that statute by passing some authority to the electors of the consolidating cities. Consolidation provides enhanced services, it conserves expenditures, and lowers taxes. It is estimated that a savings to the taxpayers average about thirty percent as a result of consolidation. **Senator Thorson** said in Ketchum and Sun Valley citizens are in discussions for the potential benefits of consolidation, particularly driven by the economic circumstances of today. The city name in that area is paramount to all concerned since the name Sun Valley is an important economic brand to the community. It is key to continuing the tourist economy. Four city council members, two from each jurisdiction, and the Mayor of Ketchum have encouraged this legislation to facilitate these discussions to allow the citizens to determine the name of the consolidated city should it occur.

Senator Davis asked **Senator Thorson** to explain the meaning of the language on line 15, "under the government or greatest in population." **Senator Thorson** responded the intent is to allow the citizens to select the name of the consolidated city.

TESTIMONY: **Wayne Willich**, the Mayor of the City of Sun Valley, testified in opposition to **S1157**. **Mayor Willich** stated that he learned quickly that he must

represent the constituents of the city. There have been some discussions pushing the consolidation of Ketchum and Sun Valley, which is really a local issue. In this effort, one of the first things that was looked at is the motivation and that motivation is to follow the money. Analysis of fund balances indicates that Ketchum has approximately three weeks of reserve monies. The City of Sun Valley has about six months. **Mayor Willich** said putting that aside, current statute 67-2321, specifically discusses the name change of a taxing district. If a community is interested in changing the name there is established statute and methodology for doing that. The proposed legislation conflicts with the language in 67-2321 and provides no due process. The language "mutually agreed upon" is vague. As the Mayor of Sun Valley he is totally opposed to this, but there are two council members that may possibly support this. This legislation is bad, poorly crafted, and it should be rejected.

Senator Kelly said that **Mayor Willich** testified that this bill does not provide due process. Title 50, Chapters 2101 through 2114 is referenced and it is a very detailed procedure. **Mayor Willich** responded that he stands on Title 67-2321, which states change of name of a taxing district. If this legislation was crafted correctly it would refer to that Title. **Senator Kelly** said there is a process established for implementing this provision it is just not cited in that particular Title. **Mayor Willich** replied he begs to differ.

Senator Fulcher said his understanding of this proposed legislation is that it has nothing to do with a potential consolidation. Should consolidation occur, it provides the process for how the name is selected. He asked **Mayor Willich** if they are getting involved with something the legislation does not address? **Mayor Willich** said this is about a name change and the consolidation process should play out. After that, then the name change can be addressed. This is accelerating the process, and if the consolidation effort fails what value is this legislation.

Senator Davis said he has read 67-2321, and **Mayor Willich** is suggesting that **S1157** is in conflict with that. He asked if it is fair to say that the statute as currently written is in conflict with 67-2321? **Mayor Willich** said possibly, but he is not an attorney.

Joan Lamb, a member of the Sun Valley City Council testified in support of **S1157**. **Ms. Lamb** stated that she first visited Sun Valley in 1964, she has been a resident for ten years, and she has been an active community volunteer for several organizations. Her background is in corporate finance and banking. Prior to being elected to the Sun Valley City Council in 2007, she spent four years on the Planning and Zoning Commission. **Ms. Lamb** said she believes that she has a deep knowledge of and a commitment to her community. In these unprecedented economic times, jurisdictions in Idaho will be looking to consolidate services that provide cost savings to taxpayers. A key emotional and economic element of any combination will be the name of the combined entity. The voters should have the right to determine that. In current discussions there is an uncertainty over what the name would be and who will determine it.

There are concerns over property and business values and if they would be diminished if the name Sun Valley were to disappear. **Ms. Lamb** stated that it is important to remove the uncertainty around this issue and ensure that the citizens who are impacted can make this decision. There is precedent in *Idaho Code 50-2108* for citizens to designate the name of their city when petitioning for incorporation. It is only logical that citizens voting for combining their cities should also have the same rights.

Senator Geddes said he does not pretend to understand the political scenario playing out in that valley. In most cases it is usually the majority that rules and the minority concedes. He asked if there is a stronger desire for the name of Ketchum or Sun Valley to be retained? **Ms. Lamb** responded from what she understands there is a unanimous consensus that Sun Valley is the brand. Sun Valley has world wide recognition and it wouldn't make sense for it to not be retained. The difficulty is that in a combination the larger city becomes the surviving city. The voters in favor of consolidation would have to take it on faith that the elected officials of that surviving city, which is Ketchum, would change the name to Sun Valley. There is a lack of confidence in the valley and an uncertainty with regard to that. This simple amendment would get rid of the emotional factor and allow the issues to be looked at. **Senator Geddes** said that helps, but it creates concern knowing that potentially that is the case, and overcoming that will be a challenge either way. **Ms. Lamb** commented that the controversy of the uncertainty will be removed if the voters can vote on the name change, rather than some assurances that Sun Valley will be the name that is retained. It should be decided by the voters if there is going to be a combined entity.

Senator Davis said as he understands, if there are contiguous cities one city can send a petition or pass a resolution to consolidate the two cities. The adjacent city then decides if they want to consolidate and the two meet to decide if they should move forward with consolidation. This requires the majority vote of both adjacent cities to take that step. He asked **Ms. Lamb** if that is correct? **Ms. Lamb** answered she believes there are two methods to accomplish this. The one **Senator Davis** described and the other is for the voters in each jurisdiction to decide by a petition and then it is placed on the ballot. It is highly unlikely that the elected officials in the Wood River Valley would do this, that is why it has become a citizens issue.

Senator Kelly asked if the petition is successful will it then go on the ballot in both cities, and would it include the name change? **Ms. Lamb** replied that is correct. **Senator Kelly** asked if this would be decided by the majority of voters in each city. **Ms. Lamb** said it would have to pass in each city, in order for it to be effectuated. The majority of the citizens would have to agree on the name change or it will not pass. **Senator Kelly** asked if the statute isn't changed and you go through that process will the name change be addressed? **Ms. Lamb** said that is correct. After the election there is a sixty to ninety day period where each city operates as usual. An election is held for a new mayor and city council members for the combined entity. It would be left to the newly elected officials to decide if they wanted to change the name. The name would be Ketchum

if they didn't do anything. That is why there is angst in the valley, because of the emotion involved in the name. The citizens want to have a say in what the name should be.

Senator Davis asked if it requires the combined vote of the majority, or does it require the majority vote of each city in order for the consolidation to occur? **Ms. Lamb** responded that she believes it is the majority of the voters of each city. With this amendment they would also be voting on the name.

Nils Ribí, a member of the Sun Valley Council testified in opposition to the bill. **Mr. Ribí** stated that this issue is important to the constituents and Sun Valley for a lot of reasons. One of the greatest values in the community is the brand name "Sun Valley" and how it is presented to the world, as well as the effect on the State for tourism. This legislation has one purpose. It is specifically designed to allow the city of Ketchum to take the name of Sun Valley and use it for their marketing benefit. This proposed legislation contradicts what is clear in existing Idaho law. There is only one municipal consolidation underway in the State, and if this passes it will be the only one that will occur under Idaho's current consolidation laws that were adopted in 1967. **Mr. Ribí** said one of the promoters behind this consolidation effort is **Senator Thorson**. In addition to contradicting the existing law, **S1157** has some inconsistent language in the Statement of Purpose (SOP). The SOP contradicts the bill itself by stating the legislation changes Idaho code to permit electors of the consolidated city to hold a special election. The current consolidation law was drafted with the idea that two cities would come together and agree to consolidate. When one city is not interested in consolidation they don't have much of a say, especially when it is the larger city that is initiating it. That is the biggest problem in the law. The larger city immediately takes over the zoning, ordinances, and the comprehensive plans. **Mr. Ribí** stated there isn't an emergency that exists today to require a change. The city can deal with it if it happens to pass under 67-2321, which provides due process. The name Sun Valley relates to the city of Sun Valley and the Resort itself. The city of Ketchum is a commercial district in the area.

Senator Davis said 67-2321 seems to deal with the renaming of a taxing district. It does not deal with the consolidation of a taxing district. He asked if that is **Mr. Ribí's** interpretation? **Mr. Ribí** responded it would apply because after a consolidation the name would become Ketchum. If for some reason the elected officials of the new city of Ketchum decide not to change the name, nothing would happen. But if the voters really want the name changed, then 67-2321 would apply for changing the name of a taxing district. If **S1157** passes, the difference would be in 67-2321 under paragraph 5. That paragraph states provisions of this section shall not apply to any city, county, or school district, nor any taxing district for which a provision for change of name is otherwise provided by law. That is the operative provision that would make this no longer viable under this bill.

Senator Davis said it seems to him if the bill is defeated, it is unlikely

there would be a consolidation because Sun Valley would lose their name. But if this bill passes, then it might increase the likelihood of consolidation because it allows the voters of each city to decide whether or not to adopt the name of Sun Valley. He asked if he is reading this correctly? **Mr. Ribi** said the intention and motivation that Sun Valley is concerned about, is another city usurping the name Sun Valley and using it for their benefit, when the name Sun Valley really relates to the Resort.

Representative Jaquet testified and stated that she was the Executive Director of Sun Valley Ketchum Chamber of Commerce. In that role she was the staff person for The Regional Economic Action Project (REAP). About twenty years ago there were discussions about merging Sun Valley and Ketchum, and after twenty minutes of arguing what the name would be, the meeting was adjourned. The former mayor of Sun Valley, **Ruth Leader** contacted her regarding this issue. She asked if the greater populated city would assume the name. **Representative Jaquet** said she suggested that maybe there should be some legislation, so that the emotion would go away and the citizens could have a conversation about merging. Our job is to provide legislation to allow the citizens at the local level to do what is best for them. This bill will provide the framework for the citizens of the Wood River Valley to have a conversation.

Senator Fulcher asked if she is in support of the bill? **Representative Jaquet** responded that she has not been home often enough to be involved in those discussions. She does not live in either city but she has heard about the meetings. The citizens need to get beyond the emotion and talk about whether or not this would be beneficial. The only things the two cities fund together are the Mountain Ride and the Chamber of Commerce. **Representative Jaquet** said that she favors this bill if it will get rid of the emotion.

Senator Geddes commented that he appreciates her support on school consolidation. But in an effort to save money it is a great topic of discussion. Either way, consolidation of a city and changing the names of businesses would be very expensive for the average citizen or the business owner. He asked if there has been any economic evaluations done as to what the savings versus the costs could be? **Representative Jaquet** responded they probably haven't done that but they probably need to.

Wally Huffman, General Manager of the Sun Valley Company, testified in opposition to **S1157**. **Senator Thorson** contacted him and asked for his support on the consolidation. **Mr. Huffman** said he told **Senator Thorson** that he could not do that and he does not support the consolidation for business reasons. There have been meetings, and this week the debate turned into an argument at a town hall meeting of over two hundred Sun Valley residents. The majority of the property taxpayers in the valley have no say in this discussion, and no vote or representation. The Sun Valley Resort has a different concern that is unique. The city code of Sun Valley would cease to exist upon consolidation and be replaced by the Ketchum city code. This includes all municipal codes and a particular concern to him are the ordinances that define zoning, densities, land use, master

plans, design review, height limits, landscape, community housing, in-lieu fees, local option taxation and planning and zoning procedures. **Mr. Huffman** stated these ordinances would be replaced by a substantially different code in use in Ketchum and the differences would have to be resolved in the political arena. These issues would likely take over a year to resolve and it would be a disaster for the Sun Valley Resort.

In 2004 the Holding Family unveiled its vision plan for the build-out in Sun Valley, and that same year **Senator Thorson** became the Mayor of Sun Valley. All city codes were rewritten as it related to land use, community housing, design review and procedure. The Resort contested this process. In the spring of 2008, thirteen rewritten ordinances were proposed which caused a public uprising. Eleven of the thirteen ordinances were defeated by the Council, which ultimately resulted in the loss of **Senator Thorson's** reelection in the Fall. Many of the proposed ordinances were defeated because they were similar to Ketchum's city code. **Mr. Huffman** said the real issue is the underlying city codes. In these economic times, the stalling of those processes would far out weigh any potential financial impact to combining city services. The Legislature should not be injected into what is a local debate. In the event of a consolidation, changing the name to anything could occur and there is no statute that would prevent a municipality from changing its name. **Mr. Huffman** said the name of Sun Valley belongs to his company not the city of Ketchum or Sun Valley. Ten years ago there were bumper stickers that said Ketchum is not Sun Valley. This bill is not in the best interest of the people, but specifically drafted to advance the cause of one side of the consolidation debate.

Chairman McKenzie cautioned **Mr. Huffman** not to speculate as to the motive of the sponsors of the bill, but if he has an opinion to the effect of it, he can speak to that. **Mr. Huffman** said this bill will take one of the issues that is being debated in the Wood River Valley off the table to the benefit of one side of the argument. They are using the Legislature as the vehicle to accomplish it. The people should resolve this issue as a local issue.

Senator Geddes asked if the name Sun Valley is a trademark name? **Mr. Huffman** said that it is. **Senator Geddes** asked how did the name become the name of the city of Sun Valley? **Mr. Huffman** responded as he remembers, the Union Pacific Railroad did not want to run the sewer or fire districts. They actually created the city to take over those municipal functions.

Senator Thorson said he would like to comment on some of the testimony. He is stunned by the statement that Ketchum is trying to steal the name of Sun Valley in order to enhance their economic development. Everyone is suffering in the downturn of the economy. Regarding city ordinances and the name belonging to the Resort, puts it in the realm of a public domain because it was established by the Union Pacific. There are one hundred acres in the county held by **Mr. Holding**. He is seeking an annexation to the city of Ketchum in order to develop a hotel and a parking structure. The essence of the debate of this legislation is that it

will enable the community to decide on a name. The two communities must each vote in the majority in order to be consolidated. This only provides the opportunity for the name to be decided on by the voters if they go through the process. It will enable discussion to take place to see if the citizens want to establish a smaller government, combined services, and the opportunity for lower taxes for the people to come together to enhance the tourist based economy. It will be a benefit to the elected officials.

MOTION: **Senator Kelly** made the motion to send **S1157** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion.

Senator Davis said he does not want to get involved in a local argument with the citizens who care about their community. He sees the problem and the solution differently. If the majority of the people do not want the merger, the consolidation will not happen. The language is a hurdle and it should be different.

SUBSTITUTE MOTION: Senator Davis made the substitute motion to send **S1157** to the **fourteenth order** for possible amendment. **Senator Fulcher** seconded the motion.

Senator Kelly asked for a clarification on the motion. Is the intent to remove the problematic language on lines 15 and 16. **Senator Davis** replied he is not going to craft an amendment. He was giving the sponsor of the bill an opportunity to look and see if there is a way to make it clear that it is either the greater population or the vote of the people. If that can be overcome he would not have a problem voting for the legislation. **Senator Kelly** said she hoped that **Senator Davis** would be open to reviewing an amendment to ensure the reason for his motion.

Senator Darrington said he is impressed by the absence of the Idaho Cities Association. This involves code and everyone in the State of Idaho. However, the perception is clear that this interjects the Legislature in the middle of a huge local feud.

Senator Geddes said his concern is if this goes to the amending order it goes to the second reading on the calendar for a vote. That takes the people who are impacted by the amendment totally out of the process. Maybe **Senator Davis** can clarify his motion for sending it to the amending order. They can never predict what happens to a bill in the amending order. If something happens that is not in the best interest of anyone involved in this issue, then they are squarely in the middle of this without any input from the citizens from either community.

Senator Kelly responded she appreciates what **Senator Geddes** said. They frequently send bills to the amending order and this bill is not a complicated language change. **Senator Kelly** stated that she has more faith in this and the understanding of what needs to be clarified.

Chairman McKenzie requested a roll call vote on the substitute motion.

Senator Darrington - Nay
Senator Geddes - Nay
Senator Davis - Aye
Senator Stegner - Absent
Senator Fulcher - Aye
Senator Thorson - Aye
Senator Kelly - Aye
Vice Chairman Pearce - Nay
Chairman McKenzie - Nay

The motion **failed** for lack of a majority.

Chairman McKenzie requested a roll call vote on the original vote to send **S1157** to the floor with a **do pass** recommendation.

Senator Davis commented that he agrees with the intention of the drafter of this legislation. It is better public policy to allow the citizens to decide, but he had not given thought to the point that **Senator Darrington** raised. The Association of Cities is not represented and he is intrigued by that. He would like to support the concept of the bill, but he has an issue with the language and cannot support the motion.

Chairman McKenzie said he believes the bill was brought with good intentions. There is a lot of local emotion regarding this. **Mr. Huffman's** testimony carries a lot of weight because it is the private corporation that created the value in that name, not the government. They have done a lot to foster the economy in the State through that name.

Senator Darrington - Nay
Senator Geddes - Nay
Senator Davis - Nay
Senator Stegner - Absent
Senator Fulcher - Aye
Senator Thorson - Aye
Senator Kelly - Aye
Vice Chairman Pearce - Nay
Chairman McKenzie - Nay

The motion **failed** to send **S1157** to the floor with a do pass recommendation.

RS18940

RS18940 relates to employment of unauthorized aliens.

Senator Darrington asked if this is a courtesy to print the RS for the sponsor? **Chairman McKenzie** replied that it is. If the Committee votes to print the RS and it is returned to them, the intent is to not have a hearing on the bill. This issue has a lot of concern and it is appropriate to get some proposals out there.

Senator Davis said if the **Chairman** is asking them to only support printing the RS, then he has no hesitation in supporting it. It will be available for discussion and the RS could enrich that discussion.

- MOTION:** **Senator Davis** moved to print **RS18940** and **Senator Darrington** seconded the motion. The motion carried by **voice vote**.
- MINUTES APPROVAL:** **Chairman McKenzie** stated that the minutes are before the Committee for approval. March 6, is for re-approval as he suggested some corrections to his comments on page 5.
- MOTION:** **Senator Geddes** moved to approve the minutes of March 6, with the changes. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.
- Senator Darrington** made the motion to approve the minutes of March 23. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.
- Vice Chairman Pearce** moved to approve the minutes of March 25 and **Senator Darrington** seconded the motion. The motion carried by **voice vote**.
- Senator Thorson** moved to approve the minutes of March 27. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.
- Senator Kelly** made the motion to approve the minutes of March 30. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.
- ADJOURN:** **Chairman McKenzie** said it is his intent not to have a meeting on Monday, April 6, in order for them to attend the funeral of **Senator Malepeai's** wife. There was no other business before the Committee. **Chairman McKenzie** adjourned the Committee at 9:40 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: April 8, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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.

HCR25 **Representative Roberts** presented **HCR25** to the Committee and stated that this Resolution calls for an interim committee to deal with the Soil Conservation Commission (SCC) statutes in Idaho Code. Along with **Senator Stegner** and others they met with the Soil Conservation Districts and the SCC dealing with codes relating to supervision, authority granted to the Commission, and what that relationship is to the Districts. The original legislation was passed in 1939 which created the SCC. In 1974 the SCC was reorganized and placed under the Idaho Department of Lands. Under Governor Batt's administration it was moved to the Idaho State Department of Agriculture (ISDA) in 1997. Through those moves there were no changes made in statute. In Title 22, Chapter 27 of Idaho Code, the SCC is a stand alone Commission functioning within the ISDA. The purpose of this legislation is for the interim committee to look at and rewrite this statute. The SCC supports this as well as ISDA.

Senator Kelly said it seems to her that this is something the executive branch should do without a legislative council appointed committee. She asked if that was talked about? **Representative Roberts** responded it is his understanding that the Legislature has always initiated this process.

Senator Stegner commented the Commission is really not an administrative function and their responsibilities are outlined in code to coordinate with the Districts. All the Districts are stand alone and the SCC is just assigned office space at the ISDA. The responsibility between the Commission and the ISDA is very confusing and the statutes are just too vague for today. Clearer lines of responsibility and authority are needed and that is the reason behind the Resolution.

Dick Rush, the Acting Director for the SCC, addressed the Committee.

Mr. Rush said just yesterday there were changes made at the SCC and in the interim the Commission requested that he take this position. He is also a Commissioner on the SCC so he is very involved. As they transition, this is a good time to review those statutes. The Legislature might be interested at looking at this particular agriculture commission because it is funded by the general fund.

Senator Kelly asked how is the Administrator appointed? **Mr. Rush** said that the Director of the ISDA has authority to hire the Administrator. The way the statute is written, that Administrator is hired from a list of suggestions by the SCC. **Senator Kelly** asked if this is a good time to hire someone to fill that position when the interim committee will be reviewing the statute? **Mr. Rush** replied it is the right time to make some decisions and give direction to the new Administrator of the SCC.

Kent Foster, the Executive Director for the Idaho Association of Soil Conservation Districts (IASCD), addressed the Committee. **Mr. Foster** stated that they have an annual conference every year. The IASCD discussed this with **Senator Stegner** and **Representative Roberts**. At the business meeting at that time, the Districts voted unanimously to support looking at the statutes through an interim committee. The IASCD supports this legislation. In *Idaho Code 22-2718* states that the Director of the ISDA shall appoint the Administrator of the SCC from persons recommended by the Commission.

Senator Stegner said he is well aware that the Legislature needs to approve an interim committee. This issue has a lot of support within this area for a review, and even if this Resolution is passed, the process will still have to be approved by leadership of both bodies, as well as the staffing and funding by Legislative Council.

MOTION:

Senator Stegner moved to send **HCR25** to the floor with a **do pass** recommendation. **Vice Chairman Pearce** seconded the motion.

Senator Davis stated that normally each body passes a request for an interim committee and sends it to the other side for approval. The majority and minority leadership get together to decide which will be approved, and then the other side is authorized to pick up that bill and run it. Once the Resolutions are approved, Legislative Council decides how they will be staffed. The decision to run the Resolutions is after the Leadership meeting, which they have not had. He will support the motion with the understanding that if the Resolution is not approved, he will request the Chairman to return the bill to Committee.

Chairman McKenzie said from his perspective he was concerned that he would be dropping the ball if the Committee didn't at least have the opportunity for this to go forward.

The motion **carried** by voice vote to send **HCR25** to the floor.

**GUBERNATORIAL
APPOINTMENT:**

Chairman McKenzie said the confirmation vote of **Ruthie Johnson** to the Idaho Human Rights Commission is before the Committee.

Senator Thorson said the Human Rights Commission is charged with protecting the rights and privileges of individuals within the State. One can't do that if they are biased against any one group or person of Idaho citizens. The testimony of **Ruthie Johnson** leads him to believe that she has difficulty with and would be biased against citizens who are homosexual. That is a great concern to him.

MOTION:

Senator Thorson moved to have **Ms. Johnson** return to the Committee for further questioning to establish her exact position.

Chairman McKenzie responded that as the Chairman it is his prerogative to schedule the agenda, and he has no intention of doing that.

Senator Thorson said he has made a motion that the vote to confirm **Ms. Johnson** be delayed, and that she return to the Committee for further testimony. **Senator Kelly** seconded the motion.

SUBSTITUTE MOTION:

Senator Davis moved to send the nomination of **Ruthie Johnson** to the Idaho Commission on Human Rights to the floor with a recommendation that she be confirmed. **Senator Darrington** seconded the motion.

Senator Darrington stated that they do not put people to a litmus test on a specific issue. The Committee heard testimony on that specific issue. Another member of the Commission testified that the vote was five to four against support of the legislation that was heard before this Committee. **Senator Darrington** said he supports the nomination of **Ms. Johnson**.

Senator Davis commented when **Ms. Johnson** was asked the question if the State of Idaho provided protection for the classification of sexual orientation, would she follow the law, and she answered yes. They are the policy and decision makers and he is not a fan of the effort that is being made here today.

Senator Kelly said it is clear based on the language of current statute, giving authority to the Human Rights Commission as well as their historical practice, that the Commission is much more than an enforcement and implementation arm of the law that they establish. The Commission is an advocacy group for human rights in the State of Idaho. **Senator Kelly** stated that she believes it is relevant to ask people who are appointed to that Commission what their view is on human rights in general. There is a well defined definition of what the Human Rights Act is within our State and our country. She has a concern about the candidate and what she said. This is a reappointment, she has been involved in these issues, and clearly has witnessed issues of discrimination. Her role is to enforce current law and to advocate for protection of certain people and groups. She does not see that commitment in the candidate that is being appointed to the Commission, so for that reason she cannot support the substitute motion.

Senator Geddes commented that he supports the substitute motion. As he recalls in **Ms. Johnson's** testimony she talked about the fact that she does respect individuals, and whatever the Commission does she has to

operate within the framework of the current statute and laws. That concern does not trouble him and he believes she is a fair minded person. Based on her experience and as a reappointment, **Ms. Johnson** understands the dynamics of the Commission.

Senator Thorson said he is not interested in a litmus test, but finding individuals who will protect the human rights of all citizens. He has participated in activities with individuals who have been taken advantage of or denied their human rights. In order for human rights to be promulgated properly, the people who are responsible for doing that must be clear and clean in their motive. **Senator Thorson** stated that the reason for his request that **Ms. Johnson** return, is that he, as a responsible citizen, can be clear about his suspicions that she has difficulty in dealing with homosexuals. **Senator Thorson** requested the substitute motion be denied.

Senator Davis said we must have been in different Committee meetings. He heard a woman who stood and expressed her strong confidence in wanting to support individuals regardless of religion, race, creed or even sexual orientation. From her point of view at this point in time as a matter of law, she did not support receiving some form of classification. Obviously, reasonable minds can differ on that as did the individual who followed her. **Senator Davis** stated that he is not afraid of individuals who have a different opinion. They have a constitutional provision that is different than what he just heard expressed. He is the first to acknowledge that the definition of marriage versus the right of an individual to sustain meaningful employment are different issues. However, he plans to support the next confirmation of the individual who had a different point of view.

Senator Kelly requested a roll call on the substitute motion to confirm **Ms. Johnson**.

Senator Darrington - Aye
Senator Geddes - Aye
Senator Davis - Aye
Senator Stegner - Aye
Senator Fulcher - Aye
Senator Thorson - Nay
Senator Kelly - Nay
Vice Chairman Pearce - Aye
Chairman McKenzie - Aye

The motion **carried**.

Chairman McKenzie said the Committee has the confirmation vote of **Hyong Pak** to the Idaho Human Rights Commission

MOTION:

Senator Davis made the motion to send the nomination of **Mr. Pak** to the floor with a recommendation that he be confirmed. **Senator Kelly** seconded the motion.

Senator Darrington said using the same rationale as the opponents of **Ms. Johnson**, someone in his position should be opposing the confirmation of **Mr. Pak**. He is not opposed to it, he is an excellent choice for an appointment to the Human Rights Commission.

Senator Thorson said he strongly supports the appointment of **Mr. Pak** based on his eloquent responses during the hearing. He believes that all human rights should be treated equally and no one should be denied their human rights based on choices. **Mr. Pak** is a fine candidate for the Commission.

Senator Darrington requested a roll call vote on **Mr. Pak's** appointment.

Senator Darrington - Aye
Senator Geddes - Aye
Senator Davis - Aye
Senator Stegner - Aye
Senator Fulcher - Aye
Senator Thorson - Aye
Senator Kelly - Aye
Vice Chairman Pearce - Aye
Chairman McKenzie - Aye

The motion **carried** to confirm the appointment of **Mr. Pak**.

Chairman McKenzie said the appointment of **Ralph Williams** to the Idaho Energy Resource Authority is before them.

MOTION: **Senator Darrington** moved to send the appointment of **Mr. Williams** to the floor of the Senate with a recommendation that he be confirmed. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

RS18881C1 **Chairman McKenzie** said he does have a letter by unanimous request from the Chairman of the Local Tax and Government Committee, requesting that they print the RS. **RS18881C1** relates to alcoholic beverages and the provisions relating to an official seal or label.

MOTION: **Senator Davis** moved to print **RS18881C1**. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

Senator Jorgenson said that the Idaho Liquor Dispensary handles approximately ten million bottles a year. Each bottle has to be hand stamped which is extremely labor intensive and it will save the State a considerable amount of money.

H266 **Mike Nugent**, from the Legislative Services Office (LSO), presented **H266** to the Committee. **Mr. Nugent** said **H266** is referred to as the Drop Dead Bill. In the late 1980's there was an Idaho Supreme Court case called *Holly Care Center v. The Idaho Department of Employment*. The justices of that case said the Legislature's review of administrative rules is not before us, but if it were they would probably strike it down. This sent a chilling effect and out of that **Senator Risch** and **Attorney General**

Jones, came up with the legal concept of making rules of temporary effect for one year, unless they were approved by statute. **Mr. Nugent** said that is codified in *Idaho Code 67-5292* and this is the statute that will make these rules effective for one year. After that statute was passed, the Idaho Supreme Court handed down the decision of *Mead v. Arnell*. The court stated that the Legislature does not have the authority to reject administrative rules. If this bill is not passed, all rules will cease to be effective on July 1.

Senator Geddes said temporary rules are important because of our interaction with businesses and industry and every aspect of our lives depend somewhat on statute and rules.

MOTION:

Senator Geddes made the motion to send **H266** to the floor with a **do pass** recommendation. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

H198a

Bill Gigray presented **H198a** to the Committee. **Mr. Gigray** said he represents a number of cities, highways, and fire districts which are listed in the handout he provided to the Committee. **H198a** relates to the process of the transfer of personal and or real property from one Idaho local government entity to another. These local government entities have the authority to transfer the property with or without consideration, as determined by the governing body and is in the best interests of the public. The proposed legislation will amend *Idaho Code 67-2323* to change the publication notice requirements from two consecutive weeks to two publications, one not less than twelve days prior to each meeting. The last publication of notice shall be made not less than five days prior to each meeting, which follows the notice of election publication requirements.

Senator Thorson asked if the publication notice can be published on line? **Mr. Gigray** responded in order to be legal the notice has to be published in the paper of general circulation within the district it is used. To his knowledge there aren't provisions in code that allow for that type of publication to be legal. **Senator Thorson** said the reason for his question is because in his community one of the two publications is on line, which happens to have a larger circulation than the one that is printed. He was wondering why it wouldn't be considered a legal publication. **Mr. Gigray** said he believes the definition of a legal publication is defined in Title 60. It has to be a paper that is published with a certain circulation, and it has to be published a certain number of times.

Vice Chairman Pearce asked **Mr. Gigray** who will use this, how will it be used, and what type of items will be transferred? **Mr. Gigray** replied that he has used this many times, and most often with the fire districts. Most recently the Caldwell fire district had a truck they received when they took over the city of Notus' fire department and annexed the fire district. The fire truck was surplus and Elmore County was in need of one, so they went through this process to transfer that fire truck from Caldwell without cost, only the cost of publication and the notice. Homedale has transferred to Jordan Valley, and Nampa and the rural fire district have a

contract service agreement. It is labor intensive and costly to own fire equipment along with the reporting and insurance, so it made more sense to transfer the equipment to the city of Nampa. Some highway districts have exchanged equipment and school districts exchange equipment. It is very beneficial to the public to have districts cooperate and transfer property for the continued use of public equipment property.

MOTION: **Senator Stegner** moved to send **H198a** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

Senator Stegner asked unanimous consent for **H198a** to be placed on the consent calendar. **Chairman McKenzie** said hearing no objection, **H198a** will be sent to the **consent calendar**.

ADJOURN: There was no other business before the Committee. **Chairman McKenzie** adjourned the meeting at 8:55 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: April 10, 2009

TIME: 9:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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 9:15 a.m.

RS18957 **Jeff Youtz**, from Legislative Services Office (LSO), presented **RS18957** to the Committee. **Mr. Youtz** said in looking at the statutes for the operation of food services in the Capitol building, it became apparent that they were not in compliance. This bill will delete the state capitol from the definition of "public buildings" with respect to food service.

MOTION: **Senator Davis** moved to print **RS18957** and **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

S1184 **Senator Geddes** presented **S1184** to the Committee and said that this deals with some minor adjustments that are being proposed to the redistricting, which will occur in a few years. In the print hearing they had lengthy discussions regarding what this bill does and it is an effort to protect and preserve communities of interest throughout the State. There are a number of districts because of Idaho's dynamic geography that were somewhat isolated from the community of interest, with respect to the district they were placed in. The most significant is the connection of highways, roads, and interstates which is the link that justifies communities of interest and keeps them together. Protecting the counties and the voting precincts as much as possible is important, so there are provisions for a process by which those can be overridden if necessary. In the last redistricting effort, the Commissioners were left with negotiating that and this will provide a better process for the decisions that need to be made and addressed.

Senator Kelly asked **Senator Geddes** how does he reconcile the affirmative vote of at least four out of the six members of the Commission with the Constitutional requirement, that actions only require four affirmative votes? **Senator Geddes** asked for clarification if that

requirement is to accept a plan or to make decisions through the process for a plan that is being developed. **Senator Kelly** said in response to that, the language is vague. **Senator Geddes** said his recollection of the Constitution, is that a majority of the Commission have to agree that the plan being submitted is acceptable and meets the criteria by which the Legislature has developed direction for them, and not by how they address each issue along the way. **Senator Kelly** said in her view there is a potential for this provision to conflict with the Constitution.

Senator Kelly said with regard to the language in statute regarding communities of interest, that gives a lot of discretion to the Commission in making the determination. It could be argued that it already encompasses the language that is added in section 9. This takes away a lot of discretion of the Commission and puts in place a very descriptive direction with regard to highway systems. She asked **Senator Geddes** if he has a response to that? **Senator Geddes** replied in the last redistricting, the commissioners were hard pressed to protect communities of interest. In the north boundary to the southeast, the commissioners boxed themselves in and that created some difficult districts, not just for the citizens but for the legislators to adequately represent them. As he looked at the counties that are not connected by roads, highways, or interstates, they generally have a geographic barrier that prevents that to occur. In doing so, it has forced those areas of the State to develop a commonality with other communities. In **Senator Broadsword's** district for example, she has to drive through several districts in order to get to Shoshone County, which is a county in her district. The intent is to tie the districts more together than what they were last time, and for communities of interest to fall within the same judicial district. In the last redistricting, county barriers were not taken into account and it disrupted the traditional community associations or commonalities.

Senator Geddes said he looked at several other options, such as having half the districts represented in a first congressional district and the other half within the second congressional district, and then having only one district overlap. The problem is that it doesn't establish communities of interest, and in some cases it detracts from it. The other problem with that option is that two issues develop simultaneously. The first and second congressional districts are developed at almost the same time as the legislative districts. That could initiate starting at the north and south, and moving towards the Boise valley where it shouldn't matter if a district varies in Boise or Eagle by a block or two, or a mile. Those communities of interest would not be disrupted significantly like the rural communities. **Senator Kelly** requested a copy of the map that shows the redistricting. **Senator Geddes** stated he intends to provide the map to everyone. He has had discussions with many legislators not knowing how their district will be impacted, so he has offered a guarantee, they will reside with one district of the state.

Senator Darrington said in support of **Senator Geddes**, the committee for developing the criteria for this plan was chaired by him prior to the last redistricting. He moved "community of interest" up to second on the list, which the commissioners did not take into account. **Senator Darrington**

stated that he supports **Senator Geddes'** contention in paragraph 9, which gives guidance and direction for communities of interest. There isn't a conflict with paragraph 7 and the Constitution. There has to be a majority of four members who agree to the redistricting plan. This will preserve communities of interest within the State.

Senator Geddes commented traditionally Oneida County has more closely aligned with Franklin, Bear Lake, and Caribou County. He still gets calls from residents of Oneida County to address their concerns. It is also interesting to note that Teton County has little if any commonality with the other southeast counties. **Senator Geddes** said this effort is not nefarious, it simply tries to recognize and allow a process by which redistricting can happen. This will give the commissioners direction to come to agreement and accomplish what is needed.

Senator Kelly said she understands the frustrations with regard to the way **Senator Geddes'** district was laid out. Her district is different with two very distinct characteristics. Urban areas are not the same. **Senator Kelly** stated that she cannot support this legislation. This appears to be micro managing a Commission that already has direction and guidance in place. It is very specific to roads and requires a certain vote to make things happen, which she believes has the potential for a conflict with the Constitutional provision.

Senator Stegner stated that on a six member commission, two thirds is also the simple majority. Statute requires any final action be approved by two thirds. The reason a five member requirement was added is to provide for flexibility, it is not a restriction. He understands why there are concerns, but it really is a compromise for the Commission to have some ability to work within the parameters, and to not have rigid requirements that make it impossible to satisfy those requirements.

Senator Davis commented that the language contained in subpart 7 is just a waiver of the rigid standards that are contained there. It is not a modification of the Constitutional standard for adopting the plan.

MOTION:

Vice Chairman Pearce moved to send **S1184** to the floor with a **do pass** recommendation. **Senator Darrington** seconded the motion. **Senator Kelly** requested a roll call vote on the motion.

Senator Darrington - Aye
Senator Geddes - Aye
Senator Davis - Aye
Senator Stegner - Aye
Senator Fulcher - Aye
Senator Thorson - Nay
Senator Kelly - Nay
Vice Chairman Pearce - Aye
Chairman McKenzie - Aye

The motion **carried**.

RS18944C1 **Chairman McKenzie** stated that he has a letter from the Chairman of the Agriculture Committee by unanimous request for the Committee to print the RS. **RS18944C1** relates to the Department of Agriculture and the Department of Environmental Quality to develop comprehensive plans with regard to dairy farm nutrient management, water, and air quality.

MOTION: **Senator Davis** moved to print **RS18944C1** and **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

RS18977 **Chairman McKenzie** said he has a request from the Commerce Committee by unanimous request to print the RS.

Bob Fick, from the Department of Labor presented **RS18977** to the Committee. **Mr. Fick** stated that **RS18977** provides for the provision in the Federal stimulus package to allow Federal-State unemployment insurance extended benefits to continue for the entire year, which the Federal government has agreed to pay for. The impact will be between fourteen and twenty million dollars more into the economy through 2010. Once the Federal government stops paying the benefits, it will revert back to the insured unemployment rate to determine whether extended benefits are needed.

MOTION: **Senator Davis** made the motion to print **RS18977**. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

ADJOURN: **Chairman McKenzie** deferred the approval of the committee minutes until the next meeting and adjourned the meeting at 9:38 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: April 13, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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.

H275 **Representative Bedke** presented **H275** to the Committee and stated that this bill proposes to freeze the amount of distribution from the Lottery that is deposited to the Permanent Building Fund and the School District Building Fund at the 2008 distribution level. That amounts to approximately 17.5 million dollars to each fund. In the interest of full disclosure, there may be additional monies from the Lottery to be distributed to the Bond Levy Equalization. That bond is in response to the school facilities lawsuit to help school districts with their bond payments. The State has at least ten percent of the interest obligation up to all of the interest, and part of the principal, for some school districts for every bond that is passed. That obligation is growing at a rate that wasn't anticipated. This year the cost to the Bond Levy Equalization is around 17.9 million dollars.

Representative Bedke said in the past, it was paid by the difference from the bond payment on the Capitol renovation and the amount of money collected from the tobacco tax. The State collected around thirty million dollars. The loan payments were twenty million, which left a balance of ten million dollars. When the Bond Levy Equalization was originally passed, they believed when the Capitol was paid off the balance of the tobacco tax would be unencumbered and dedicated to this effort. There is a shortfall of three years and this effort is to put additional money into the Bond Levy Equalization. This bill provides that any monies over and above the 2008 distribution would be dedicated to the Bond Levy Equalization. The bill will sunset in September 2014 when the Capitol renovation will be paid. The distribution will be 3/8 to each fund and one fourth going to the Bond Levy Equalization, but the level has to remain at the 2008 distribution level. If the Lottery proceeds decline so will the dividend.

Senator Darrington said he understands this process, but is there an expectation that it will sunset in 2014? **Representative Bedke** responded as with every effort in the Legislature, they are only as good as the collective resolve to do it. The fact remains that the State has taken on an obligation to the Bond Levy Equalization, through bonding to the school districts. Whether it is this funding source or another, it is an issue.

Senator Davis said there will be winners and losers. He asked if he had an analysis of what the loss is to each district? **Representative Bedke** responded the Lottery money is distributed with the intent that if there is growth to the Lottery dividend distribution, everyone would take a prorated hit. This is the same for the Permanent Building Fund. Between now and September 2014, any increment would go to the Bond Levy Equalization. If there are winners and losers on a status quo, the result will not change because of this legislation. If there is a significant increase to the Lottery the dividend would go to this cause. **Senator Davis** said hypothetically speaking, if the distribution remains the same he understands that all school districts participate in the school district building account, and that not all school districts benefit from the Bond Levy Equalization. He asked if that is correct? **Representative Bedke** replied to the extent that they have not passed a bond since the inception of the Bond Levy Equalization, that is correct. **Senator Davis** asked if the school districts that have not passed a bond, would they be disadvantaged by this legislation? **Representative Bedke** said yes, but keep in mind that some schools are in that same boat. Had the Bond Levy Equalization not been successful, then the districts that have not passed a bond would have been on the hook. The school districts that have not passed a bond will be limited by this. **Senator Davis** said those are the ones that are the losers in this bill. He asked if he had a list of those districts.

Representative Bedke said he does not have a list of those districts, but he can certainly provide one.

Senator Geddes said in the event that this doesn't pass, and the Bond Levy Equalization is depleted, what happens to the school districts that pass a bond? **Representative Bedke** responded he doesn't know. His experience teaches him they will find a way to do it.

Senator Darrington said looking at the last five years of growth to the Lottery, and applying it to the next five years, will that one fourth be achieved by 2014 according to your projections? **Representative Bedke** replied he doesn't know for sure. If present trends continue the answer is no, but if there is growth there could be between one and two million dollars. **Senator Darrington** said he believes it is pretty optimistic to think they will achieve that by 2014.

Senator Kelly said this might not fix the problem and without any figures, she asked if there was some way to predict how much will be needed? **Representative Bedke** said when the cigarette tax sunset, the thirty million dollars that was obligated for payment on the bonds for the Capitol renovation was only twenty million. The ten million dollar difference was banked for the Bond Levy Equalization, and the plan was to draw from

that when the Capitol renovation was paid off. There is a shortfall of three years. It was recommended that the entire 17.9 million dollars out of the twenty five million that was set aside in **H743**, be used to address the school facility lawsuit. The State set aside money outside of the appropriations process to tap and fix buildings. More bonds were passed than what was anticipated. There is money for this year, but steps need to be taken to dedicate funds to this effort. It was suggested that the way the Lottery functions they could carve out eight million dollars. It is a complicated issue but suffice it to say, there isn't a dedicated funding source and they need to find one. **Senator Kelly** commented it doesn't seem like this is the dedicated funding source. To rely on increased gambling and smoking to meet our financial obligation to the schools, doesn't sound like it is working. **Representative Bedke** said he is willing to partner with her to find a better way. The richest school districts get ten percent of their interest paid under this program, but the efforts to just assist them failed in this Committee. The cost this year is 17.9 million dollars and there is enough to cover that, so if not this, then what.

Vice Chairman Pearce said they are capping the Permanent Building Fund with this legislation. He asked if the Lottery grows, is that fund anticipating or expecting more funds? **Representative Bedke** answered a lot of time our strategic plans are wishing and hoping. **Vice Chairman Pearce** asked if there are other things that have been committed to that and is the Lottery expecting to take care of it. **Representative Bedke** replied this building is a perfect example of that. It has been renovated to the point where they can't walk away from it. The future of this building will have to depend on some funding source, so that it is suitable office space for State agencies or whatever it ends up being. The renovations that are needed will have to come out of the Permanent Building Fund, which depends on increases from the Lottery to help address that. **Representative Bedke** said, "Does hope spring eternal in the Permanent Building Fund." He believes that it does. This will take away one of those hopes until 2014.

Senator Stegner asked if he thought maybe a few cents to the fuel tax would take care of this. **Representative Bedke** replied that he hadn't thought of that and maybe that was missing in his debate on the floor.

Senator Darrington said the Permanent Building Fund receives about thirty five million dollars a year. 17.5 million dollars comes from the Lottery, five million from the sales tax, and there is income tax and some interest, which grows a little each year. The Fund does not spend beyond what it receives, but it does service the debt on the six colleges across the State. The Department of Financial Management (DFM) gives the Fund an estimate and projects are approved and recommended to the Joint Finance Appropriation Committee (JFAC) according to that estimate. The Fund does not have the authority to bond through the Permanent Building Fund. **Representative Bedke** asked **Senator Darrington** what is the cost per year to service the debt on the six colleges? **Senator Darrington** replied he can't remember.

TESTIMONY: **Jan Sylvester**, who represents the Idaho PTA, said the original purpose

of the Lottery was for schools. The funds are supposed to go to the schools and now part of it will go to the districts that have passed bonds. Charter Schools do not participate in the bond program, they are prohibited by law. **Ms. Sylvester** said she does not have a recommendation for another source to fund the Bond Levy Equalization.

Senator Kelly inquired, because of the budget cuts, is there a reason to expect there would be an increase for schools to pass bonds and put more demand on the Bond Levy Equalization?

Wayne Davis, who represents the Idaho Association of School Administrators, said as he sees how their membership and the school districts are changing. They are moving from the rural areas to the Treasure Valley and Coeur d'Alene. Those areas are experiencing increases and would probably benefit from increased bonds or even the ability to pass bonds. **Mr. Davis** said his concern is when they sub-optimize the State by taking funds from the Lottery and from the districts that haven't passed bonds. Those districts have done it another way through a plant facility levy. This will not resolve that situation.

Senator Kelly asked if that was a yes or a no answer? **Mr. Davis** said it is "no."

MOTION:

Senator Stegner made the motion to send **H275** to the floor with a **do pass** recommendation. **Senator Geddes** seconded the motion.

Senator Stegner stated that it is easy to try and find criticism with this bill. No one wants to change the traditional use of the Lottery funds and allow consideration from the Legislature to modify that effort. There is a gap to fill and this seems like a reasonable effort to try to do that. In a few more years they should have more options and be able to deal with this issue. For the time being, they have an obligation to try and find some funding source for the Bond Levy Equalization. This is a reasonable effort to deal with this temporary situation. It is worthy and worthwhile to move forward for consideration.

Senator Davis said they need to find a solution they can have confidence in to solve the problem. He would like to see another option and he does not support the motion.

Vice Chairman Pearce stated although he supports what has been said, if sales increase, five eighths of the Lottery funds will go to the schools instead of fifty percent. In that sense it is a positive move so he supports the motion.

Senator Darrington said he agrees with **Representative Bedke** that by 2014 they won't reach the one fourth threshold. It will take a lot of work by the Lottery for that to happen, because it does take 35 million dollars off the top to protect the Permanent Building Fund. This will fall short in bridging the gap, but he believes it will help a little.

Senator Geddes said for many years **Representative Bedke** has been

the lone voice in the wilderness in raising this concern. He compliments him for continuing to do that. Although he will support this effort, he does have concerns that in order for this to succeed the only way to see an increase or enhanced revenues is to come up with something new, different, and appealing to those who participate in the Lottery. **Senator Geddes** stated that he somewhat disagrees with some of the testimony that the Lottery was designed to help the schools. The schools were simply put in there as a mechanism to justify to some extent the harmful effects of the Lottery in our society. It has done that, so while he doesn't necessarily support the effort to separate people and their money, he will support what **Representative Bedke** is trying to address.

Chairman McKenzie requested a roll call vote on the motion to send **H275** to the floor of the Senate with a **do pass** recommendation.

Senator Darrington - Aye
Senator Geddes - Aye
Senator Davis - Nay
Senator Stegner - Aye
Senator Fulcher - Absent
Senator Thorson - Aye
Senator Kelly - Nay
Vice Chairman Pearce - Aye
Chairman McKenzie - Aye

The motion **carried**.

H267

Colonel Bill Shawver, Director for the Bureau of Homeland Security, presented **H267** to the Committee. **Colonel Shawver** stated that **H267** proposes to make language changes to Title 39, Chapter 71. As written today, the code limits the ability for the State to assist first responders as they are called to hazardous substance incidents. This code limits the responding team to recover costs associated with an actual hazardous substance incident, where there has been an abrupt release of hazardous material. The existing statute does not allow cost recovery for any event where there is a threat of a release of a potentially hazardous material. **Colonel Shawver** said for example, if an unknown white powder is found a team responds based on the threat of that powder. But in field testing or follow up lab testing, when they find it is not a nonhazardous substance, the teams cannot recover the costs associated with it.

When there is an explosive device, a team responds to the location. If an explosive device is found, the responding team cannot recover costs because there wasn't an abrupt release, in accordance with the interpretation of the statute. It has to be an actual detonation. With regard to clandestine drug labs, teams respond to suspected labs where drug making materials are discovered. If through field testing and or air monitoring it is determined that a hazardous material was not released at the crime scene although the team responded, and a hazardous material is not found, that team cannot recover costs.

Colonel Shawver stated that changes to the existing code to include a

threat of a release of a potentially hazardous substance, will ensure that they can continue to prevent, minimize, or mitigate harm to public health and safety. In an effort to further clarify the language in code, they worked closely with **Bill von Tegen** and his staff at the Attorney General's Office, who were instrumental in creating the language in **H267**. In cases where a responding team requests cost recovery under the existing code, and where a responsibility party can be identified, the authorized costs of response are assumed by the Bureau of Homeland Security. There were approximately one hundred fifty hazardous substance incidents in 2008, and approximately thirty five were processed for cost recovery under existing code. **Colonel Shawver** asked the Committee to send **H267** to the floor with a **do pass** recommendation.

Senator Davis said what if the team gets this wrong and there isn't a threat or a potentially hazardous substance, but the team believes it was a reasonable judgment. It seems to him that if this becomes law it isn't whether the State should be able to recover costs, but the person who made the determination was reasonable in making that judgment. He asked if that is correct? **Colonel Shawver** responded first of all it will never be a member of the Bureau that makes that judgment, but the incident commander. That individual has the responsibility for that jurisdiction, who would be a fire chief, or sheriff. In their estimation if there is a potentially hazardous situation and that public safety is at risk, then the team is authorized to deploy under the umbrella of the State.

Senator Davis said he understands that, and the fact that they cannot make the determination without consultation with the Bureau, which makes additional sense. He is now in the collection process and isn't the fight over whether or not the local responder made the right decision.

Colonel Shawver replied the incident commanders who respond to the incidents do this out of responsibility to provide for the safety of the public. As these events unfold there are numerous calls that take place. He has yet to see where the incident commander made a wrong decision.

Senator Darrington commented that he had a lengthy conversation with **Bob Wells** regarding this legislation. He asked what happens when an incident happens on property that is not the responsibility of the owner, who is responsible? **Colonel Shawver** answered there is a specific release of liability written in existing statute, which addresses incidents caused by an act of God, war, or an act or omission of a third party of the potentially liable person. As the Director of the Bureau, he has the authority to exercise common sense. He has waived an event from cost recovery and not gone after the property owner.

Senator Geddes said in most cases he would assume if it is a leak or spill from a truck in an accident, that there is probably insurance that would cover the liability of such an incident. He asked if that is generally true? **Colonel Shawver** responded that is true specifically if they are involved with a commercial entity. In a clandestine drug lab there has never been an insurance agent who stepped in, and in those incidents they work closely with the county prosecutor to make restitution a part of the justice system. **Senator Geddes** asked if someone puts a suspicious powder in an envelope, are there resources to go after to cover the cost of

the response? **Colonel Shawver** replied in that case the Federal authority assists in those matters. There have been cases where the responsible party has been found, but in many cases the responsible party is never found.

Senator Davis asked if he would have a problem with striking the word "likely" on page 3, line 2? **Colonel Shawver** answered that he would because if it was a white powder, the first responder is going to be very conservative, due to the potential threat to the public. Through testing if it is found that it is not a hazardous substance, the first responding team needs to respond as if it is a hazardous material. If that word is stricken, the ability for the team to respond to that incident has been taken away, the ability for cost recovery, and to be made whole. **Senator Davis** said if that were the case in every scenario as suggested, he would vote for this bill. But he can imagine hypothetically that the team may find an innocent set of circumstances and misjudge the event, and then use this bill as a basis to try and impute the cost of testing on an innocent citizen. That is the only problem that he is having with the legislation. **Colonel Shawver** replied there are so many failsafes in this process and it is tried and true in the State of Idaho. There is a collective conversation that takes place and if the incident commander feels that the public is potentially in harms way, there are many scenarios that could play out. The first responders are used to seeing the whole gamut of events that take place. In his estimation, the likelihood of that happening and the State attempting to pin the cost on someone, he just doesn't see that happening.

Senator Stegner commented that **Senator Davis** keeps raising the issue in his mind of trust rather than putting it in code. What if a mother is going to the mall on a hot day and she needs to restrict the amount of articles to bring. Inadvertently she places talcum powder in an envelope and drops it, security finds the envelope and then notifies the Bureau. All of a sudden there is an incident for a potential hazardous material in a public place that causes panic, and runs up a bill in response to the incident. It appears with this legislation that the mother would be potentially liable for the cost, because the State of Idaho logically reacted to what they perceived to be a threat. **Senator Stegner** said this scenario is exactly what **Senator Davis** is trying to address. There should be some language in here that states there has to be a threat before the recovery of cost is an issue. **Colonel Shawver** responded this bill does not allow for recovery of site clean up or remediation efforts. It does allow the team to respond and make the site safe for the first responders and then it stops. For example, in that white powder incident, the mother would probably do what is necessary to recover the envelope. If that envelope was threatening in some way and it was determined that they didn't know who was responsible, the team would respond and render the site safe. Once that occurs that is where their authority ends. The cost recovery only provides for the period when the incident happens and to the point that the site is made safe for the first responders to operate. It is not the cost recovery for the entire remediation or clean up of the site. **Senator Stegner** asked wouldn't that mother be liable for the cost of the response in securing the site? **Colonel Shawver** said if the mother dropped the envelope and continued on her way he doesn't know how they would link

her to the envelope. **Senator Stegner** said what if there is a return address on the envelope. **Colonel Shawver** said common sense would prevail and they would call her and ask, and at that point the event would be over. **Senator Stegner** said might we ask **Mr. von Tagen** the same question.

Bill von Tagen, Deputy Attorney General, said since 1990 he has been involved with this issue in varying degrees. **Mr. von Tagen** stated that first of all, he has never seen a situation where they have gone after an innocent party. Many times the argument is just the opposite that involves the State. He cannot completely answer the question, but without these definition changes the State cannot step in. When the local community reasonably responds it incurs costs. If they come to the State to seek reimbursement, the State cannot. The local community is left holding the entire bag in that situation. If there is a case where something is truly not a hazardous substance, but it is reasonable to allow the State to respond, the State will not be able to do that. In looking at this, there is discretion, but he is not certain how they can eliminate the concern that **Senator Stegner** has without putting the local entity over a much larger barrel.

Senator Davis asked **Mr. von Tagen** if somewhere in Title 39, Chapter 71, is there some language that states the right to recover is limited to those who know, or had reason to know that it might be perceived as a threat? **Mr. von Tagen** responded if there is, he is not aware of it. **Senator Davis** said he agrees that if a person merely chooses an innocent substance with the intent to create panic, it should not be an excuse to say they are not liable. He asked what is wrong with inserting language that under that circumstance, there should be a limitation of application to those who knew it might be perceived as a threat. That would take care of the scenario of the mother at the mall. **Mr. von Tagen** said he is concerned about an additional element of proof that would be involved. He is not sure if it is really necessary. About twenty years ago a white liquid substance came to Boise all the way from Canyon County. It turned out to be milk and no one sought reimbursement from the milk company and probably couldn't. **Senator Davis** said this bill as written has a factor in the recovery effort that would preclude the State from recovery, if the people making the decision were exercising reasonable judgment. If they exercise reasonable judgment than those costs could be imputed on whoever is the responsible party. **Mr. Von Tagen** replied that is also the same factor that is going to either allow or prohibit the State from reimbursing the local recovery team, that the State has even authorized to respond.

MOTION:

Senator Darrington moved to send **H267** to the floor with a **do pass** recommendation. **Senator Kelly** seconded the motion.

Senator Kelly said this is an area that she is very familiar with given her past experiences. She was a legal advisor to a number of State and local agencies as they try to respond to those situations and recover costs. If there is an emergency situation there is a need for quick response. So many people in the State are well trained, and they are professionals that use their best judgment in responding to situations that are perceived as

emergencies. These situations are potentially threatening and most importantly so is our public safety. What they have before them is a request for an ability to recover costs. This is truly a case of a need for government intervention in terms of protecting public safety, and it is appropriate to put in place a mechanism for recovering costs associated with it. **Senator Kelly** stated that she is very comfortable that the checks and balances are in place within the emergency response team, and also in the legal system to ensure that there aren't situations where people shouldn't be responsible for those costs.

Senator Darrington commented that he doesn't believe they can put in code language that will replace decision making by trained people in this area. They cannot codify the control of every decision.

Senator Davis said he couldn't agree with **Senator Darrington** more. They have to trust them, but that is not the problem for him. The problem is in the details that applies here. In his experience, he has seen the State of Idaho standing in Committee and stating they won't make this mistake, and then over exercise the mistake of imputing the costs on Idaho citizens. For him it is on the collection side when the wrong judgment call has been made. **Senator Davis** said he personally does not have a problem with taking the bill and including language to limit it to those who knew, or had reason to know that it might be perceived as a threat, as a standard on the collection side alone. Then when an individual is pursued it isn't whether or not it was a reasonable judgment call, but whether or not they knew or had reason to know. That would be a more fair standard.

Chairman McKenzie requested the Secretary to take a roll call vote on the motion to send **H267** to the floor with a **do pass** recommendation.

Senator Darrington - Aye
Senator Geddes - Aye
Senator Davis - Nay
Senator Stegner - Nay
Senator Fulcher - Pass
Senator Thorson - Aye
Senator Kelly - Aye
Vice Chairman Pearce - Nay
Chairman McKenzie - Nay
Senator Fulcher - Nay

The motion **failed**.

Senator Davis asked **Chairman McKenzie** if the bill was still before the Committee? **Chairman McKenzie** replied that it is.

**SUBSTITUTE
MOTION:**

Senator Davis moved to send **H267** to the **fourteenth order** for possible amendment. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

MINUTES

Chairman McKenzie asked if there is a motion on the minutes before the

APPROVAL: Committee.

MOTION: **Senator Thorson** said he has read the minutes of April 3. He would refer the Committee to page 3, the fifth line from the bottom where it states the Mayor of Sun Valley. He did say that, but he should have said the Mayor of Ketchum. **Chairman McKenzie** said that correction will be made. **Senator Thorson** moved to approve the minutes of April 3, with the correction. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

Senator Stegner moved to approve the minutes of March 18. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

S1204 **Senator Davis** said in the absence of **Senator Jorgenson**, would **Dyke Nally** be willing to present the bill. **Chairman McKenzie** answered that he doesn't know the relationship between **Senator Jorgenson** and **Mr. Nally**.

Mr. Nally responded that he believes it would be best to hold **S1204** until Wednesday and allow **Senator Jorgenson** to present the bill.

Chairman McKenzie said they will hold the bill until the next meeting.

ADJOURN: **Chairman McKenzie** said they are adjourned for today. The meeting was adjourned at 9:16 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: April 15, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett (Thorson), 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 8:01 a.m.

RS18972 **Chairman McKenzie** said they have a letter by unanimous consent from the Chairman of the Agriculture Committee, requesting that they print the RS. **RS18972** authorizes the Idaho Department of Agriculture to regulate large swine and poultry feeding operations.

Senator Davis asked if the intent is to print the RS or to advance it?
Senator Corder responded the intent is to print the RS.

MOTION: **Senator Davis** moved to print **RS18972** and **Senator Geddes** seconded the motion.

Senator Darrington commented that he hopes **Senator Corder** is aware of the bill regarding the limitation on large swine that was passed a few years ago. He asked if he is working within the parameters of that?
Senator Corder responded they intend to do that and it will be incorporated. There is no intent to change that legislation.

The motion carried by **voice vote**.

RECOGNITION: **Chairman McKenzie** stated that our page, **Michele Jenkins**, for the second half has been with us for quite a while. The Committee has appreciated her help and all the work she has done for us and the Senate. **Chairman McKenzie** thanked her and presented a letter of recommendation and a Senate watch to her. He asked what her plans are after the session ends?

Ms. Jenkins stated that she will be sadly returning to high school. In September she will be attending college and majoring in biology. Next session she will return to the Legislature as an intern for **Senator**

Fulcher.

S1204

Senator Jorgenson presented **S1204** to the Committee and provided an empty liquor bottle as an example of the label. **Senator Jorgenson** stated that this bill is about saving the State some money. There is a numbered label on the bottle and the intent or original purpose for that was to provide accountability for liquor control, and to ensure that they were sold by the State. That practice is outdated and has outlived its practical use. The State handles approximately ten million bottles per year which need to be individually labeled. **S1204** proposes to remove this label from the bottles and only apply it to bottles that are sold to a licensed premise. The reason is for liquor control when the authorities do an inspection. **Senator Jorgenson** said the Attorney General and the Liquor Dispensary are in support of this legislation. It could potentially save the State between two hundred fifty to five hundred thousand dollars.

Senator Darrington asked if bootlegging of liquor is the same with cigarettes? **Senator Jorgenson** responded he has no idea and deferred the question to **Dyke Nally**.

Dyke Nally, the Superintendent of the Liquor Dispensary, stated that all the states surrounding Idaho are control states except for Nevada. The prices are fairly uniform, with the exception of Washington. **Mr. Nally** said the State enjoys what he refers to as "favorable tourism." Nevada is the only open border and the law states that a citizen can transport two liters legally. The State police occasionally have check points for drug and liquor on that border and make some arrests. It is not a big problem. More importantly, none of the other control states surrounding Idaho have a label on their bottles.

MOTION:

Senator Darrington made the motion to send **S1204** to the floor with a **do pass** recommendation. **Senator Thorson** seconded the motion. The motion carried by **voice vote**.

S1215

Senator Geddes presented **S1215** to the Committee and stated that when the Committee printed the bill it was somewhat fully discussed. The intent is to allow a food service provider other than the Commission of the Blind, to manage the food service in the State Capitol. He has not had a conversation with the Commission, but **Senator Stegner** or **Jeff Youtz** may have.

Jeff Youtz, Director of the Legislative Services Office (LSO), stated that this legislation will not displace food service operation from the Capitol building for anyone. In the past the Commission for the Blind has not operated the legislature's food service. He has spoken with the Commission and they have no interest in operating the food service. Their main concern is the cafeteria in the basement of the LBJ Building, and if the cafeteria in the Capitol were to be a public cafeteria and compete for customers. **Mr. Youtz** said he has a letter from the Commission affirming that they have no interest in food service at the Capitol.

MOTION: **Senator Fulcher** moved to send **S1215** to the floor with a **do pass** recommendation. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Fulcher** stated that he reviewed the minutes of April 10, and found them to be in order. He moved to approve the minutes. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

Senator Darrington moved to approve the minutes of April 8, as corrected. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

Senator Geddes said he has read the minutes of April 1, and finds them to be in order. He moved to approve the minutes as written. **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 8:17 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: April 16, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Senators Darrington, Davis, Stegner, Fulcher, Stennett (Thorson), and Kelly

MEMBERS ABSENT/ EXCUSED: Vice Chairman Pearce 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: **Chairman McKenzie** called the meeting to order at 9:08 a.m.

H287 **Representative Thompson** presented **H287** to the Committee and stated the purpose of this legislation is to provide immunity for employers who allow the unlawful storage of firearms by their employees. These employees have the Second Amendment Right to do so, and store their firearm in their personally owned vehicles on their employers premises. Currently some employers prohibit employees from storing their lawfully possessed firearm on company property. **Representative Thompson** said this affects hunters and more importantly people who carry a firearm for self defense. Employers maintain these policies mainly because of the fear of liability. **H287** simply relieves employers from the potential liability if they allow their employees to store their firearms in their automobile while they are at work. The bill does not force the employer to do anything. It is good public policy and it limits employee liability in certain situations that is beyond the employers control. This concept is supported by the National Rifle Association (NRA) and the business community.

Senator Thorson said he struggles to find the necessity for this. He asked why should someone want to be relieved of liability for certain things that happen on their premise? It seems to be discriminatory and he does not see any purpose for it. **Representative Thompson** responded this is not discriminatory. It is only to encourage employers to help employees to practice their Second Amendment Right. **Senator Thorson** said how is relieving an employer of a specific liability enabling them to help someone participate in their Second Amendment Rights. **Representative Thompson** said it is not relieving the employee, it is relieving the employer and allowing them immunity if they have policies that encourage their employees to store firearms in their vehicles. This legislation is good public policy in that it limits employer liability that is

beyond the employers control.

Senator Davis said as he understands this legislation, there are some employers today that have a policy that prohibits employees from storing a weapon in their vehicle on company property. Further, nothing in this bill will compel an employer to change their policy, and that the employer can still have a policy that says the employee may not store a firearm in an employees vehicle on company property. **Senator Davis** asked if this legislation passes will the employer still have that right? **Representative Thompson** replied that is correct. **Senator Davis** said if the company allows this or fails to prohibit it the only immunity that is granted is for the storage of the firearm. He asked if that was correct. **Representative Thompson** said "yes" that is correct. **Senator Davis** said in the event that a firearm is stored in the employee's vehicle and the employer has reason to know that it could be used, it will preclude or provide immunity. He asked if the only protection that is provided to the employer is for the storage of it? **Representative Thompson** said that is correct. **Senator Davis** said by providing this narrow limited immunity, the intent is to say to the employer that the immunity for storage and if they allow or fail to prohibit, that individuals may be allowed to store a firearm in their vehicle. He asked if that is correct? **Representative Thompson** responded that is correct. **Senator Davis** said if a school district wants to have a policy of zero tolerance including students and teachers, could they continue to have that policy? **Representative Thompson** said *Idaho Code 18-3302 (c)* prohibits a concealed weapon in a courthouse, juvenile detention facility, jail, public or private school, except as provided for in subsection 4(f) of 18-3302 (d). **Senator Davis** asked **Representative Thompson** if anything in **H287** will modify the statutory provision that he suggested? **Representative Thompson** said absolutely not.

Senator Thorson said if **Senator Davis** is correct, he finds there is no real purpose for this bill other than to just have a bill to clutter the Legislature and our statutes. He asked what does it do for practical purposes? **Representative Thompson** responded it is a bill that helps protect an individuals right to keep and bear arms and it gives the employers immunity who have a policy, to allow firearms to be stored in their employee's vehicles.

Senator Davis commented it is his understanding that by passing this bill, the companies that are troubled by not having a policy because of the potential liability, may feel more inclined to allow it if they knew they had this protection. Whether or not it will change the policy or decision of the employer, he believes that the proponents believe that it will open up the possibility of it happening. He asked if that is correct? **Representative Thompson** said that is correct.

TESTIMONY:

Barbara Jordan, who represents the Idaho Trial Lawyers Association (ITLA), said she is speaking in opposition to **H287**. **Ms. Jordan** stated the ITLA represents plaintiffs and potentially the employees in this type of matter and or the employers. The ITLA has determined that this bill is unnecessary. There have not been any cases where an employee has had a firearm unlawfully stored at their employers property where the

employer has been held liable. The members that represent the employers feel if something were to arise, that the employer would not be liable for something that could potentially happen. The other concern is that the bill does not provide for the employee to bring their firearm to their place of employment. The employers policy specifically does that or denies it. This is really just about the employer and the bill really says if you want to have a policy that says they cannot bring their firearm and leave it in their vehicle, than they can be liable for it. It is not about giving immunity to those who have specifically allowed it, it is about specifically saying they can't be liable. **Ms. Jordan** said there are concerns about the specific language, it is not written as Idaho code would dictate. The language on line 11 and 13 is not in Idaho code and it could be arguable. Providing this type of immunity to employers should be across the board.

Julie Pipal said she represents the Boise Metro Chamber of Commerce (BMCC). The BMCC provided a letter to the Committee explaining their position in support of **H287**. **Ms. Pipal** stated they had far less conversation regarding this bill. Employers are allowed to run their business and set policies so they want to support legislation which provides for that.

Senator Kelly asked **Ms. Pipal** if she has spoken with any employers who have policies that prohibit their employees from storing firearms in their vehicles, and have they raised civil liability as a concern? **Ms. Pipal** replied one member on the policy committee brought up an issue. In the past, he worked for a company where the employees would go pheasant hunting after work and store firearms in their vehicles. That employer was concerned because they had a policy. It was never an issue, but the real issue was whether or not the employer wanted to inspect vehicles entering the parking lot and enforce it. They did not, so that is why they like this bill. It provides some immunity and most employers said they like it.

Representative Thompson said this legislation is good public policy, it will limit employer liability in situations that is beyond their control.

Senator Stegner said they are granting immunity to employers that have the right to allow or prohibit this. He asked what about immunity to the employers who prohibit this, shouldn't they have immunity to?

Representative Thompson responded he understands that, but this is attempting to give them an incentive to have a different policy. Nothing will change, they can have that policy, but they should make it more conducive for employees to store their firearms in their personal vehicles.

Senator Stegner said he is asking wouldn't it make it fair to provide immunity to the employers who choose to have that policy?

Representative Thompson replied he does understand that. This legislation was based on what eighteen other states have done, and in some cases it was more strict. This language has been used previously.

Senator Davis said if an employer has a policy of disallowance, and they fail to enforce it, are they liable because of the language in this bill?

Representative Thompson said if the employer has a policy that their

employees cannot store their firearms in their vehicles, is he asking if they would be immune. **Senator Davis** said if an employer has a policy that prohibits storage of firearms in the employees vehicle as he understands this, it will not provide immunity to them because the language only applies to those who have a policy that permits this. He asked what happens to the employer who has that policy but is negligent in enforcing it. **Senator Davis** suggested language to include employers that have a policy of allowance, a policy of non-policy, and a policy of expressed disallowance. All three would be properly protected. **Representative Thompson** said that **Senator Davis** is attempting to broaden the scope and he does understand that. The language in this bill was taken from the language of eighteen other states and that is why it was drafted this way. **Senator Davis** said if a company wants to have an expressed policy of disallowance than they should enforce it. If they believe firmly in their policy than they should not be negligible in the enforcement of it. That is the answer he was looking for. **Representative Thompson** said they should enforce their policy and not have one if they aren't willing to do so.

Senator Fulcher asked if the language in the bill has been tested in a court of law? **Representative Thompson** answered absolutely, it has been tested.

Senator Kelly asked if there has been litigation regarding this issue in other states? **Representative Thompson** responded he does not have the exact specifics, but he could provide that if necessary.

MOTION:

Senator Stegner moved to send **H287** to the **fourteenth order** for possible amendment. **Senator Kelly** seconded the motion.

Senator Kelly commented as an observation this is the eighth gun bill to be introduced this year, and the seventh one to go through this process. She recognizes that it is important to some people, but she is questioning if they should be picking at the law regarding firearms in particular. **Senator Kelly** said she hopes they do not have to do this again next year.

Senator Fulcher said he suspects the purpose of this language is because it has been through other states, the court system and it has been tested.

SUBSTITUTE MOTION:

Senator Fulcher made the substitute motion to send **H287** to the floor with a **do pass** recommendation. **Senator Darrington** seconded the motion.

Senator Davis said he is troubled anytime they have an immunity bill. He is a friend to this bill as it is written and he is confident that it will not do much at all. It does suggest the possibility of individuals to lawfully store weapons. It doesn't have anything to do beyond that, and it only provides protection to those who allow or fail to prohibit it. **Senator Davis** said he is not certain that it is well tested judicially, but because of the limited impact he intends to support the bill.

Senator Thorson commented that he is pleased to serve on this Committee with **Senators Davis** and **Stegner** who have discovered in this bill that there is discrimination against individuals who would choose to not allow storage of firearms. Certain property rights would be discriminated against and hence their motion to better structure the bill to include all property owners. The second thing is the testimony by the ITLA, who have come before them and say this is a poorly written bill. It could be made better and they have suggested it be altered to be more effective and fair. Finally, he is dismayed with **Representative Thompson's** comments that the bill was presented to coerce certain property owners to comply with people being able to store firearms on their private property. **Senator Thorson** said he strongly supports the motion to send this bill to the fourteenth order and make it the kind of bill that will be good for all citizens.

Senator Davis said he doesn't believe the word coerce was used or not. He is not voting for it because of that. For him it is an opportunity for an employer to reexamine their policy and this legislation encourages them with some immunity. If an employer wants to continue to have a policy of prohibition there is no coercion in the legislation.

Senator Stegner said he is voting for his motion. He is unimpressed with the fact that eighteen other states may have adopted this language. He has confidence that they can always do better than all states.

Chairman McKenzie requested the Secretary to take a roll call vote on the substitute motion to send **H287** to the floor with a **do pass** recommendation.

Senator Darrington - Aye
Senator Geddes - Absent
Senator Davis - Aye
Senator Stegner - Nay
Senator Fulcher - Aye
Senator Thorson - Nay
Senator Kelly - Nay
Vice Chairman Pearce - Absent
Chairman McKenzie - Aye

The substitute motion **carried**.

ADJOURN:

There was no other business before the Committee. **Chairman McKenzie** adjourned the meeting at 9:45 a.m. and said future meetings will be subject to the call of the chair.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: May 1, 2009

TIME: 8:00 a.m.

PLACE: Room 204

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, and Kelly

MEMBERS ABSENT/ EXCUSED: Senator Thorson

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.

H372 **Senator Hill** presented **H372** to the Committee and said this bill is the revision of **H201**, which was introduced earlier this session. **H372** proposes to consolidate election dates. **Senator Hill** provided a handout to the Committee outlining the schedule of election dates. The bill provides for partisan elections to be held on the even years and nonpartisan elections on odd years. The change in the primary date is moved up one week to avoid the Memorial day weekend, and the November general election remains the same. All taxing districts will have their election on one of these two dates with the exception of school levies and bonds. They have two additional dates added, the second Tuesday in March and the last Tuesday of August. This bill will put the county clerks in charge of all elections including the schools, library and fire districts. It will make the polling places consistent for a precinct involved in an election and it basically shifts the cost from the taxing district to the State.

Senator Hill stated the changes in **H372** begin on page 10, section I. The counties expressed concern that they would have to invest in additional hardware and software in order to comply. The intent of the Legislature was not to place a burden on those counties. There is an appropriation coming from the budget stabilization fund, to be allocated to the counties that purchase equipment for elections. They can apply for a grant and be reimbursed for those costs up to one dollar per population in that county, or a minimum of ten thousand dollars for some of the smaller counties.

Chairman McKenzie asked **Senator Hill** for a clarification on page 10, line 11. It appears there is a "y" missing on county. **Senator Hill** replied that is correct, it is a technical correction that can be made.

Senator Hill said the next change is on page 51 which is the specific exemption for the irrigation districts. **Representative Lake** testified on the previous bill that the irrigation districts would not be included. The Idaho Water Users felt it needed to be spelled out in greater detail. Irrigation districts vote by the number of shares they have. On page 54, line 35 after Idaho Code, there used to be an insert that the elections would be paid by the county, except for elections conducted on a March or August date, which shall be paid by the school district conducting the election. That language has been struck, and the school districts will not have to pay for those special elections. The change on page 87 is for the funding. In **H201** the funding was 3.1 million dollars and it has been changed to 4.1 million to pay for the elections. **Senator Hill** stated that all the costs will shift to the general fund from the local and county taxing districts, as well as the school districts. The distribution will be forty thousand dollars to each of the counties and the balance will be distributed according to the population. It will be increased or decreased every year according to inflation. The last change on page 88 removes the funds from the taxing districts and the cities.

Senator Davis said he thought there was going to be another change on page 86 regarding the number of months between elections. **Senator Hill** responded he is correct. He overlooked that. It was changed from six months to five months in order to accommodate the extra dates. Between March and August there are five and one half months, so leaving it at six months wouldn't allow for elections every other time. Five months will provide for elections every other date. **Senator Hill** said this means one election will have to be skipped and be held every other election with the five months. There is talk of possibly changing these dates next year. On line 31, the provisions of this section do not apply to school elections held for determining property tax levies. The levies are not affected by the five months, only the bonds. **Senator Hill** stated that he overlooked that and he has no objection to amending it.

Senator Stegner commented that they had discussed making it two months instead of three. Additionally, there was talk about the dates and the consensus to agree on that proved to be a little more difficult. The issue of the months can be taken up to try to find some consensus. **Senator Hill** said he has no objection to changing the months, he just overlooked it. **Senator Davis** said that was his understanding of the agreement.

TESTIMONY:

Karen Echeverria, the Executive Director for the Idaho School Board Association (ISBA), stated they support **H372** except for the previous things just discussed, which is the ability to have bond elections two months apart. The ISBA would like to see an amendment to that. They had discussed some date changes, one of which was to move the August date to September. **Ms. Echeverria** said other than those two issues, ISBA stands in support of the bill. An amendment may be difficult this year, if not, they will return next year with legislation to include those two changes.

Senator Stegner stated that counties had some objections to moving that

date too far into September because of some of their other functions. He asked **Ms. Echeverria** if she thought it would be difficult to find a resolution to that, and has she talked to them? **Ms. Echeverria** replied that the ISBA has talked with the Association of Counties and she believes they can come to a consensus on that date.

John Watts, a concerned citizen, said he has been involved in this issue for several years and he is pleased that discussions have continued. **Mr. Watts** said he is excited that the Senate has worked with the House in drafting **H372**. There are some additional tweaking that may be required, but in his personal opinion this is a major step that the State of Idaho needs to take. This will truly create the awareness that the voters need, educating them as to what will be on the ballot, and knowing where and when to vote will yield an increase in participation.

Tim Hurst, from the Secretary of State (SOS), stated that when **Ben Ysursa** was here, he said he supports the concept as long as it is properly funded. **H372** appears to be, so the SOS supports this legislation.

Tony Poinelli, Deputy Director for the Idaho Association of Counties (IAC), stated that the IAC is in support of **H372**. The IAC can work with the schools regarding the dates. **Mr. Poinelli** said they stayed away from the September date because that is when all taxing levies have to be certified, and they need to be careful not to run into the forty five day time frame for the November election absentee ballot mailing. That is the only other issue that would have to be worked on.

Senator Hill said it is difficult, and they may want to make some changes to the definition for voting equipment to ensure that everything is included. The cost is a shot in the dark at best. **Representative Lake** has spent a lot of time working with the various entities trying to determine the costs for elections. There is a comfort clause regarding that on the last page of the bill. The SOS and IAC will need to submit a report to the Legislature regarding the actual costs incurred in operating the elections. There is no intent to make this a burden for anyone and it is wise to shift these costs to the State.

Vice Chairman Pearce asked **Senator Hill** to explain the funding. He asked if the money will come from the county? **Senator Hill** responded it is an additional amount that will go to the counties from the sales tax distribution formula. They will receive additional funding annually.

Senator Davis said he appreciates the work that **Senator Hill** and **Senator Stegner** have done to improve this legislation. He was concerned about a variety of things, one of which dealt with the appearance of an unfunded mandate. The last bill was not a fully funded election consolidation bill. He agrees with **Senator Hill** that it is a best guess or an educated one at this point in time. A lot of input and adjustments have been reached. An important component is the number of months contained on page 86 and it wasn't picked up in the bill. That is an important part of the agreement for him.

MOTION:

Senator Davis moved to send **H372** to the fourteenth order for possible amendment. **Senator Stegner** seconded the motion.

Senator Stegner said he shares the responsibility in that error. It should have been picked up. In the allocation of the money to the counties it is not a flat rate, but indexed over time to keep up with costs of elections. That is a significant change from the prior legislation. **Senator Stegner** said he is not as concerned over the dates, but he is prepared to amend this and move it forward and work on that in the interim. It will accomplish what is needed because of the implementation dates. The school districts and the counties can figure that out and it is a doable plan.

Senator Kelly said that she has spent a lot of time regarding this issue. She is appreciative of the changes and improvements but her concern over school funding remains. She is supportive of the efforts to increase voter turnout and predictability in terms of elections. The Legislature has a Constitutional obligation to have a robust public school system. In her view, it is important to provide all students with the opportunity to use the public school system. In 2006 the funding for public schools was changed dramatically by taking off the property tax. The problems associated with that unstable source of funding are coming home this session. **Senator Kelly** said we have made cuts to the public school budgets and this bill will limit another source of revenue for schools. By keeping the super majority that is in the Constitution can be changed to reduce the super majority. The reason schools can hold bond and levy elections on any day is a trade off for the super majority that is in the Constitution. If they are going to limit them to four days a year, then the Constitution should be changed. The funding for the school districts will be on the general fund. A good argument can be made that the school districts will pay because it is one more thing competing for limited general funds. Another concern is what the real cost will be and the impact on the general fund could be larger. **Senator Kelly** said Article 9, Section 1 of the Constitution mandates that they keep public schools free, and this is one more step in undermining that institution. She cannot support the motion.

Senator Davis said in 2006 the public overwhelmingly supported the increase to the sales tax and the reduction in the property tax. He does however share in the concern of the Minority Leader, that any time money is taken from the general revenue they should be cautious. The competition for those dollars is something the Legislature wrestles with every year. Every dollar that is taken out does not necessarily disadvantage the public schools, and he has confidence that they will continue to support public education. **Senator Davis** stated that the events that have happened over the past few weeks were intended to achieve the very goals that were mentioned by **Senator Hill** and **Senator Kelly**, which is to increase participation. That is the target they are trying to hit. He believes this will achieve public participation and hopefully increase the awareness of the needs, including the financial needs of the school districts.

Senator Kelly commented that she takes issue with the word stealth,

which they have heard many times in this discussion. With regard to any of the elections, the taxing districts were doing what they were allowed to do within the scope of the law. Using the word stealth is not appropriate in her view.

Senator Geddes said he is sitting in for his son the Pro Tem. He personally supports this bill and he knows that the Pro Tem supports it as well.

The motion **carried** by voice vote to send **H372** to the **amending order**. **Senator Kelly** requested it be recorded that she is opposed to the motion.

ADJOURN:

Chairman McKenzie said there is no other business before the Committee today. Further meetings will be subject to the call of the Chair. The meeting was adjourned at 8:38 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary