Senate State Affairs Committee

Minutes
2010

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	January 18, 2010
TIME:	8:00 a.m.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Stennett, 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. and stated this is the first meeting of the Senate State Affairs held in these new facilities. The rules review will begin today. In Idaho pending rules are reviewed and by concurrent resolution they can be rejected. The Idaho Supreme Court has upheld in *Mead v. Arnell*, that the Legislature has the authority to review rules that are promulgated pursuant to legislation, and the pending fee rules must be approved by concurrent resolution in order to go into effect.

PENDING RULES: 15-1302-0901

Bob Wells, from the Idaho Military Division, Bureau of Homeland Security presented Pending Rule, **Docket no. 15-1302-0901** to the Committee. **Mr. Wells** said that **Mary Halverson,** Program Manager for Hazardous Materials and Special Teams is present. She has many years of experience and a wealth of knowledge on the subject matter. Should the Committee have questions that he cannot answer, she can do so. The pending rules before the Committee were carefully written to assist the citizens of Idaho, the Bureau and the First Responders in addressing the very important task of Hazardous Substance Response. In creating this pending rule, the Bureau worked with the Attorney General and the Idaho Department of Administration (DOA), Office of Rules Coordinator. The Bureau worked diligently to ensure Title 39, Chapter 71, of the Idaho Code will be implemented fairly and equitably and to the benefit of the citizens of the State of Idaho.

Mr. Wells stated that Title 39, Chapter 71, the Idaho Hazardous Substance Emergency Response Act of the Idaho Code, lays out the Bureau's duties and responsibilities to not only the citizens and first responders, but the spillers as well. The pending rules clearly spell out how the Bureau will assist not only the first responders, but also the spillers, the parties who are determined to be responsible for the incident statewide. The first responsibility of the Bureau is to protect the citizens

of Idaho, as well as property and the environment. Their next duty is to assist first responders to recover the actual, documented costs from responses to hazardous materials, explosives, or biological incidents. **Mr. Wells** said that the Bureau must ensure consistency in cost recovery procedures. This includes reviewing every packet submitted for correct rates billed, as well as ensuring the response costs are eligible for recovery under Title 39, Chapter 71. Under this code, the Bureau has the responsibility to ensure that local jurisdictions have the appropriate resources and assistance. **Mr. Wells** pointed out to the Committee that on page 219 of the pending rules, every county is covered by a response team that is trained, equipped and prepared to assist in the response to a hazardous material, explosive or biological incident. Additionally, the Bureau is also required to ensure that Federal standards are met including the use of the Incident Command System (ICS) and the National Incident Management System (NIMS). The main goal of the Bureau is to ensure that the cost for these events are recovered accurately and precisely to the letter of the law.

Senator Kelly asked **Mr. Wells** if this is a new chapter? **Mr. Wells** responded that it is. **Senator Kelly** asked what rules did the Bureau operate under before? **Mr. Wells** said some rules were antiquated and needed to be rewritten. Legislation was passed last year to correct the law and now the rules are being corrected.

Senator Davis asked **Mr. Wells** to explain what is meant by team headquarters and how it relates to Region 7? **Mr. Wells** said he would defer that question to **Mary Halverson** as she is the team manager and she has that knowledge. **Ms. Halverson** stated that in region 7 the regional response team is actually the hazardous material team and that is under the Idaho Falls Fire Department. The regional bomb squad is under the Idaho Falls Police Department. **Senator Davis** asked **Ms. Halverson** if it was a collective planning by the cities and counties in Region 7 to make this happen. **Ms. Halverson** responded absolutely. If the local jurisdiction requests assistance then it is done through a conference call. **Senator Davis** asked if any city or county is troubled by what is being proposed? **Ms. Halverson** answered she isn't aware of any. **Senator Davis** asked **Ms. Halverson** if everyone was invited to participate in the regional response team. **Ms. Halverson** answered yes.

Senator Stegner said Region 2 does not have a local explosive response team. He asked **Ms. Halverson** if it would be logical to have a local team identified or possibly a coordinator? It isn't likely they would think to contact Spokane. **Ms. Halverson** responded Region 2 was split with Spokane or Region 3's bomb squad. At this time the bomb squads are fairly new and they are not available in each region. **Senator Stegner** said he realizes the necessity for dealing with rural areas, but it would be helpful to designate the nearest police department as a coordinating location. **Ms. Halverson** replied that is being worked on and grant money has been utilized to fund them.

Senator Stennett asked for an explanation as to how the groups were put together. Was it by population, distance or reaction time? **Mr. Wells** said

it was built around communities of interest, response time and the facilities that were available to each team. **Senator Stennett** asked **Mr. Wells** if Camas would be better served by Boise in his opinion. **Mr. Wells** responded yes.

Vice Chairman Pearce asked **Mr. Wells** to explain the reimbursement costs. First, how long can the incident stay open for the state to retain liability for the costs of cleanup. Secondly, who determines who is responsible for the incident, and is there an appeal process? **Mr. Wells** deferred this question to **Ms. Halverson**. **Ms. Halverson** responded that the Bureau works with the Attorney General's Office (AG) and that they have two years to collect on the incident. An appeal has to be in writing and the Bureau works with the AG to determine if costs should be recovered for the incident. **Vice Chairman Pearce** asked if the AG makes the decision if it is collectible or not? **Ms. Halverson** replied the Bureau coordinates with them to make sure that they are within the law. The Bureau rarely gets an appeal and if the spiller is determined to be liable, a payment plan is available. **Vice Chairman Pearce** asked if it is the responsibility on the AG to determine if the incident is an act of God or a third party, and where is the protection for the individual citizen in that process? **Mr. Wells** answered that the ultimate authority who makes that the decision is the Director of Homeland Security, **Colonel Shawver**.

Chairman McKenzie stated the Committee can approve each docket as we hear them, or a motion can be made at the end. It would be more appropriate as we look at each docket to have a motion to approve it or reject it.

Senator Davis asked if the intent of the Chairman is to vote today or wait until the next committee meeting? **Chairman McKenzie** replied he would prefer to vote on the day of the presentation and debate.

MOTION: **Senator Stegner** moved to approve **Docket no.15-1302-0901. Senator Kelly** seconded the motion. The motion carried by **voice vote.**

PENDING FEE RULES: 03-0101-0901 **Larry Johnson**, Manager of Investments for the Endowment Fund Investment Board (EFIB) presented **Docket no. 03-0101-0901. Mr. Johnson** stated that the rules will allow the Public School Endowment Fund to guarantee that school district bond payments will be made in the event that a school district defaults and State of Idaho funds are not available to make the bond payment. The Endowment Fund will only have to make good on the guaranty if the State does not have sales tax revenues or certain other funds available to make the payment. The State's pledge results in an "AA" bond rating while the Endowment's "Credit Enhancement" pledge boosts the rating one more notch to "AAA." **Mr. Johnson** said the program to guarantee school bonds was first established several years ago. Last year legislation was approved to clarify the program and require the EFIB to establish rules, to administer the Credit Enhancement portion of the program.

Mr. Johnson provided a handout to the Committee with a graph explaining how the State Guaranty and the Credit Enhancement work. He

stated that most school districts have a bond rating of "A" or lower. The graph shows the extra interest cost they incur for not having the top rating of "AAA". As an example, a district with an "A" rating would pay 80 basis points, or 0.8% more each year in interest compared to a "AAA" rated issuer. A district with a "AA" rating would still pay almost 20 basis points more interest each year. The State Guaranty program, administered by the Treasurer, improves a district's rating to the same rating as the State, or "AA." Going from an "A" to a "AA" rating saves a district the interest cost between the top of the red portion to the top of the blue portion as indicated on the graph. The Endowment Fund's Credit Enhancement moves the rating from "AA" to "AAA", saving the district the amount of the red portion as seen on the graph. In today's market these annual savings are substantial. This is an annual amount of interest paid each year without a "AAA" rating.

Mr. Johnson stated that most of the rules are simply routine and specify the application process within the Credit Enhancement and the procedures that will be followed in reviewing the application. The fees to be charged are the only controversial issue of the rules. There are two fees specified in the rules, the administrative process fee of up to $1,000, and the fee for offsetting the opportunity cost to the Fund of the guaranty. This fee can go up to 5 basis points. The current specific level of those fees are set at $100 for the application fee and 2 basis points for the guaranty fee. For example, **Mr. Johnson** said on a $20 million bond with a 15-year term, the fee is $6,000 with 2 basis points, plus $10 million of interest paid times 0.02%. With 5 basis points the fee would be $15,000. By improving a bond's rating to "AAA" from "AA", it reduces its interest rate, which results in about 40-75 basis points of the bond in today's market. This compares with an up-front guaranty fee of 2 to 5 basis points. The savings are significant to a district, between $120,000 and $225,000 on a $20 million bond, compared to the fee of $6,000 to $15,000.

Mr. Johnson stated that the Credit Enhancement warrants a fee. A trustee, like the EFIB, is required by its fiduciary duties to get a return on its investments. A guaranty by the Fund is an investment, it is a type of insurance policy. No one likes a fee, but zero is not an appropriate return. Without a fee, there isn't an investment incentive to provide a guaranty. Every dollar of guaranteed school debt represents an opportunity cost because it reduces the investment options available to the Fund. The higher the level of guaranties, the more cash, or cash-like instruments that must be held. These have a lower long-term expected return than other potential investments. If the guaranty is never called, as is expected, then the Fund will never be compensated for the opportunity cost for providing the guaranty, nor will it be reimbursed for ensuring sufficient short-term liquidity to support the guaranty.

The proceeds of the fee are deposited right back into the Public School Endowment Fund, which is good news for the districts that pay a fee, because it will be invested and eventually distributed for the benefit of public schools. **Mr. Johnson** said the argument has been offered that no fee should be charged because the Public School Fund bears the cost of

the guaranty. The school districts are the beneficiaries of the Fund, so the cost and the benefit should equal out. Unfortunately, that's not a direct and complete offset. The EFIB is constrained by law to earn a return on all the Fund's investments, as well as a fiduciary responsibility to see that all beneficiaries are treated equally. A guaranty does not benefit all school districts equally, so a fee allows all beneficiaries of the Fund, including those who have not utilized the guaranty, to benefit from the investment activity.

In order to set the 2 basis points as the fee, the EFIB did some research to pin down an appropriate market rate. In today's market only a few firms currently offer any guaranty, so it is hard to determine. The lowest fee before 2008 was 10 basis points in order to boost a "AA" rating to "AAA. " That rate would be significantly higher today. The EFIB has granted some unique preferences in statute to ensure that it is repaid promptly and completely. Additionally, the investment portfolio of the Fund and its opportunity costs are substantially different from other entities offering guaranties, so it is hard to make a direct comparison between a market rate and the rate that will be charged. The EFIB considered the opportunity and liquidity costs to the Fund in setting the fee. These impacts are estimated to be small today, hence the low fee.

Mr. Johnson stated that initially the pending rules that were developed in June had a fixed fee. After public discussion and input from all EFIB members in August, the proposed rules were modified to allow a range of fees. The EFIB concluded that a range of fees was prudent, since the opportunity and other costs to the Fund of issuing the guaranty may vary with future market conditions. The range will allow the EFIB to exercise its fiduciary responsibilities over time and prevent the need to reject guaranty applications until a fixed fee can be revised. If the State's credit rating were to change or if the Fund could make a lot more money on different opportunities, then the need to change fees might arise. Any change in fees will be established by the EFIB in its policy in a public meeting. **Mr. Johnson** said that there are several other state entities that have authority to establish fees in policy, so this isn't a new procedure.

The initial pending rule was drafted by the EFIB staff and approved by the Executive Committee on June 30, after taking public testimony at that meeting. On August 12, the full Board discussed the pending rule, took other public testimony and amended the pending rule to allow for a range of fees. The change that occurred in August is the source of the changes shown in the rules. The EFIB held a special meeting on August 27 to review the rules, specifically the range of fees, and there was further opportunity for public comment. The only opposition to the fees in the rules was from the Idaho School Boards Association. There was no substantive comments from either the Legislative Service Office (LSO) or the germane joint subcommittee. In response to the concerns of the School Boards Association, the EFIB requested legal clarification from the Attorney General in November regarding the legal necessity to charge fees for providing the guaranty. **Mr. Johnson** provided a copy of that opinion to the Committee.

Mr. Johnson stated that **Attorney General Wasden** does not issue many official, formal opinions under his signature. His conclusions were thoroughly vetted by him and several members of his staff. They concluded that the EFIB's fiduciary duties to the Public School Endowment required that it either establish fees or that it decline to invest under the Credit Enhancement Program. **Mr. Johnson** said in summary, the rules were developed after public input and after carefully considering the Board's strict legal responsibility to focus on the best interest of the Fund. No one likes a fee, but the proposed fees are reasonable and a bargain relative to the benefit received. The fees ensure that all beneficiaries of the Fund profit from the guaranties that are issued and provide an investment incentive to offset the opportunity cost of the guaranty. The range proposed allows for guaranties to continue to be issued should market conditions change.

Senator Stennett asked **Mr. Johnson** who is determining the value of the bond and what system determines the "AA" or "AAA" rating? **Mr. Johnson** responded that the ratings are determined by rating agencies. They review the school districts financial situation, size, the money it has in reserves and their history of responsible fiscal management. Based on that they issue the rating. **Senator Stennett** asked if he felt comfortable with that. **Mr. Johnson** replied he can't say that he is an expert in school bonds rating and financing, but it is the process by which school districts can sell bonds. They have to have them rated by those agencies and it is the system that they have to use.

Senator Stegner asked **Mr. Johnson** if he believed it is the intent of the Board to assign different fees to different applications, and is it based on the particular need of the applicant? **Mr. Johnson** answered that the policy today is to apply the same fee to all districts. Under a speculative condition something may change in the market to cause that to happen. But at this point it is the same fee. **Senator Stegner** said then historically a flat fee is charged and uniformally applied to all. He asked if that was correct? **Mr. Johnson** said that is correct. **Senator Stegner** said that he is curious why the rule wasn't written to increase the fee to $1,000 rather than have "not to exceed", which suggests that it allows the Board to have latitude in the application of a specific fee. **Mr. Johnson** responded that it was never the intent of the Board to build in flexibility to respond to sudden changes in the market. The Board does not do an in depth credit analysis of every school district that presents an application. In the future, that may be necessary if rating agencies stop rating bonds. That is the flexibility that the Board thought was appropriate. If it takes more time to review the rule and look at the credit of the district, then the Board can change the policy and adopt a higher administrative fee. **Senator Stegner** said it seems to him if that is the case, then the appropriate action may be to come with an additional rule change. This is deviating from the whole purpose of rules by allowing a fixed policy to be reviewed by the Legislature and the citizens of the State. Both of these rules have "not to exceed" language which confuses the issue of what will actually be the fee. **Mr. Johnson** replied that the EFIB has the fiduciary responsibility to make investment decisions, so they have a lot of latitude under the condition of rules to do that. The Board has some fiduciary

responsibilities to not be arbitrary in making those decisions. On the other hand when a school district needs a bond, the Board feels it is more responsive to the needs of our customer to respond promptly to them.

Senator Davis asked **Mr. Johnson** if the Board has ever denied a request? **Mr. Johnson** answered no they have not. **Senator Davis** asked why? **Mr. Johnson** responded that Idaho school districts operate under some pretty tight guidelines with regard to the ability to issue bonds. Those guidelines are established by the Legislature in terms of the bonding capacity relative to the percent of taxable property. There are lots of guarantees, restrictions and controls that are built into the way that school districts fund bonds and pay them off. With the way the current statutes are structured, there is a very low risk to issuing guarantees for school bonds, so the Board has not seen the need to deny any requests for a guaranty. **Senator Davis** said in light of your answer that there is a low risk, or a nominal one, what is the problem with **Senator Stegner's** concern being addressed and objectify what the fees will actually be including the basis points. He asked **Mr. Johnson** why does the Board need this discretion? **Mr. Johnson** said that the investment markets are uncertain today due to what happened this past year. The Board believes that having some discretionary authority will allow them to keep rates as low as possible and adjust them upwards only if necessary. **Senator Davis** said he understands the need to do something. His concern is when a school district has calculated their costs to be "X" and then the Board calculates the costs at "X" plus whatever figure. With a more objective standard the school district knows what that is when they go to their patrons. This is not a traditional lender, borrower relationship. **Senator Davis** said that he serves on the Bond Bank Authority. They address similar types of issues and they haven't always approved a request. The EFIB has some discretion to deny a request and he doesn't understand why the Board doesn't objectify the standards with the nominal fees they are charging. He asked **Mr. Johnson** to comment on that. **Mr. Johnson** responded that he understands his concern of adding some uncertainty to the school bond process. Market interest rates change frequently. When a school district goes through the bonding process they are always at risk. During that time the school district faces more risk from the change in interest rates than they would from a change in the guarantee rate.

Senator Kelly asked **Mr. Johnson** what agencies have authority to adopt a fee in policy rather than in rule, and what in your statute gives you that authority? **Mr. Johnson** said he would defer that question to **Julie Weaver,** Deputy Attorney General and counsel to the EFIB. **Ms. Weaver** stated that she did some research on that. The agencies that have given themselves that authority are the Division of Veterans Services and the Department of Health & Welfare for both State Hospital North and South. She doesn't know what the specific statute is, but they did put that in their rules. **Senator Kelly** said that precedent doesn't bind us here. Also, what about the timing of the adoption of their rules and whether or not they were adopted before or after the Administrative Procedures Act, which clearly sets out that the Legislature needs to approve rules and increases in fees.

Mr. Johnson stated that the flexibility in rules is intended to allow the Board to respond promptly to the need of the school district to fund its bond. That is the underlying rationale rather than to deny an application and have the flexibility to adjust the fees if market conditions change.

Senator Davis asked **Mr. Johnson** how much money would be generated per year if the maximum rate was charged? **Mr. Johnson** replied the maximum amount they can bond up to is $800 million. With a rate of 0.05 it would be $400,000.

TESTIMONY: **Karen Echeverria,** Executive Director of the Idaho School Board Association testified and stated that the Board has opposed part of this pending rule from the very beginning. The School Boards are not opposed to the administrative fee, they do oppose the basis point fee. **Ms. Echeverria** said that **Mr. Johnson** testified that the purpose of the statute is to guarantee the bond will be paid if a school district defaults. Statute allows for 40 basis points on the back end if the school district defaults on the loan. The School Boards question why basis points are being charged on the front end of the loan to guarantee the bond. The School Boards testified at the hearings and sent a letter in opposition. The AG's opinion of last week also puts them in a quandary. They do not want to do anything that would limit the school districts' ability to have access to the funds, but they do have a problem that the fee is not specifically set out in rule. **Ms. Echeverria** said another issue is the process that was taken when the fee was adopted. The proposed rule was adopted by a subcommittee, and to their knowledge all comments were in opposition to the fees. **67-5227,** Idaho Code talks about the variance between a proposed rule and a pending rule. This statute states that a pending rule should be a "logical outgrowth" of the proposed rule. At the proposed rule stage there was a specific fee of 2 basis points and $100 that received negative comments. The pending rule before you was then adopted with a spread up to $1,000 and up to 5 basis points. The School Boards have concerns with the process that was used and the fact that the fee is not specifically set out in rules. Fees can be changed through the temporary rule process and they can be adopted quickly if necessary.

Senator Davis asked **Mr. Johnson** to speak to the logical outgrowth of the pending rule. **Mr. Johnson** responded that he is not an expert in rule making, but the EFIB has always been open in its proceedings and allows adequate public comment. The staff drafted the initial proposed rule, which was reviewed by the executive committee. At the Board meeting in August comments were received from the public as well as comments from 5 Board members. This led to the change. Another meeting was held on August 27, and the Board took further comments and consideration on the merits and demerits of a range of fees.

Senator Stegner asked **Chairman McKenzie** if he could ask a question of **Dennis Stevenson**, the Administrative Rules Coordinator. **Senator Stegner** asked **Mr. Stevenson** if an agency could have a temporary rule in order to change a fee? **Mr. Stevenson** answered yes they can if they can show that the fee is necessary to avert any danger to the agency.

Senator Kelly commented this is the second time she has heard this rule. The Legislature's review of administrative rules raises separation of powers issues. She is disinclined to second guess the executive branch on administrative rules as a matter of policy. But, the process that was taken is a big concern to her in this case, as well as the fact that this Board is giving discretionary authority to adjust the fee through policy without notice. There is a significant change between the publication of the proposed rule and the pending rule. The Administrative Procedures Act has very clear steps for public participation, notice and due process. The process and the adoption of discretion in policy are fatal flaws to this rule.

Senator Davis stated that the Minority Leader has expressed some of the very concerns that he has. He has concerns whenever a standard is subjectified. There are multiple school districts involved with multiple attendant risks, although he leans toward narrowing that standard slightly different and with better defined rules. **Senator Davis** said that **Ms. Echeverria's** concerns trouble him as well. If you go through the negotiated rulemaking process you don't take testimony, get further input, and then come up with a rule that is substantially different than what was proposed. **Senator Davis** said that he will not be supporting the rule.

Senator Darrington asked for clarification on what is being proposed by this rule. As he understands it, $100 is now being charged on one end and 2 points on the other. The Board is asking for discretionary authority to go as high as $1,000 and up to 5 points. They are asking for that authority based on the unforeseen circumstances that might occur in the volatile market place and the economy in which we live today. **Senator Darrington** asked if we should give the Board the ability to make an adjustment due to unforeseen circumstances, and is that what is being proposed?

Senator Davis responded that these are market plus fees and the market is going to do what it is going to do.

Senator Kelly added that if the Board needs discretion then it should be codified in rule. There are ways to word the fee in rule, which may give them the flexibility that they need. At the same time it will give the school districts what they need and notice of what the fees would be.

Chairman McKenzie commented that the Board has that discretion codified in **68-502**, Idaho Code. It tells the Board to use their discretion pursuant to what is called "prudent investment standard," to manage all the assets under reasonable, skill, care and caution.

Senator Darrington said it seems easier said than done to codify the eventuality of the unforseen.

Senator Stegner stated from the testimony that he has heard today he believes that the Board would move immediately to those higher fees. It is not a matter of utilizing the language they are asking for, "up to and not to exceed." He doesn't have a problem with the Board coming to the

Legislature and asking for the fee for a purpose, and that they need the ability to set a variety of fees for different circumstances. What mostly troubles him is the need for the flexibility they are asking for, and then deviating from the historical practice of having specific fees in rule reviewed and approved by the Legislature. The issue is not raising the fees it is Legislative review and continuing to have oversight over this process. If we reject this rule it will not be a significant burden on the Board.

MOTION: **Senator Stegner** moved to reject **Docket no. 03-0101-0901. Senator Kelly** seconded the motion. The motion carried by **voice vote**.

40-0101-0901 **Michael Faison,** Executive Director of the Idaho Commission on the Arts presented **Docket no. 40-0101-0901. Mr. Faison** stated that this pending rule has no fiscal impact. The Arts Commission is Idaho's principal cultural agency, charged with making arts programs available to all Idahoans. Under the Office of the Governor, it enfolds 13 volunteer commissioners appointed by the Governor, 5 at-large citizen-advisers selected by the Chair, and 10 staff members. This rule change request is to increase access to grants by volunteer, community-based arts groups and to make deadline dates consistent throughout the grant guidelines. The QuickFund$ grant program currently limits access to these grants. The first restriction prohibits the Commission from supporting ongoing activities by these groups, which limits their eligibility to new or one-time events. The Commission is requesting the removal of the restrictive language on pages 294 and 299.

Senator Davis stated at one time there was a determination by the Commission to find value and support recurring activities. If a community has a recurring activity why wouldn't the community support it. He asked if the removal of that language will mean that a recurring activity is precluded, and is there a definition for "recurring activity?" **Mr. Faison** responded that it is quite the opposite. There is existing language that restricts the ability to support the on-going activities. The restriction currently exists and the Commission is asking for the removal of that restriction.

Mr. Faison said the second, current restriction prohibits the Commission from accepting applications from unincorporated groups, even with fiscal agents, unless the group is actively incorporating. That restrictive language is on page 296. Both of these restrictions unnecessarily limit these community groups' access to assistance, incentives and competitive grantmaking such as that in other public arenas in the arts and sciences. Lifting the restriction on support of ongoing public programs, will give the Commission the ability to assist those local arts activities that established themselves in the ongoing lives of their communities. By lifting the restriction that currently requires pending incorporation status, the Commission can assist activities of citizen groups who have authorized fiscal agents for whom the process of incorporation is unnecessary or even counter productive. Together, these changes finally allow small community organizations to come to the Commission with requests for support for their public services.

Mr. Faison stated that the last request is clerical. There are dates on pages 297 and 298 that were changed last year, when the agency guidelines and programs were significantly updated.

Senator Stennett asked **Mr. Faison** if the change on page 296 is for someone who is not tax exempt, and would they need to use a fiscal sponsor as an umbrella in order to get their own designation? **Mr. Faison** replied that is correct.

MOTION: **Senator Darrington** moved to approve **Docket no. 40-0101-0901** and **Senator Davis** seconded the motion. The motion carried by **voice vote**.

03-0101-0902 **Roger Hales**, Administrative Counsel for the Idaho State Athletic Commission addressed the Committee regarding pending rules for the Athletic Commission. **Mr. Hales** stated that the Commission regulates contests or exhibitions for boxers, mixed martial arts, fighters and wrestlers. The Commission issues licenses for the fighters, ring officials, match makers, promoters and other individuals in an effort to protect public health and to ensure the integrity of the sport. On page 1 there are clarifications to define who are combatants and clarifications for the types of events. The blood testing requirement is on page 6. Fighters have to be tested at least twice a year and the Commission has the ability to test fighters when they participate in a contest outside the state of Idaho. The rule clarifies what they have to test for such as HIV and Hepatitis, as well as illegal drugs or other substances.

Senator Davis asked **Mr. Hales** to explain the six month testing requirement before competing in an event. **Mr. Hales** responded that all fighters need to be tested within six months when they are granted a license. If they test positive they will not receive a license and they would not be eligible to fight. If the test was within three months, they would qualify.

Section 109 deals with sanctioning of amateur events. The Commission has the authority to approve an entity that would sanction an amateur event. It clarifies the objective requirements for application approval, eligibility and violations. **Mr. Hales** said section 300 revises the surety bond rule to provide flexibility for accepting other types of security like a cashier's check.

Senator Davis asked **Mr. Hales** if there is a definition for "medically unfit" and who makes that determination? **Mr. Hales** responded an amateur event requires that a physician be present and examine the fighters prior to the event. Ultimately it would be the ringside physician who would determine if someone were medically unfit. **Senator Davis** asked if there is language in the rules that requires the physician to be in attendance at these events. **Mr. Hales** answered that is correct.

Mr. Hales stated besides the semi-annual testing the fighter must also be examined by a physician within 36 hours, but not less than 2 hours, before an event. There are changes to the definitions and fouls at mixed martial arts (MMA) events on page 12 through 16.

Chairman McKenzie asked **Mr. Hales** if different leagues or types of fights have their own rules regarding fouls, and how do these apply? **Mr. Hales** replied that the Commission regulates boxing and they have their own set of rules. They also regulate MMAs which is grouped into one class. These are the rules that apply to them regardless of the style. In an MMA event in Idaho, these rules will apply whether it is karate, kung fu or any other style.

Mr. Hales said beyond revising what constitutes a foul, the Commission is revising intentional or unintentional fouls and the consequences. Finally, on page 19, the length of a round in an MMA event is clarified. An amateur event round is 3 minutes long and a professional one is 5 minutes.

MOTION: **Senator Davis** moved to approve **Docket no. 03-0101-0902. Senator Geddes** seconded the motion. The motion carried by **voice vote**.

PENDING FEE RULE: 03-0101-0901 **Mr. Hales** continued with **Docket no. 03-0101-0901** and stated that this pending fee rule does not add a fee. It is a clarification in the fees charged. The address for the Commission has been updated and they officially reside within the Bureau of Occupational Licenses. There is a clarification to combatant and that there is a license requirement and application. On page 5 is where the fee has been added. In reality, ring officials have always been charged a $30 fee under non-combatant. **Mr. Hales** said under rule 111 for license requirements for a ring official, the Commission may use discretion to lower the age limit for a particular applicant to 18 years of age.

MOTION: **Senator Darrington** moved to approve **Docket no. 03-0101-0901. Senator Stegner** seconded the motion. The motion carried by **voice vote.**

ADJOURN: There being no further business before the Committee, **Chairman McKenzie** adjourned the meeting at 9:30 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	January 20, 2010
TIME:	8:00 a.m.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett and Kelly
MEMBERS ABSENT/ EXCUSED:	None
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
CONVENE:	Chairman McKenzie called the meeting to order at 8:02 a.m.

PENDING RULES:
31-1101-0901
31-2101-0901
31-2102-0901
31-4101-0901
31-4102-0901
31-4201-0901

Commissioner Jim Kempton, for the Idaho Public Utilities Commission (PUC), presented the pending rules and provided a handout to the Committee. **Commissioner Kempton** stated that **Docket no. 31-1101-0901** are the safety and accident reporting rules for the PUC. The PUC incorporates the Federal rules by reference into the rules, specifically related to revisions to the 2009 International Fuel Gas Code and revisions to the 2009 International Mechanical Code. With the exception of part 2 chapter 1 in the International Fuel Gas Code on page 229, because the language in this section addresses local government to comply with their own local ordinances.

Senator Davis said on page 226 in the descriptive summary, does it mean that the utility will not have to report damages greater than $200,000? **Commissioner Kempton** said that provision was in proposed rules, it was eliminated, so it is not in the pending rules before you today. The reason they eliminated it was because it was tending towards micro-managing the utilities. They get that information in rate cases and utilities are very good at reporting an incident or accident. **Senator Davis** said as he understands this, then that information is provided to you when you have a rate case. **Commissioner Kempton** answered yes.

Commissioner Kempton said on page 230 hospitalization is included in the area of reporting requirements and there is an exemption for reporting automobile accidents. The only other change is on page 232 for the addition of reporting official. **Vice Chairman Pearce** said on page 230, section 203 accepting the International Mechanical Code, will that cause any problems here for service? **Commissioner Kempton** responded the PUC does not think so. There is a connection with what the utilities do and what contractors do to meet local compliance with Federal code. The

short answer is that it is better to adopt the code.

Commissioner Kempton said **Docket no. 31-2101-0901** relates to customer relations for gas, electric and water. There are no changes other than the provision for annual reporting on bills and they will be compared to the previous month annually with the past year. The customer can look at consumption use over the past year for a comparison in use.

Senator Davis asked **Commissioner Kempton** if the language in the descriptive summary on page 233 is an accurate description of what he is to consider on the following pages? **Commissioner Kempton** responded that it is very general and the summary is relatively short because it proposes to consolidate several sections of code.

Commissioner Kempton said on page 234 the PUC intends to relocate three rules from 31.21.02 to 31.21.01. This proposes that water utilities with more than 5,000 customers provide consumption data on each customer's bill, comparing consumption in the current billing period with the corresponding billing period in the previous year.

Senator Davis said that he likes the comparison data that he receives on his utility bills. He asked if there are utility providers who do not provide that? **Commissioner Kempton** answered no, this is more of a clarification on the 5,000 customer requirement. Additionally, each utility will provide temperature data available to customers upon request.

Docket no. 31-2102-0901 is a PUC request for a chapter repeal, which is one of the rules being consolidated. **Commission Kempton** said that **Docket no. 31-4101-0901** is not being changed but moved into a new section. In the descriptive summary on page 240, the enactment of the Telecommunications Act of 1996 and state statutes, and the amendments to the Telecommunications Act of 1988, have significantly changed the regulatory objectives for telecommunications companies. The changes are intended to encourage competition in telephone services. The proposed rule changes are consistent with that objective by simplifying regulatory requirements and allowing companies more flexibility to respond to customers' service requests, while maintaining some service quality standards related to basic local exchange service.
Commissioner Kempton provided a handout to the Committee which outlined the changes or revisions, which are attached to the original minutes.

Senator Davis said that he recalls a bill a few years ago requesting deregulation. He asked **Commissioner Kempton** to explain why the PUC continues to have the right to participate in regulation, or was it a rates bill and not a service delivery right for the PUC? **Commission Kempton** replied that is exactly right. It was for deregulation and there are very few areas where the PUC interfaces, but one area is in customer relations. Rule 003 is a proposed revision to simplify and clarify how formal complaints and requests for exemption will be handled. The proposed revision in Rule 005 combines the definition of "Applicant" and "Customer"

which will give both the same rights and responsibilities in order to simplify this rule and other rules throughout this rule set. The strikeouts on page 245 reflects the language that is no longer required, or if it is covered in another section.

Senator Davis said on page 243 the statutory definition of a "customer" is a person or an entity who has requested service. He asked **Commissioner Kempton** if entity should have been included in subpart d, or are you trying to say an entity is not a customer when service has been temporarily disconnected? **Commission Kempton** responded that an entity is usually a company and not a person per se. Entities most likely have the same rights, but they are handled differently because of contracts and the size of the company. **Commissioner Kempton** asked to defer this to **Beverly Barker**.

Ms. Barker, Supervisor in the Consumer Assistance Section, stated that it probably would have been more appropriate to say any "customer", so that it includes both person and entity. This section was retained and it was not edited. It does not change in actual practice what the PUC does. Persons and entities have the same rights in terms of disconnection. **Senator Davis** said then he understands if the practice is consistent then it applies to both person and entity.

Commission Kempton said in Rule 100 the existing text was eliminated and all definitions are now found in Rule 005. **Senator Davis** asked why the bankruptcy language on page 247 is limited to an involuntary bankruptcy. Why doesn't it include a voluntary bankruptcy? **Commissioner Kempton** said he doesn't have any answer, but **Don Howell** may be able to answer that. **Mr. Howell** said that section 366 of the bankruptcy code applies to both debtors. It is the practice of the PUC to apply to both and should be cleaned up on the next rewrite.

Rule 102 was revised to remove the requirement that notices must be written. The amount of deposits in Rule 103 proposes changes to remove any reference to deposits for MTS and only cover amounts for local exchange service. The proposed changes to subsection .02 in Rule 105 simplifies the rule by establishing the same terms for returning a deposit for both residential and small business customers. The deposit record in Rule 107 was revised to eliminate the requirement that telephone companies provide a separate written deposit receipt to customers and Rule 110 was stricken. **Commission Kempton** stated that Rules 200 through 299 deal with billing. Billing statements may be provided to customers in an electronic format. If automatic payment is authorized, the customer must be informed in writing when the funds will be withdrawn from a bank or charged to a credit card account. The statement must also state the actual date the funds will be withdrawn and include an itemization of fees being charged.

Senator Darrington asked **Commission Kempton** if electronic billing will be a requirement rather than an option for everyone in the future? **Commission Kempton** replied not in the near future. The PUC is working to protect customers who are using credit cards from abuse

policies by companies who force them into credit cards or who are not fair in the billing process.

Commissioner Kempton said Rules 203 and 204 have been combined into a single rule. The proposed changes make it consistent with the corresponding rule found in the Commission's Utility Customer Relations rules. The existing rule, Rule 204 was eliminated and the revised rule addresses billing issues, which simplifies and clarifies the procedures for handling billing disputes.

Senator Davis said if a customer benefits from incorrect billing problems, and the amount owed is fairly large, is there a rule that provides for the disconnection of service, is there a period of time for the customer to repay the bill, and is it within the discretion of the provider? **Commissioner Kempton** responded that it is typically handled through customer assistance. When this occurs, the customer has been extended a period of time to repay it and they have not been disconnected as long as they are being progressive in repaying the bill.

Senator Stennett said in her area a lot of people have second homes. When there is a decline in their service, is there something in your system that flags that, so the customer will be contacted? **Commissioner Kempton** responded generally there isn't a direct method to contact the customer because they may be away for an extended period of time. This rule addresses billing issues and handling disputes. The customer is notified and they have time to have their billing modified without stopping service.

Rule 205 was revised to clarify the notification requirements in circumstances where a telephone company intends to transfer a bill to a customer's current service. The proposed change will make it consistent with its corresponding rule found in the commission's Utility Customer Relations Rules. **Commissioner Kempton** said existing Rule 207 deals with the required information on bills when telephone companies billed for other services has been eliminated. This is now in Rule 201. Existing Rule 301 is now Rule 300. It revises the requirement that notices must be written. Both written and oral notices will be permitted to provide regulatory flexibility to telephone companies. This revision also clarifies the right of customers to file complaints with the Commission and it makes it consistent with its corresponding rule found in the Commission's Utility Customer Relations Rules. There are minor changes for denial or termination of service with or without prior notice in Rules 301 and 302. The Commission accepted Verizon's suggestion to modify Rule 303 and 304 to specifically provide for electronic notices. Rule 306 subsection .03 makes it optional for companies to allow a second medical postponement of disconnection and Rule 307 applies to medical facilities and notice of termination to the PUC and Department of Health & Welfare. Insufficient grounds for termination of local service in rule 308 makes it consistent with its corresponding rule found in the PUC's Utility Customer Relations Rules. The PUC accepted suggestions made by Qwest and Verizon to modify subsection.01.a, which reduces the minimum dollar threshold for termination of service from $50 to $30. On page 263 in Rule 312, deals

with the cessation of service in a service area for a single area service provider and what they must do to notify the customers in that area.

Rules 400 through 499 are the complaint procedures for telephone companies. A customer for service may complain to the telephone company about a deposit or guarantee required as a condition of service, billing, termination of service, quality or availability of service, or any other matter regarding telephone company services, policies or practices for local exchange service and or other services. **Commissioner Kempton** said Rule 601 was eliminated as telephone directories are no longer regulated by the Commission and in many instances directories are printed and distributed by unrelated third parties. Rule 602 has been renumbered as Rule 600 and it underwent substantial revisions. The remainder of the rules in this section deal with information to the customer such as records, public notice, telephone solicitations and price lists or tariffs. The remaining two dockets are chapter repeals, which are information to customers of telephone customers and the rules for telephone corporations subject to the rules of the PUC under the Telecommunications Act of 1988.

Senator Geddes said he likes the balance in these rules because it seems to protect the balance of the utility and the customer. It allows the customer to understand the different arrangements and agreements available to them. More and more, customers are using cell phones as their sole telephone service. He often receives complaints because there isn't a provision to protect the customer from the cellular phone provider. Most people are not aware of the implications of signing a contract. He asked if the Legislature is precluded from regulating those providers and contracts? **Commissioner Kempton** deferred this question to **Don Howell. Don Howell**, Director of the Legal Division for the PUC, said that is correct. When the Legislature enacted the Telecommunications Act of 1988, cellular telephones were just emerging at that time. Idaho Code 62-601 through 622 is where the Legislature is specifically exempt from regulating cellular phones, paging, answering machines, one-way video or cable television. What covers that gap is the Attorney General's Consumer Protection Agency which does the interface.

Senator Davis asked **Mr. Howell** if there are any Federal limitations or preemptions in this area for cell phone users? **Mr. Howell** responded that there are lots of preemptions in the area of telecommunications. The most notable one is that technology is ahead of regulation. You can now transmit a call over the internet and Federal regulations preempt State regulations for that type of activity. **Senator Davis** said for the past hour we have heard testimony on the consumer service side. He asked if we are preempted as a State from doing something similar with cell phones? **Mr. Howell** answered there is some preemption as it deals with the Federal Communications Commission's oversight.

MOTION: **Senator Davis** moved to approve **Docket nos. 31-1101-0901, 31-2101-0901, 31-2102-0901, 31-4101-0901, 31-4102-0901 and 31-4201-0901. Senator Geddes** seconded the motion. The motion carried by **voice vote.**

08-0202-0905 **Luci Willits**, Chief of Staff for the State Board and Department of Education presented **Docket no. 08-0202-0905** to the Committee. **Ms. Willits** stated this docket is the State Department of Education Driver's Education Manual. The Department of Education (DOE) oversees Idaho public driver education and training programs. During the 2009 Legislative session, private driver education businesses were moved out from under the DOE to the Bureau of Occupational Licenses (IBOL). Due to this move it was necessary to revise the operating Procedures for Public Driver Education Programs and to address the new relationship with them. In addition, the DOE has reviewed content standards for driver's education and made changes to align Idaho's standards with national standards and clarify policies. The clarifications include reasons a student may be dropped from a course, the duration of a course, hours per day students may be in class and in a car, requiring parent-teacher contact, reducing paperwork for teachers and disallowing multiple DUI and felony offenders against children from becoming instructors. A public hearing in October centered on private driver's education and requirements in the rule related to their ability to contract with public schools. Based on the testimony, the rule was revised to address the areas of concern with the exception of two areas that are required by statute.

Ms. Willits said the rule incorporates the operating procedures for the public driver programs manual by reference and changes that were earlier mentioned. Section 6 of the manual addresses specifically public schools who contract with private driving schools. The reason for that is due to the reimbursement of public funds. These rules do not affect a private driver school in any other area. If a parent chooses to purchase services from a private school, it is a private transaction and it is beholden on the consumer to do their research. Once a contractor is hired to perform a service using public money, there is a greater level of accountability. The education system is responsible for the well being and safety of the student when the student enters the school property, particularly if the service is being contracted as state laws and rules apply. Some schools contract with private drivers education just as schools contract for bussing services, food vendors, textbooks, and with private curriculum and instruction companies. When a school offers private driver education, it is an extension of the school and considered a class. Content standards are incorporated by rule and must be met as well as specific guidelines.

One of the requirements of any contractor doing business in public schools is a background check, **Ms. Willits** said. In 2008 the Legislature took bold steps to protect children from dangerous predators and pedophiles. Any person with unsupervised contact with students must undergo a criminal background check.

Senator Davis said as he looks at **S1133**, the private driving schools have made the transition to the IBOL. He asked if the DOE believes that it has the right to promulgate rules or enforce them regarding driver education that is operated by the IBOL? **Ms. Willits** responded yes. When a private company contracts with a school district because that

school district cannot or doesn't want to provide those services, the DOE is required by state statute to meet minimum standards for reimbursement. That is where the statutory responsibility comes from. **Senator Davis** said can he reasonably infer that the rules that are before the Committee are intended to apply to only public driver education that is operated by the school district, or a private company that the school district contracts with to provide service. **Ms. Willits** said yes. **Senator Davis** said if a business that contracts with a school district operates its own private driver program, can he assume that these rules are only intended to deal with the regulation of that business and its contract relationship with a school district. **Ms. Willits** replied yes. **Senator Davis** asked if the component of their business that is not part of that contract relationship with the school district, administered by the IBOL? **Ms. Willits** answered yes. **Senator Davis** asked **Ms. Willits** if a person is appropriately licensed by the IBOL, is it the position of the DOE that if that person wants to do contract work with a school district, they must go through a separate certification and licensing with the DOE**?** **Ms. Willits** said they would not have to go through a separate certification, only the background check and they would have to meet contract standards. **Senator Davis** asked if the individual is licensed by the IBOL and the DOE accepts that licensing, are the only additional requirement the background check and that they must meet content standards? **Ms. Willits** replied that is correct.

Vice Chairman Pearce asked **Ms. Willits** to explain sections one through eight on page 4 of the pending rules, which are incorporated by reference. **Ms. Willits** responded the first section deals with student requirements, such as age and how a home school student would interact. Section two addresses the instructional requirements, hours per day, driving time, observation time, and vehicle occupants. The third lays out what is required of an instructor and their education and medical examination.

Chairman McKenzie asked **Ms. Willits** what document is she referring to, it looks like there are different standards, and could she clarify what standard she is referring to as she goes through them? **Ms. Willits** replied that she is reviewing the Operating Procedures for Idaho Public Driver's Education Programs Manual. **Ms. Willits** said section four deals with course administration, section five deals with vehicle requirements, section six deals with public schools contracting with private driver schools, section seven monitors integrating programs and section nine was deleted which were the definitions. At public hearings there was very little discussion in terms of the standards that were updated. Most comments dealt with the relationship with the private driver schools.

Vice Chairman Pearce asked if these are the only changes and are they only being incorporated in rules by reference? **Ms. Willits** asked to defer this question to **Nick Smith**, the Deputy Superintendent of School Support Services. **Mr. Smith** said he believes what **Vice Chairman Pearce** is referring to are the documents listed on page 4 that are all incorporated by reference. One of them is the document that **Ms. Willits** spoke to and another is the Idaho Standards for Commercial Driving Schools. There are several documents by which the DOE operates. The

two that deal with commercial driving schools should have been deleted last year, when the private driving schools were removed and placed under the IBOL because they no longer exist.

Senator Geddes asked when a private driving school goes through the licensing and certification through the IBOL, is a background check required? **Mr. Smith** responded that it is their understanding that they do not do the full Federal Bureau of Investigation (FBI) background check. A lot of agencies only use a regional background check, which only checks the neighboring states. The DOE has full authority to do the FBI check. **Senator Geddes** asked if a private driver school that contracts with a school district would have to have two separate background checks? **Ms. Willits** answered that is correct and by statute the DOE is allowed to do that.

Senator Davis asked **Ms. Willits** who approves the program rules? **Ms. Willits** responded in section six of the manual it speaks to the issue of reimbursement, which is governed by statute as well. It should really be submit rather than approval. **Senator Davis** said on page 43, subpart 5 in the manual, it talks about the incorporated document for operating procedures for public driving schools as approved on November 9, 2009. **Mr. Smith** responded that refers to when it was last approved by the Legislature. The document we are looking at today has to be approved by the DOE and then it is approved by the Legislature. **Senator Davis** said he is referring to the date in subpart 5 and his question is about the current language. The new language reads the Idaho Operating Procedures Standards for Public Driver Education Programs as approved on November 9, 2009. His question was who approved the new operating procedures on November 9, I believe I heard you say it was the DOE.

Ms. Willits said the reason that private driver education is included in this rule is because of the statutory responsibility to reimburse school districts. Currently all contract education providers in public schools must meet content standards. The DOE rules under 08.02.3 establish the content standards which include the driver education standards. School districts are required to establish local standards that meet or exceed the state's minimum standards. Therefore, because of the statute the DOE must require minimum standards for reimbursement and a background check. **Ms. Willits** said the criteria required for private drivers education companies who choose to do business with school districts, are based on existing statute and these rules comply with the law. That is why those particular instances were not changed and must go forward in this rule.

TESTIMONY: **Teresa Molitor** who represents the Idaho Association of Public Driving Business (IAPDB) addressed the Committee. **Ms. Molitor** stated that she wants to talk about this rule from their perspective and the flaws that they see. The IBOL is where the private driver businesses are housed and in the rule there are three different descriptions of that agency. From a process standpoint, the IAPDB is dismayed that they did not have an opportunity to meet with the DOE and do some negotiated rulemaking. At the bottom of page 3 is the description given by the DOE as to why negotiated rulemaking was not done in this case. The workshops and

meetings that were held were no different than those from the past as the members feel unwelcome. Participation in those meetings has dropped off and the few that did attend reported written comments that are specific to this issue. **Ms. Molitor** said they are disappointed that they did not have an opportunity to sit down and discuss the very issues that have been discussed today regarding the conflicts they see in this rule and that it will create. The IBOL requested and was granted a hearing on October 19, where individuals testified to some of the things the Committee heard today. Some things were changed but overall they haven't really communicated. This rule is flawed especially regarding commercial schools.

Senator Darrington asked if her contention is that the rules were not promulgated according to law? **Ms. Molitor** answered that is a strong statement. The IAPDB takes serious issue with the description of why negotiated rulemaking was not done in this case. It is for the Legislature to decide if it meets the statutory requirements**. Senator Darrington** asked again if it is her contention that they were not promulgated according to law, negotiated rulemaking notwithstanding? **Ms. Molitor** replied that is their position.

Senator Geddes asked **Ms. Molitor** to go into more detail what is entailed in the background investigation that the IBOL does that is relative to what **Ms. Willits** described. **Ms. Molitor** responded it is her understanding that the IBOL has promulgated rules that address criminal background checks. **S1133** is going through a clean up to be more specific in that regard. **Ms. Molitor** asked to defer to **Mike Ryals** to address that question. **Mike Ryals**, Chairman of the Idaho Driving Businesses Board with the IBOL said the wording in statute regarding background checks was in error. In order to put a background check in place they accepted a lesser background check so they could license the drivers. As **Ms. Molitor** stated, they are in the process of cleaning up the language in **S1133** so they can offer that complete background check. **Senator Geddes** said in that case if your efforts to change the statute complies with a more stringent background check, do you have an issue with what the DOE has required for a contract**. Mr. Ryals** answered that the board does not have a problem with having more than one background check. The private businesses are concerned about more fees especially the way they are operating right now and today's economy. **Senator Geddes** asked would there be a requirement for two background checks, or are you elevating your requirement to the same standard as the DOE? **Mr. Ryals** said if they are the same check it is a matter of duplication, but then it comes back to the rules that are set up by the DOE and maybe we need a discussion about that.

Senator Davis said on the first page the proposed rule requires that the private instructor also be certified as a school teacher. He believes he understood from **Ms. Willits** that there won't be a separate licensing requirement. Under the statute passed last year, if you have a license then the only other requirements are the standards that have to be taught and an additional background check. **Senator Davis** asked if the proposed rule requires that private contract instructors will have to be a

certified teacher? **Mr. Ryals** responded this is the first time he is hearing that. In the DOE Rules of Uniformity it speaks to that fact. But when he goes to the Operating Procedures and he looks at the rules that are being incorporated by reference, he does not find those statements. **Mr. Smith** indicated that they have not been cleaned up at this point and he would like to see that happen before we can agree that this works. **Senator Davis** said this helps him to understand his concerns.

Senator Davis asked if the contract provider that is licensed by the Bureau also has to be a certificated teacher with the DOE? **Mr. Smith** answered no, and he would like to explain the confusion. The original draft which is being referenced had that language in it. After the public hearing in which the private drivers had an opportunity to testify it was one of their concerns, so it was removed from the published rule. The DOE took into account every single recommendation that they put forward with the exceptions of the ones that **Ms. Willits** outlined as the statutory requirements, which are the background check and the content standards. **Senator Davis** asked **Mr. Smith** if the content standards are the operating procedures in the program that was approved by the DOE? **Mr. Smith** responded that there is a difference between the operating procedures manual and the content standards. The content standards are what is being taught to the students. The operating procedures that we are reviewing today are not requirements for the private businesses. They have their own operating procedures which they determine. The only things the DOE is requiring is the background check and the content standards. **Senator Davis** said when you use the term "content standard" it is the basic framework of those items that you want to ensure are being taught by the instructors, and as a contract provider they must include them in their instruction. He asked if that is a fair summary? **Mr. Smith** replied that is exactly right.

Mr. Ryals stated currently there aren't any national standards for driver education. In the proposed rules when it refers to national standards, Idaho rules by the DOE are weak in approaching the recommendations.

Senator Davis said it was a very rough transition between the DOE and the Board, and he was very disappointed in how that happened. He senses that everyone has a carryover of frustration. He asked if it is best for the DOE to run its own program? **Ms. Molitor** responded the bill that was passed last year takes the private driver businesses and creates a self governing entity under the IBOL. Now you see rules from that entity that talk about the things we discussed today, which include content standards. The short answer is no. The public schools can continue to offer driver education in the same fashion that they have. The IBOL has promulgated rules to govern private driving business, and with an issue such as content standards they should have had an opportunity to sit down and weed through this before we got here. Public and private driver education will continue as long as the school boards want it**. Senator Davis** said he doesn't see a problem with the DOE setting whatever content standards they think is an appropriate subject to State Board approval and the same for the private providers. What he is uncomfortable about is that he sees both groups going in substantially

different directions. **Ms. Molitor** said at the very least, the flaw in the rule that they see is that it is not clear. If you are going to talk about commercial schools then it should say commercial schools that contract with public school districts. They are looking for clarification and it is not too late to sit down and discuss it. **Senator Davis** said the legislation was passed at the end of last session and maybe a reasonable date for the transition should have happened. The Legislature may have been a participant in part of the problem.

Senator Geddes said what concerns him is the negotiated rulemaking process and the fact that the formal process was not held, and that It was deemed appropriate that enough discussion occurred in the eight workshops that were held around the state. He asked if that was one workshop held eight times in various locations? **Mr. Ryals** responded that is correct. **Senator Geddes** asked if it was clear to all involved at the workshops that it would entail the rulemaking effort and discussion needed for a consensus as to what the rules should say, or was the workshop for other instruction? **Mr. Ryals** replied that he is only aware of what happened in one workshop in Coeur d'Alene. The workshops are professional workshops to acquire the hours for continuing education. At one point one of the schools was told they could leave and they were told that the remainder of the workshop was about public school rules. **Senator Geddes** asked for perspective from the DOE on how the workshops were conducted, and whether or not they did entail a productive discussion regarding the rules? **Ms. Willits** responded that negotiated rulemaking is not required but something they can do. There was a hearing, there was opportunity for comments and we came back with a second version of the rules that went before the State Board. At that time there was an opportunity for comment from the State Board, so it was done within the scope of the law. There are some that may feel they were not adequately heard, but the fact is there was a hearing on it and no one responded. **Ms. Willits** stated what we need to look at is the fact that there isn't an objection to the rules. If a private driver school wants to exceed those standards, we welcome that. There isn't anything here in substance only criticism of the process, but the result is the same.

Mr. Smith added that the workshops that were conducted around the state did include a full day of discussion on the topic of this manual. It was part of the agenda sent out ahead of time, so it was understood that it was what was going to be discussed.

Chairman McKenzie said it is 10 a.m. and there is still additional testimony to be heard before the Committee may want to take action. Testimony will continue on this rule at our next meeting on Friday.

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

Senator Curt McKenzie Chairman	Deborah Riddle Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: January 22, 2010

TIME: 8:00 a.m.

PLACE: Room WW55

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

MEMBERS ABSENT/ EXCUSED: None

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

CONVENE: **Chairman McKenzie** called the meeting to order at 8:03 a.m. and stated the first order of business is the continuation of the pending rules from Wednesday's meeting.

PENDING RULES: 08-0202-0905 **Teresa Molitor,** who represents the Idaho Association of Professional Driver Businesses (IAPDB), said as she indicated they have some concerns about the rule. Not only the process, but also with some flaws in the rule, which will create some confusion if allowed to move forward. **Ms. Molitor** said additional information has been provided to the Committee regarding the costs between the public and private driver schools. In addition to that there is a letter dated October 19, 2009 from the Idaho Bureau of Occupational Licenses (IBOL) to the State Board of Education (DOE) and to the Superintendent of Public Instruction, Tom Luna. **S1133** is the law regarding private driving business. In that law, section 5405, it states any private driver business or driving instructor licensed pursuant to this chapter shall be exempt from the provisions of Title 33, Idaho Code. In section 3, any driving business licensed pursuant to this chapter may contract with a public school to provide driver education. Any driving business that contracts with the public school to provide private driver education may be allowed to use the services of any or all of the driving instructors of that driving business. **Ms. Molitor** stated the assumption made last session is that the Board will then create content standards and do things to get those instructors and businesses licensed according to their standards. At that point, the State of Idaho recognizes that business or instructor as licensed to practice.

Senator Kelly asked **Ms. Molitor** can the public schools who contracts with the private instructors, impose additional standards, such as content standards and require a background check? **Ms. Molitor** responded that it does not say that in the law. The argument last year was about content standards. The DOE asked that their content standards prevail and we

requested that the private business could create their own content standards that would apply to their driving business and their instructors. The law created an obligation to the IBOL to come up with content standards in addition to all their other rules. Those rules have been presented to the business community this session and have been presented to committees for consideration. Due to the delay by the Board in creating the rules the deadline was missed, but they are on the internet and contain a few things that should answer her question. The rules list specific content standards, which are proposed rules. They are the content standards that need to be met, in order to operate a business. In addition to that, a bill is being drafted with amendments to **S1133**. The IBOL has reviewed **S1133** and they have made changes to the criminal background check. In **54-5405 Idaho Code**, regarding the license requirements, a sentence will be added to state that a satisfactory fingerprint based criminal history check of the Idaho central criminal database and Federal Bureau of Investigation (FBI) criminal history database. Another section being added will state that if the Board granted a business a license without the satisfactory criminal based history check, such licensee shall obtain and submit the required fingerprint based criminal history check to the Board. The bill with the changes address in numerous places the issue regarding the criminal background check. **Ms. Molitor** stated if this rule is adopted there will be two sets of standards regarding the criminal background check and the content standards. The difficulty in sorting this, is whose content standards will apply to what person. In this case, there will be competing documents that will create more confusion in the future.

Senator Stennett said how much effort would it take to be uniform with a single set of standards so that it doesn't matter who you are driving for. If you prefer to operate under your own set of standards and not under the DOE, is there any obligation to contract as a subcontractor with the schools. The driving business doesn't have to contract with a school district if it doesn't care for the DOE's standards. **Ms. Molitor** replied until now ,the operators were using the same set of content standards. However, because the private driver businesses wish to be overseen by an entity that is not their primary competition, they asked this Legislature to be under the IBOL and develop their own content standards. If a school district decides to contract with a driver business who will accept those content standards for as good as the DOE or better, then they can contract with them. Any vendor who comes before a school district must convince them that they are the best person for the job.

Senator Kelly asked if the rules from the private driver businesses will not be in effect until next year? **Ms. Molitor** said she is not an expert on rules, but they are published as temporary rules. Because they missed the deadline, they will be considered by the 2011 Legislature and they are the standards by which these entities will operate.

Senator Davis said he has some questions for the DOE. He asked if the private driver will have to have a valid teaching certificate? **Ms. Willits,** from the DOE said they do not. **Senator Davis** said you sent a copy of the Idaho Operating Procedures for Idaho Public Education to him which

he skimmed through. As he looks at the specific language on page 32, in 3.3.2 it states that the applicant must have a license and a valid teaching certificate. That seems inconsistent to him. **Ms. Willits** responded there are seven sections, and the first six sections only address public driving schools. There is only one section, section six, which is for the public schools who contract with private driving schools. Only that section applies to them. Those are things that were discussed before, which are the FBI check and meeting minimum standards. The remainder of the document applies to public schools. **Senator Davis** said it was not clear to him and he can see why it wasn't clear to the private providers. Other than the description in the title he does not find the language that provides clarity. **Ms. Willits** said she reiterates that the first five sections deal with the public driving schools, this is the public driving school manual. The last section is for the public driving schools who contract with private driving schools. The DOE does not have the ability to regulate a private business when they deal with a private individual. Their only obligation is when they enter the school and into the public system. They will only have to do what is in that section. **Senator Davis** said that words mean something to him. On page 3 it says to him "all driver education courses offered in Idaho public schools must be conducted in compliance with all of the requirements in this document." It does not say only sections one through five apply to instructors that are public providers and that six will apply to those that we contract with. He had intended to vote for the rule, but now he sees a fatal flaw in the document that you want him to adopt by rule.

Nick Smith, Deputy Superintendent for the DOE responded that he can see where Senator Davis sees confusion in the document and his points are well taken. **Senator Davis** said he is not confused. **Mr. Smith** said the intent of the document is for section six to only apply to the private driver schools who contract with a public school. There are some issues with the manual that in the future will need to be cleaned up. The DOE needs to have a manual in order to operate the public schools. Whether this manual is approved today or not, they will have to revert back to the old one. He would like to have this manual approved and then make corrections as needed. The DOE's intent is clear that section six only applies to the private schools who contract with our public schools. **Senator Davis** said he is having a hard time in light of what happened last June to say that he will trust the DOE to do the right thing. **Ms. Willits** responded that he has my word that we will not require private driving schools in their own right to have a teaching certificate if they contract with a public school.

Senator Geddes said if a school district determines that they would like to enter into a contract with a private driving school, is that contract reviewed and agreed to by the DOE, or by the individual school district. **Mr. Smith** answered the contract that is entered into between the school district and the private business is just that. The only thing the DOE must have is that the contract must be submitted with the public schools program plan, so we can see where the funds are going for reimbursement. **Senator Geddes** said he shares the same concerns as **Senator Davis**, especially based on what you just told me. What will

happen if the school district reaches the same conclusion that **Senator Davis** has, how will you uphold your promise if ultimately the district has the authority to enter into a contract. How do we know for certain that **Brian Johns,** who supervises this program, whom we have not seen in any of these hearings, will make that same interpretation. **Mr. Smith** said that he supervises **Brian Johns.** He shares the exact interpretation and he understands clearly what this manual is. If there is a misunderstanding it will be dealt with directly to that individual school. **Senator Geddes** asked if he could foresee the potential that a school district would not ask the DOE for a clarification? **Mr. Smith** responded there is that possibility, but he can say that they work very closely with the public schools on a daily basis. Workshops are conducted and this manual will be shared with them. The DOE will do their very best to communicate that.

Vice Chairman Pearce asked how many employees are there in the DOE that oversee the private education drivers? **Mr. Smith** replied that there is one coordinator, **Brian Johns**, a part time administrative assistant and he oversees the entire division of school support services where it falls under.

Senator Stennett said if these rules are not passed will there be a set of substandard rules and security checks. **Mr. Smith** responded that the manual that is in question today has not been reviewed, approved and updated for a considerable amount of time. The protections that will be afforded to the children are not as good in the old manual as they are today. Steps have been taken to ensure the security of children in the new manual. **Senator Stennett** asked what would be the more obvious changes or improvements? **Mr. Smith** stated that the DOE has identified the types of activities in an FBI check that would keep an instructor from working in the public schools.

Vice Chairman Pearce asked aren't those rules already in place in the school system? **Mr. Smith** said currently when an FBI check comes back it is going to identify misdemeanors and felonies. For a public school teacher, crimes are an automatic red flag and that individual cannot receive a teaching certificate in the State of Idaho. When an individual has a DUI they can still be a teacher and not necessarily be identified as someone who could not teach drivers education. This manual further identifies that individual for the obvious reasons. **Vice Chairman Pearce** said wouldn't it be simpler and just as effective to do this without having a rule. He just wants to understand this process. **Mr. Smith** said in a perfect world that is exactly what we hope would happen. It isn't what always happens and not because the school district doesn't want it to happen. They may be overburdened with other issues and things can slip through the cracks, so it becomes necessary to promulgate rules to ensure the safety of children. That is what we are trying to do with this rule.

Senator Geddes said we heard earlier that there will be new legislation to clarify some things that were not in the original legislation. That legislation will focus in two areas. One, it will require the FBI standard of background check and two, it will clarify that the content standards of the

program is incorporated in the private driving schools when contracting with public schools, and that it will exceed or meet the standards. In the event that legislation passes and those clarifications are made, will it eliminate the concerns with respect to the private driving schools as applied in this rule? **Mr. Smith** responded he appreciates the private driver schools cleaning up the language as it does address the DOE's concerns. He could be mistaken, but if those statutes are amended and passed they will go into effect on July 1. We will have private driver business contracting with public schools as early as tomorrow. It is not appropriate to endanger a child's life. **Ms. Willits** added if that is the case then these rules should go forward. These are the DOE's operating procedures and it is important for us to have them, particularly the sections that apply only to public schools.

TESTIMONY: **Mike Arnell** said he was asked by the IAPDB to testify on their behalf regarding the proposed operating procedures for private and public driver education programs. The Association asks that you reject these rules for a lot of reasons. First, IAPDB's exclusion from the negotiated rulemaking process. For the record, the DOE did not ask the IAPDB to participate in any negotiated rulemaking processes which includes the driver education workshops they conducted. Since **S1133** was signed into law by **Governor Otter** last year, the IAPDB has been further excluded from the rulemaking process. After it became apparent that was not going to happen, some private driving schools formally requested and attended an October 19, 2009 to oppose six of the rules contained in the operating procedures. **Mr. Arnell** stated the second reason has to do with the pending rules for private education incorporation by reference. Rule 004.07 refers to the Idaho Operating Standards dated March 10, 2005. Rule 004.08 refers to the Idaho Standards for Commercial Driving Schools that are available at the DOE. **Mr. Arnell** said in Rule 230.0l, it refers to the provision that all driver education courses offered in commercial driving schools must be conducted in compliance with all requirements and standards for commercial driving schools dated March 10, 2005. The IAPDB considers these rules to be in direct conflict with the Idaho Driving Business Act in Title 54 and they should be removed from the Operating Procedures. Lastly, in addition to the IBOL's attorney, the IAPDB's is asking the DOE to clarify the following. Are private driver schools that contract with a public school required to follow the rules contained in the operating procedures in Title 3, or by Idaho Code Title 54, or a combination of both. Once this clarification is made, the IAPDB would like this added to procedures. **Mr. Arnell** urged the Committee to reject the rules.

Mike Ryals, Chairman of the Private Driving Businesses, testified that his concern is the negotiated rulemaking process as well. The transparency is not there. **Mr. Ryals** said he would bring to the Committee's attention, that they have never had a driver prosecuted in the State and all the drivers have taken the approved course by the DOE to be certified to teach driver education. The standards they used are the same as the DOE's. They took the standards for classroom and behind the wheel and added some things to improve that curriculum. The IBOL believes that their standards exceed those of the DOE. The rules for public schools

who contract with private businesses has taken approval away from the school district and placed it with the DOE. If a private business wants to contract with a public school, he understands that the program that has already been approved by the IBOL, will take away the local control. In statute there is a code that talks about reimbursement to schools. The rules before you will change that statute. Title 33 was removed by the Private Driving Businesses Act and it is still being used to place requirements on private driving businesses. There are documents incorporated by reference that have not been changed to accommodate private driving businesses. The operating procedures do not tell us what we are hearing. **Mr. Ryals** stated if section six is removed from the DOE's operating manual it will give the private driving businesses what they need.

Ms. Willits said these rules are the operating standards for public driving schools. There is only one section that deals exclusively with public schools who choose to deal with a private company. The DOE has a process for rules. We needed to change our manual and the changes were made. Before it was put out for comment they had to go before the Board for approval. A public hearing was held and they took the feedback from the private businesses that the first version did not meet their needs. The only two things required of them are the background check and that they meet minimum standards. That is not far reaching and it is required of every private business that does business with the State. **Ms. Willits** stated they would not allow a bus company or a virtual school to make their own rules. What she is hearing from the private businesses is that this is not the issue. Before, the DOE did oversee them and we could tell them what to do. That has changed and they now have their own Bureau which oversees them for private transactions. The DOE has a statutory obligation to say what is required of them. That is what the DOE is asking for. She knows the Committee has concerns, and she reports directly to **Superintendent Luna**. If there is a problem she is here to fix it. **Ms. Willits** said the majority of these rules deal with the public driving schools, it deals with their operating procedures. There is only one small section that deals with the private driving businesses. They are only required to have the FBI background check and they have to meet minimum standards. The private driving business say they accept that so there shouldn't be a problem with the rules. We can move forward, so the private driving business can operate in their environment and the public schools can operate with standards and accountability in place.

MOTION: **Senator Kelly** moved to approve **Docket no. 08-0202-0905. Senator Darrington** seconded the motion.

Senator Geddes said he will offer a substitute motion. There are issues that were addressed today regarding potential confusion, that these rules were not crafted in a way that truly represents the intent of either the public driving schools or the privates. With the potential of having additional legislation to clarify the concerns of the private driving schools **Senator Geddes** moved to reject the rules as written. **Senator Davis** seconded the motion.

Senator Darrington said he doesn't see or hear the problem. If we do not believe what the DOE has said, than their integrity is on the line.

Senator Davis stated that **Ms. Willits** representation means a great deal to him personally, but experience teaches him that a lot of damage can occur between a misunderstanding. He believes she means what she says and that she will follow through. A written commitment would help to alleviate his concerns. As he weighs this in his mind, the intent was for the schools to have the right to set their own standards and he does not have a problem with that. He does not have a problem with the finger printing. The standards should be uniform and he agrees that there may be some division within the private providers, the DOE and IBOL. He had intended to vote for the rules and he believes the technical problems can be corrected, which he does not find to be a fatal flaw with the adoption of the rule. What it comes down to for him, is the language in the operating procedures that are referenced in the administrative rules to a date certain as approved by the Board. That language is not carefully drawn and there is a potential for abuse. **Senator Davis** said he is being asked to vote on language and not on intent, so he cannot support this.

Senator Stennett said she understands the quandary of both sides. Her concern is the safety of children regardless of the language.

Senator Kelly commented that last year this Committee spent a lot of time dealing with legislation regarding this issue. The ultimate product which has been codified granted authority to the private driving schools to have their own board and to adopt their own standards. There are two driving schools in Idaho, private and public. The public schools are bringing to us a proposal of how they will implement their duties and responsibilities. The private driving schools seem to want to work towards a goal that the public schools do not offer. That is not the bill that was passed last year. She sees that the public schools are performing the statutory requirement that was allocated to them. What we have before us is a safety concern so the DOE is well within its authority to adopt this rule. **Senator Kelly** said she cannot support the substitute motion.

Senator Stegner said he intends to support the motion to reject the rules. There is ambiguity in the rules and that is the reason that we review them. There is opportunity for the public to address their concerns and then the Legislature makes a determination as to whether they are fair to the citizens of Idaho. The DOE has acknowledged that it will be an inconvenience to start over and rewrite the rules. But that is the whole purpose for having them. When they are ambiguous, it is the job of the Legislature to point it out. **Senator Stegner** stated that the DOE has good intentions to make a clarification, but they have not succeeded. As for personal guarantees, unfortunately they do not go very far because this whole body could be replaced next year. The people offering those guarantees may not be here next year either. Personal guarantees are not the purpose of rules. This rule does not meet the standard of being concise for establishing the proper procedures that our citizens can easily understand. He will be voting to reject the rules.

Senator Davis said the minority leader speaks to the issue of safety and those comments are valid. By rejecting this rule, we will return to the standards that provide safety for our children in the past. The DOE will not be left without meaningful tools to ensure the safety of the students in the program.

Chairman McKenzie requested a roll call vote on the substitute motion.

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

The substitute motion **carried** to reject **Docket no. 08-0202-0905.**

PENDING RULES: 38-0404-0901
PENDING FEE RULES: 38-0404-0902

Tim Mason, Administrator for the Division of Public Works, presented **Docket no. 38-0404-0901** to the Committee. **Mr. Mason** said one of the functions of the Division is the administration of the Capitol Mall parking program. It is somewhat of a difficult program to manage as there are1,700 registered parkers and 1,238 spaces available. There was a legislative audit this past year and the rules were rewritten to make a clarification regarding what the Capital Mall parking program entails, including who the authorized Capitol Mall parkers are. This docket is the repeal of the rules and the second docket, **38-0404-0902** is the rewrite, which are the new parking rules for the Committee's consideration. For the most part definitions have been cleaned up to define what parking locations are such as general, reserved, and carpool designated parking spaces. A carpool space is for two or more rather than more than two. State vehicles have been removed from the roof of the parking garage to the fourth floor. Parking tags will be issued every year and duplicate parking tags will now have to be paid for. Parking penalty fees have been increased from $5 to $15, general parking is a $5 fee and reserved parking is $25.

Senator Geddes said he appreciates the efforts of the Division to wrestle with the parking problems. He asked **Mr. Mason** where in the rules is the designation for parking school buses? **Mr. Mason** responded school bus parking has never been a part of the parking rules. It is a problem and prior to the remodel of the Capitol they would park in front of the plaza. They are in the process of trying to figure that out with the City. **Senator Geddes** said that would be helpful and it needs to be done sooner rather than later.

Senator Davis said he assumes the difference in the105 legislatures to 103 is because of the two spots for the Speaker and the Pro Tem. He asked if that was a fair statement? **Mr. Mason** answered that is correct. **Senator Davis** asked if there is reference to that in the rules. **Mr. Mason**

said yes, it specifically calls for a reserved space for both. **Senator Davis** said he noticed in the definitions, on page 33, there is a definition for a legislative attache, which states an employee who is hired by the legislative branch who receives a State of Idaho issued paycheck. He asked **Mr. Mason** if there is another definition in the rules that includes the legislative attaches right to park when we are in session? As he reads section 02, sub parts a and b, it seems to clearly exclude a legislative attache's right to park. **Mr. Mason** replied an employee of the legislature who is hired and paid is entitled to park. When we talk about legislature reserved and general parking spaces, that is a special designation because 103 spaces are blocked. Each Legislature is offered the opportunity to have reserved parking within the 103 allotted spaces, which becomes reserved parking. If they choose to have general parking, that is different than his parking. He has to look for an empty space and the legislature has to look for a space in the 103 spaces, minus the reserved ones. The other employees of the legislature are Capitol Mall employees. **Senator Davis** said he sees that distinction now.

Senator Fulcher said there seems to be a lot of spaces dedicated to carpooling. It is a good policy, but it is a bit more difficult for the legislatures and most of those spaces are not being utilized. He asked **Mr. Mason** how the number of carpool spaces are determined? **Mr. Mason** replied they encourage carpooling for the obvious reasons. In order to address that problem a vacant carpool space that is available at 9 a.m. will become a general parking space, so there isn't an empty space all day because the carpoolers didn't use them. **Senator Fulcher** asked if the general parking spots are full, will it be acceptable to utilize a carpool space after 9 a.m.? **Mr. Mason** said that is correct.

MOTION: **Senator Darrington** moved to approve **Docket nos. 38-0404-0901** and **38-0404-0902**. **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 9:22 a.m.

Senator Curt McKenzie Chairman	Deborah Riddle Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	January 25, 2010
TIME:	8:00 a.m.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett and Kelly
MEMBERS ABSENT/ EXCUSED:	None
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
CONVENE:	**Chairman McKenzie** called the meeting to order at 8:02 a.m. and stated we have a full agenda today, but they are all related to the Idaho State Racing Commission.
PENDING RULES: 11-0401-0901 11-0404-0901 11-0404-0902 11-0405-0901 11-0406-0901 11-0408-0901 11-0409-0901 11-0410-0901 11-0411-0901 11-0414-0901 11-0415-0901	**Dennis Jackson**, Executive Director, of the Idaho State Racing Commission presented the pending rules. **Mr. Jackson** stated with him today is **Jackie Liebengood**, the Management Specialist for the Commission. These rules are a total rewrite regarding all the rules under which the Commission operates. Prior to the beginning of the rewrite, the Commission operated under four chapters and one main chapter that were outdated, poorly written and organized. The staff has rewritten the rules and this is the product of that effort. There are twelve chapters, organized by topic. Prior to the rewrite, if you were an owner of a horse and you wanted to enter that horse in a race, you had to search all the rules to find out what specifically applied. Now, there is a specific chapter which lays out the requirements, so that individuals can see what applies to them.
PENDING FEE RULE: 11-0407-0901	**Mr. Jackson** said **Docket no. 11-0407-0901** is the one pending fee rule that applies to racing associations. This rule speaks to the organization that is organizing and putting on the race. **Docket no. 11-0401-0901** is a chapter repeal, which are the original rules that the Commission operated under. It was necessary to repeal the chapter in order to organize and put them into separate chapters. Public hearings were held on all the rules and there were no negative comments on any of them. The existing chapter, **11-0404-0902** was a chapter that dealt with how the Commission will deal with disciplinary hearings in the field. Stewards observe each race and depending on the conduct at the race, the stewards may summon the party or parties for a disciplinary hearing and may in some instances assess a penalty or a suspension. **Docket no. 11-0405-0901** is a new chapter that was rewritten and it covers advanced deposit

wagering. Statute allows for advanced deposit wagering. These rules govern the better and the operator who is licensed through the Commission. **Mr. Jackson** said **Docket no. 11-0406-0901** is a new chapter for the rules that govern the racing officials. These are the people who supervise the races to ensure they are conducted according to the rules. Another new chapter, **Docket no. 11-0408-0901**, specifically covers pari-mutuel wagering. This means if you make a pari-mutuel wager, this wager goes into a pot and you are wagering against the others in the pool. The wager is not against the house or the racing association. This chapter outlines for the pari-mutuel wagers what is legal in Idaho. **Docket no. 11-0409-0901** is the rule that concerns claiming races. Prior to a race if an individual takes a liking to a horse, they can enter a claim for the horse and the amount of money they are willing to claim for it. At the end of the race the horse belongs to that individual no matter what the outcome of the race.

Senator Stegner said it just so happens that his wife asked him a question about claiming because it came up in a movie they were watching. His explanation to her was that it is a method to keep the playing field fair, so that superior horses are not entered, or a ranking or level for that particular race. If someone enters a high quality horse in an effort to win a purse against substandard horses, there is a risk that someone would end up losing their horse in the claiming process. It really is a financial handicap process to keep the horses in a particular race at a certain caliber, which is based on their perceived value in the market place. He asked **Mr. Jackson** if that was close? **Mr. Jackson** replied that he did a better job of describing it than he could. When the association writes a race, they set the qualifications such as three year old thoroughbreds that have not won a race in the last year and then they decide the claiming value for the race, which is the handicap. It is not uncommon for an owner to slip a horse into a low claiming race with the intent to win a purse.

Mr. Jackson said **Docket no.11-0410-0901** are the rules that govern live horse races and it is the main chapter used to assess and operate the races. The Commission believes that the statute was written to protect the public and secondly to protect the animals. This chapter specifically address how a horse must be entered to run in the race.

Vice Chairman Pearce asked **Mr. Jackson** if paint horses race in the State of Idaho? **Mr. Jackson** answered yes, he isn't sure what rule that is. **Vice Chairman Pearce** said it is **11-0409-0901** on page 149, section 120, and paint horses are not included. **Mr. Jackson** said that section deals with how horses must be registered. All horses are able to race, whether they are a thoroughbred or appaloosa. **Vice Chairman Pearce** asked why paint horses were left out of that section? **Mr. Jackson** stated they were not left out for any particular reason. He will look at that and make sure they are included. It does not make a difference as to whether or not they could race and he will make sure that it gets corrected.

Docket no. 11-0411-0901, **Mr. Jackson** said, are the rules for governing veterinary practices. Prior to this there wasn't a chapter that talked about

this. There were only a few line items in the old chapter one and the Commission felt strongly about writing this chapter. This chapter describes what legal drugs can be administered, when they can be administered and if it isn't listed in this chapter than it is illegal in Idaho. The State employs one veterinarian who supervises those who work for a specific owner of a horse. **Docket no. 11-0414-0901** covers the rules for owners, trainers, authorized agents, jockeys, apprentice jockeys and jockey agents. Prior to these rules there wasn't a specific chapter which laid out the requirements to be licensed. **Mr. Jackson** said another new chapter is **Docket no. 11-0415-0901**, which governs controlled substance and alcohol testing of licensees, employees and applicants. The Commission specifically states that a jockey cannot have alcohol in his system on the day of a race. It also describes the process by which the Commission does alcohol testing. Random tests are done throughout the year for controlled substances and alcohol for all jockeys. The goal is to ensure that the jockeys are sober when racing. It does not apply to the owner who wants to have a beer with his friends, only the participant of the race.

MOTION: **Senator Stegner** moved to approve all the pending rules including the pending fee rule of the Racing Commission. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote.**

ADJOURN: **Chairman McKenzie** said there is no other business before the Committee today. He adjourned the meeting at 8:28 a.m.

Senator Curt McKenzie Chairman	Deborah Riddle Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	January 27, 2010
TIME:	8:00 a.m.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett and Kelly
MEMBERS ABSENT/ EXCUSED:	None
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
CONVENE:	**Chairman McKenzie** called the meeting to order at 8:02 a.m.
RS19237C1	**Mike Nugent** from the Legislative Services Office presented **RS19237C1** to the Committee. **Mr. Nugent** stated this is the annual codifier's bill. The purpose of the bill is to make various codifier corrections to the Idaho Code. In the course of a legislative session, multiple amendments to a single code section, chapter or title are frequently passed. Occasionally, these multiple amendments result in conflicting numbering of sections or subsections. The codifier, The Lexus Company, made some suggestions regarding some wrong cites, which are included in this.
MOTION:	**Senator Stegner** stated since this is a print hearing, he will move to print **RS19237C1. Senator Darrington** seconded the motion. The motion carried by **voice vote**. **Senator Darrington** said as the Chairman is aware, a bill was misreferred to his Committee that should have been sent to State Affairs. He intends to refer this bill today in the Judiciary and Rules Committee meeting to State Affairs.
ADJOURN:	There being no further business before the Committee, **Chairman McKenzie** adjourned the meeting at 8:06 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: January 29, 2010

TIME: 8:00 a.m.

PLACE: Room WW55

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

MEMBERS ABSENT/ EXCUSED: None

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

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

GUBERNATORIAL APPOINTMENT: **Susan K. Simmons**, who was appointed to the Idaho Endowment Fund Investment Board (EFIB), addressed the Committee regarding her appointment. **Ms. Simmons** stated that she is a Certified Public Accountant with over twenty years of experience working in the State of Idaho in a variety of financial and administrative capacities. Additionally, she has twelve years of experience in long term investing and she has served on the EFIB since 2006. Prior to her service on the Board, she served on the Prison Board for nine years. **Ms. Simmons** said as a Board member, she is on the Audit Sub Committee as well as co-chairing the Compensation Committee. Serving on the Board has been very rewarding for her as it gives her the opportunity to serve the citizens of Idaho and it increases her professional knowledge.

Senator Geddes said that he noticed on her bio sheet that she did not state any political affiliation. He asked **Ms. Simmons** if the reason was to balance the Board with respect to party and if so, what party is she affiliated with? **Ms. Simmons** responded there is no requirement for a political affiliation to serve on the Board.

Senator Fulcher asked **Ms. Simmons** to share how often the Board meets and has she been able to attend all the meetings? **Ms. Simmons** replied that the Board meets quarterly and her attendance record is 100%.

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

Joe B. McNeal, appointed to the Idaho Commission on Human Rights, stated approximately forty years ago the State of Idaho passed a law to

make it clear that Idahoans will not tolerate discrimination. The enforcement of that law has always been the most important work of the Commission. **Mr. McNeal** said that he fully understands that and that he believes that life experiences, a sense of right and wrong and knowing how to follow written law is critical for the protection of all citizens. With his service to the State, the city of Mountain Home and our nation, he is uniquely qualified as a Commissioner for the Commission.

Chairman McKenzie said that he noticed he was an active member of the legislature in the past. He asked **Mr. McNeal** if State Affairs was the Committee that he served on? **Mr. McNeal** answered it was the Joint Finance Committee.

Senator Kelly asked **Mr. McNeal** if he has served on the Commission since July? **Mr. McNeal** replied that is correct. **Senator Kelly** said the Commission by statute has a role advising the Legislature on policy issues and recommended changes, that the Commission might consider in terms of amending statute to assist the Commission with what they do. One issue has been to include gay, lesbian and transgender individuals for protection by the Human Rights Act. She asked if he had an opinion on that. **Mr. McNeal** responded if you are asking if he has an opinion regarding changing the law, he will maintain whatever law is changed.

Chairman McKenzie said he sees that **Mr. McNeal** served in the Air Force. He asked if that is what brought him to Mountain Home in the first place? **Mr. McNeal** responded yes, he served twenty six years in the Air Force and he is very proud of that.

Vice Chairman Pearce commented that **Mr. McNeal's** bio is very impressive. He asked **Mr. McNeal** if a lot of cases come before the Commission? **Mr. McNeal** replied there are and Idaho has problems like other states. The Commission could use additional funds and help. The staff does an outstanding job reviewing and investigating the cases for the adjudication of them.

Senator Kelly asked **Mr. McNeal** if the Commission has the resources that are needed to enforce, investigate and ensure that the Human Rights Act is being applied to the incidents that come before the Commission? **Mr. McNeal** responded that he has not served that long, but from his experience and from what he has seen, they could use additional resources and funding in his opinion. **Senator Kelly** asked if the Commission didn't have the resources that they do, would it compromise the Commission's ability to enforce the Human Rights Act in Idaho**? Mr. McNeal** said additional cuts in the budget could devastate the Commission.

Senator Davis said it is always a pleasure to see former Senators return, and, hopefully, **Mr. McNeal** has had an opportunity to walk through the Capitol. He asked if he has seen the Capitol since it was restored and rededicated? **Mr. McNeal** answered that he had the privilege of being the Master of Ceremony for the Martin Luther King Day and this is the first committee room he has been in. From what he sees the money was well

spent. The last time he was in State Affairs, it was upstairs and crowded. **Senator Davis** asked if he and the other commissioners work well together? **Mr. McNeal** responded as you know, he has worked with many individuals over the years, and the commissioners have a sense of urgency in getting the job done. As far as he knows everyone works well together even through conference calls. **Senator Davis** asked if he believes that the commissioners as individuals and collectively have a commitment to implement the Human Rights Act in the State of Idaho? **Mr. McNeal** said from the people that he has met, they are all dedicated in doing their job to make sure that things are done according to the law and the rules and regulations of the Commission.

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

H379

Representative Luker presented **H379** to the Committee and stated **H379** will repeal the campaign funding check off option on individual income tax returns. Unlike other check offs, this money comes out of the general fund. The money comes in, it is diverted to the campaign fund and then distributed to the political parties. This campaign check went into effect in 1976. Over that period of time, approximately $1.6 million have been diverted. In 2008 the accounting was changed. It used to be reported every two years. For the period ending 2008 the amount that was diverted is $71,429 and in 2009 that amount was $34,320. **Representative Luker** said the first two sections are the repeal of the applicable sections and it will take affect for the 2009 tax year. It will allow for amended returns for this year and there is an emergency clause to make it retroactive for January 1, of this year, because we are accruing tax and refund liability.

Senator Davis said that he had read some news articles on this legislation when it went through the House. He recalls that someone asked why he did not elect to have it come out of the tax refund or tax obligation. **Senator Davis** asked if there is a trailer bill that will provide another alternative? **Representative Luker** responded at the present time, he does not believe so. He does, however, know that there has been some discussion on it.

Senator Stennett asked **Representative Luker** what is the percentage and what parties receive the funds? **Representative Luker** replied that primarily it has been the Republican, Democrat and Libertarian parties. The Secretary of State (SOS) decides who qualifies as a political party and sometimes the party has enough to qualify and sometimes they do not. At one point the American Party and the U.S. Labor Party received funds. There are references to the Constitution Party, Natural Law Party, United Party and a few references to the Reform Party. **Senator Stennett** said taking the top three, what is the percentage? **Representative Luker** said from 1976 through 2008 the total is $1,572,088.25. Of that, the American Party received $18,339.94, the Constitution Party $19, 458, the Democrat Party $735,573.54, the Libertarian Party $55,535.58, the United Party $9,045, the Reformed Party $7,758, the Republican Party $728,412.03, and the U.S. Labor

Party received $966.16. There was no reference to the American Party since 1982.

Senator Geddes said that he was always confused over this and that he did not realize that this money came out of the general fund. He just assumed that it came out of his tax return. He asked **Representative Luker** to provide some historical perspective on this and why it was passed? **Representative Luker** responded the best that he can determine is that the Federal government enacted this type of provision and it was kind of "sounds good, me too" situation. It was probably to encourage smaller party development. He believes that State government shouldn't be involved in collecting money for parties, since they are able to do that for themselves.

Vice Chairman Pearce thanked **Representative Luker** for plugging at least one more hole in the State resources that are leaking through the dam He appreciates this effort as those funds will be well spent elsewhere.

MOTION: **Vice Chairman Pearce** moved to send **H379** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion. There was no discussion on the motion. The motion carried by **voice vote**.

RS19441 **Senator Jorgensen** presented **RS19441** to the Committee. **Senator Jorgensen** said he has provided some handouts for the Committee and one is a biography of **Kris Kobach**. **Mr. Kobach** was his primary source of information and help in drafting the proposed bill, and he is the quintessential expert in the United States (U.S.) when it comes to enforcement legislation. If this bill goes to hearing, **Mr. Kobach** will testify at his expense. The other handout is a CD and it contains the draft legislation and a full set of arguments as to why this legislation should be enacted in Idaho. It details everything you could possibly want to know regarding enforcement.

Senator Jorgensen stated this bill will prohibit Idaho employers from hiring persons who are illegally in the United States. It conforms with the Federal Immigration Reform and Control Act of 1986 (IRCA), where the Federal government provides criminal and monetary penalties to employers for hiring persons who are illegally in the U.S. IRCA carves out an area where the States can address this issue of illegal alien employment. IRCA *8 USC 1324 (h)*(2) Preemption, states "The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens."

If this legislation is enacted it will allow for Idaho employers to be fined and have their state, county or city licenses suspended for knowingly employing illegal aliens. Professional licenses are excluded from the legislation. If a court determines that an employer has knowingly misclassified a worker as legal, the court shall enter a judgment in favor of the state in the amount of $50 per day per misclassified employee up to a

maximum of $50,000. In addition, for a first offense of knowingly violating this legislation, as established by a court, a license will be suspended for 15 days. For a second offense the license will be suspended for one year and for a third offense the license will be permanently revoked. This legislation provides that the State Tax Commission shall notify all Idaho employers who withhold taxes of the new provisions of this legislation. It defines, prohibits and classifies as a felony the trafficking and harboring of illegal aliens by individuals and employers, the penalties of which range from a fine of $1,000 and one year imprisonment to twenty years imprisonment. where the crime causes serious bodily injury or placed the life of any person in jeopardy.

Senator Jorgenson said this legislation will prohibit the issuance of a driver's license to an illegal alien who has been issued a driver's license from another state and it will not provide for the honoring of a drivers license issued to an illegal alien by another state. Washington state will issue licenses to anyone with very little documentation. In some instances illegal aliens cross the border, go straight to Washington, get their license, and then come to Idaho. It would also compel the written portion of the test required to obtain an Idaho state drivers license, to be administered solely in the English language without benefit of a translator. This legislation makes the E Verify online computer program operated by the Department of Homeland Security mandatory for use, by all Idaho employers during the hiring process of all new employees. **Senator Jorgenson** stated there has been wide criticism that E Verify does not work. The Department of Health and Welfare will testify as to how well E Verify has worked for the past five years in Idaho. When E Verify is utilized the response is almost instantaneous. If there is a negative response, the individual will have five days in which to provide correct documentation in order to be employed. When other states have enacted this type of legislation, it created enforcement by attrition, or self imposed deportation.

A "Sanctuary City" is a city that does not enforce the provisions of this legislation. Any city determined to be a "Sanctuary City" will be ineligible to receive moneys provided through grants administered by the state. If this legislation is enacted, it will be enforced primarily by the counties, and the state Attorney General (AG) will also have enforcement authority. As to the financial impact, **Senator Jorgenson** said it will be the man hours required by the AG's office to enforce the act. Employers will have to be notified by the Tax Commission and this can be included with other mailings. The organization, Federation for American Immigration Reform (FAIR), estimates that the cost of illegal aliens to all governmental levels of government in Idaho will be $148 million for 2010. Implementation of this legislation can greatly reduce that cost.

Senator Stennett said when you speak of enforcement and the counties, is that for law enforcement or a lay person. Senator Jorgenson stated this will not place a burden on the counties. It will take the investigation and conviction of the AG to make any determination. **Senator Stennett** asked if a lay person can initiate the process of incriminating someone? **Senator Jorgenson** said with the use of I-9, employment verification, anyone can make a complaint to the immigration authorities. They would have to investigate the complaint in order to make a determination. The legislation states that there would have to be a finding by the court for this to be enforced. **Senator Stennett** said she believes this could get bogged down if someone is disgruntled with their employer or they believe that something is happening, that isn't. Then it ends up going through the process which takes time and resources. Eventually it could become something that is litigated and the state would be responsible. Her concern is that we do not have the resources or the ability to do this. **Senator Jorgenson** replied that disgruntled individuals are part of life. That is why we have due process. If someone files a complaint or they are an informant, we need to rely on the system.

Senator Davis said he is not familiar with IRCA or **Mr. Kobach**. If this type of conduct is unlawful under IRCA, is it necessary for Idaho to have this statute. **Senator Jorgenson** responded he asked that question of himself and **Senator Crapo**. **Senator Crapo** told him in the absence of Federal government not doing what they need to do, the State has every right to use whatever means that is available to protect itself. Clearly, this section has been cut out by the Federal government to allow states like Idaho to impose this type of legislation. **Senator Davis** said he assumes that the estimate FAIR made is similar for other states that have adopted legislation such as this. He asked if that is a true statement? **Senator Jorgenson** answered that it is. **Senator Davis** asked if any states have experienced the savings that you are suggesting? **Senator Jorgenson** replied they have and he expects to present that when there is a full hearing. Arizona has enough data now to prove that. **Senator Davis** said in the fiscal note it states this will be enforced primarily by the counties and the AG will also have enforcement authority. On page 6 with respect to enforcement, it states the AG shall enforce the requirements of the provisions of this chapter. He believes the fiscal note is saying it will save the state a lot of money, so it will not cost the state money. His understanding of the rule is that we ask the sponsor of a bill to state the cost of implementing the legislation. This is requiring the tax commission to do something, the AG's office and the counties. They should be telling us what they project the impact of this legislation will be to their budget. **Senator Davis** asked **Senator Jorgenson** if he has asked those three entities what they project will be a hard cost to them to implement this? **Senator Jorgenson** answered that he hasn't, but he will certainly do that.

Senator Kelly said is she to understand that this is model language that **Senator Jorgenson** acquired from somewhere else. **Senator Jorgenson** responded this is similar to other states, but this piece of legislation was specifically drafted for the state of Idaho with **Mr. Kobach's** assistance. **Senator Kelly** asked if he has consulted with the AG's office as to whether there are preemption issues? **Senator**

Jorgenson said he has, and he will provide the AG's opinions.

Senator Davis asked if that opinion is on the disc that he provided? **Senator Jorgenson** answered that it isn't, but he will get that to him.

Senator Kelly said she is looking at the driver's license provision. She asked if **Senator Jorgenson** had consulted with the Idaho Transportation Department, as it may be a burden to them. In addition, in the full faith and credit language where we do not recognize other states valid driver's license, did he look at the constitutionality of that particular provision and if other states have adopted that. **Senator Jorgenson** responded he has. The AG has and he believes it will withstand any test. **Senator Kelly** said the fiscal note may need to include the cost of litigating this. **Senator Jorgenson** said there are precedents in a number of states and that has been factored into this proposed legislation.

MOTION: **Senator Davis** moved to print **RS19441** and **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

ADJOURN: There was no other business before the Committee. **Chairman McKenzie** adjourned the meeting at 8:55 a.m.

Senator Curt McKenzie Chairman	Deborah Riddle Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 1, 2010

TIME: 8:00 a.m.

PLACE: Room WW55

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

PRESENTATION: **Garret Nancolas**, Mayor for the City of Caldwell and the Chair of the Idaho Emergency Communications Commission (IECC), addressed the Committee regarding the IECC's annual report. **Mayor Nancolas** said the IECC was formed in 2004 and was given the task to identify the needs across the state of the public safety answering points, and to better serve the citizens of the state in providing a more efficient and effective 9-1-1 system. A copy of the annual report was provided to the Committee members. This is the first year the IECC has issued the first round of grants to those counties and or public safety answering points across the state. This was accomplished by the implementation of twenty-five cents on the 9-1-1 service fee. A set of rules was put in place last year to reevaluate the applications of the Public Safety Answering Points (PSAP)'s. The evaluations were based upon need first and foremost, and there are several counties across the state that are still at Basic 9-1-1. Basic 9-1-1 means they only have a voice and that is the only information they do have. When the person on the other end of the line cannot tell them where they are it was very difficult to get service to those individuals. The goal was to identify those with Basic 9-1-1 and help them achieve Enhanced 9-1-1. **Mayor Nancolas** said on page 1 of the report, the counties and or PSAP's that were award grants in this years cycle are listed, which is the result of the twenty-five cent fee. The grants have been distributed and they are in the process of upgrading those systems.

The mission and purpose of the IECC 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. The Commission is comprised of different entities and bodies across the state that deal with emergency management services. They are active

and most attend regularly and they have a great impact on the ability of the Commission to perform its duties. Throughout the year one of the goals of the Commission is to provide training. In Bonners Ferry recently, over 70 participants besides the Commission attended that meeting. That is an indication of the amount of interest statewide from the local PSAP providers as well as emergency service providers to learn more about the Commission and what its goal is.

Mayor Nancolas stated the funding for the Commission comes from an assessment level of one percent of all emergency communications fees collected in the state. With the enactment of the twenty-five cents, the one percent is no longer required because the Commission takes one cent of that to fund the IECC. The Commission had an operating budget of approximately $185,000 last year and they came in $40,000 under, which can be attributed to the IECC being conscious of the dollars given to them. **Mayor Nancolas** said Appendix C shows the status of statewide 9-1-1 services in 2008. The pink area reflects Basic 9-1-1 and in Appendix D for 2009, prior to the grants, it is about the same. Appendix E reflects the status for 2010. As you can see, there are only three remaining counties with Basic 9-1-1. The hatched yellow area reflects the grant recipients for 2009. The majority of the state is now or soon will be Enhanced and a large majority of the state is in Phase II, which means you can call in from a cell phone or your home. The computer dispatch will tell the operator where you are, give them an address, and even with a cell phone it has the capability of providing an approximate location. These three maps show the progress that has been made the past few years in getting there and particularly through the grants of 2009.

PSAP is the point where the calls come in. The Commission discovered that across the state there was a lack of consistency with regards to training in the PSAP locations. A PSAP subcommittee was formed to help the IECC evaluate where the PSAPs were in training. Based on the results, a standard entry level training program has been established across the state for all dispatchers to be certified by the Idaho Peace Officers Standards and Training (POST). The committee helped to establish a minimum of training criteria required, so no matter where you are in the state of Idaho that person on the other end has acquired this minimum standard of certification. This means the level of safety has improved across the state. **Mayor Nancolas** stated the E 9-1-1 Program Coordinator, **Eddie Goldsmith**, attended and represented the Commission at several national conferences to make sure the IECC is up to speed on national changes and projects and opportunities for funding that may be coming down the pipeline. Because of the IECC, the state is moving towards a better and safer state with 9-1-1 communications.

Senator Darrington said on Appendix F it shows that thirty-five counties have opted in to pay the additional twenty-five cents, and all but one or two of them opted in the same time the bill was passed a few years ago. He asked if we have reached a point for the other counties to opt in? **Mayor Nancolas** said he believes we are making progress. The counties that have not opted in are eligible and there is a real incentive to join the program now. The Commission has made an effort to visit with those

county commissioners to keep them up to date and to let them know the progress that has been made. **Mayor Nancolas** asked to defer to **Eddie Goldsmith. Mr. Goldsmith** said thirty-five counties have participated in the grant fund. Out of that number, they have collected $1.7 million last year. The remaining counties are some of the larger ones and if they come on board that amount will triple. He has met with some of the county commissioners and in the northern part of the state they are in discussions to do equipment sharing. There are four counties and a tribe discussing the purchase of an Enhanced telephone system that can be remoted out to those counties. Two of the counties that are involved in that are not participating, and they see one county has received $192,000. The Commission will let them share the system, but they will have to provide the funding for their own remotes. They see now that they missed an opportunity and they should have come on board. **Mr. Goldsmith** said this will be the driving factor statewide to cost share since the central part of the state is partnering up. Over the last three years he has seen a movement towards cooperation, partnership and sharing throughout the state. Once Phase II is completed then we will move into next generation 9-1-1. When that happens, all the counties will need to move there and there will be a need for money to create that network. The counties that have not opted in need to participate and pay the twenty-five cents or they will be left behind. **Mayor Nancolas** added that he has personally visited with the commissioners in Bonneville and Ada County to encourage them to participate. They would benefit the most from this system.

Senator Stennett said it appears that there are various counties moving into different phases and at some point they will have to move to the next generation. She asked at some point will all the counties have to move there simultaneously, even though they may have just enhanced their existing system? **Mayor Nancolas** responded there are obvious enhancements to 9-1-1 communications as we move forward. The goal is to get everyone from Basic to Phase II. That is where we need to be in a short period of time. Because technology changes so rapidly it is hard to keep up at times. The IECC believes that over a period of time with texting and all the enhancements on cell phones, at some point of time in the future we will need to be at the next generation level if we are going to be able to keep up with technology. As of now they are not sure what next generation will be, so they are trying to take it step by step and keep up with technology as it changes. **Senator Stennett** asked if he has an estimate as to when that might happen? **Mayor Nancolas** said **Mr. Goldsmith** is the technical guru. **Mr. Goldsmith** said what we are doing right now for next generation, is making sure that new equipment has to be next generation ready. **President Bush** signed into law the 9-1-1 Act, which directed us to initiate planning for the next generation network. The Commissions goal in the next two years is to develop a state 9-1-1 plan that will give us the blueprint for moving to that next generation. Some of the states are already doing that. Indiana has done a next generation wireless and have spent over $30 million to develop their network. It is a state stage planning program in order for us get from Phase II to next generation. **Mr. Goldsmith** said that will probably be in the next five to six years. **Senator Stennett** said when you talk about wireless first

phase, can anyone act on it. Phase II pins it down a little more narrowly and if you can go to a next generation 9-1-1, it would be even more precise. **Mr. Goldsmith** responded Basic 9-1-1 is just receiving voice. Enhanced 9-1-1 is receiving voice, name, address and phone number. Phase I will locate the cell phone tower of the caller and Phase II will provide the actual location of the caller. Next generation will put all of this on an IP network, which will give us the capability to receive text messages and video plus numerous other options. We will have the ability to take data into the 9-1-1 center and send it directly to a responder. Technology is a wonderful thing, but it is also difficult to keep up with. You can now purchase a pair of children's Nike tennis shoes with a Global Positioning System (GPS) transmitter, which can be hooked into the 9-1-1 system. If your child is lost you can call into the PSAP and they can track your child.

Senator Geddes said that he received a call recently from someone in Bannock County who was very concerned that some of the 9-1-1 funds were being spent for other purposes. He asked if that has happened. **Mayor Nancolas** responded there is confusion about the use of the 9-1-1 funds. As far as the IECC is concerned, every dime has been spent according to the requirements set by the state as well as their accounting standards. The funds have been strictly used for the 9-1-1 functions such as education and for expenses to run the Commission. The confusion is in the PSAP world, that 9-1-1 funds can be used for the dispatchers wages. If it is happening, it is being minimized as the communications are set out.

Vice Chairman Pearce asked if the four counties that are still at the Basic 9-1-1 move to the next phase shortly, are they holdouts or are they lacking funds? **Mayor Nancolas** replied that the four remaining counties have not adopted the twenty-five cent fee, so they are not eligible for the grant funds. **Mr. Goldsmith** added that Clearwater and Idaho County are the two that are not participating. They are looking at equipment sharing and will probably move with that group this year. As for Bear Lake and Butte County, it is a matter of him getting with the commissioners for the next grant cycle to assist them with the technical side.

Senator Geddes asked what is a grant cycle and why can't it just be issued when the need is identified? **Mayor Nancolas** said the purpose of the grant cycle is to allow time for the applications to be processed. Once the funds are issued they have to be accounted for. It takes time to evaluate the applications and the funds need to be collected and available for distribution, which takes time as well. The original thought was do this once a year and as funds come in or from the Federal government, then they could do this more often. Because of the accountability side and application and making sure the funds are being used properly, once a year seems the best for now.

Chairman McKenzie said he appreciates the work of the Commission to expand this service across the state.

MOTION: The confirmation vote on **Susan K. Simmons** was before the Committee.

Senator Davis moved to send the gubernatorial appointment of **Susan K. Simmons** to the Idaho Endowment Fund Investment Board to the floor with the recommendation that it be confirmed by the Senate. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

The confirmation vote on **Joe B. McNeal** was before the Committee.

Senator Kelly moved to send the gubernatorial appointment of **Joe B. McNeal** to the Idaho Commission on Human Rights to the floor with the recommendation that it be confirmed by the Senate. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

MOTION: **Chairman McKenzie** said **Senator Kelly** has some clerical changes to the minutes of January 18.

Senator Kelly moved to approve the minutes from January 18, with clerical changes. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Pearce said the minutes from January 20 are in order and well written. He moved to approve them with one clerical change. **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 8:34 a.m.

Senator Curt McKenzie Chairman	Deborah Riddle Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 3, 2010

TIME: 8:00 a.m.

PLACE: Room WW55

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

MEMBERS ABSENT/ EXCUSED: None

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

CONVENE: **Chairman McKenzie** called the meeting to order at 8:03 a.m. and stated our first order of business is the appointment of **Bob Bolinder** to the Idaho Commission on Human Rights.

GUBERNATORIAL APPOINTMENT: **Mr. Bolinder** addressed the Committee and said he has lived in Boise for about forty five years, he is retired now and currently serving as a commissioner for the Commission. Their function is to evaluate the claims that are made and with the Attorney General's Office they determine which ones are valid.

Chairman McKenzie asked **Mr. Bolinder** how long has he been on the Commission? **Mr. Bolinder** said he was appointed in July, subject to the approval of the Senate.

Senator Geddes thanked **Mr. Bolinder** for his willingness to serve on the Commission. He asked him what his responsibilities are relative to his past experiences as an executive of a fairly large operation. **Mr. Bolinder** said his career started in the fifties, sixties and seventies when human rights was a different issue. At first, they were reluctant and not very enthusiastic about infringing on the rights of a business. Over time, he learned that everyone benefits from this. He helped implement policies, teach employees and in particular management staff the virtues of human rights. Companies became effective and the work place was more efficient. We have come a long way, but we still have much to learn. **Mr. Bolinder** stated that education is the biggest issue especially in the smaller businesses. **Senator Geddes** asked **Mr. Bolinder** if he had any direct experience in his past job responsibilities, when dealing with the types of grievances that may be filed and brought before the Commission? **Mr. Bolinder** responded that he had. He was the Chief Administrative Officer for Albertsons, including human resources and he was directly involved with the implementation of these laws from the very

beginning. When he retired from Albertsons, he became a consultant and then he served as a chief financial officer at various family held companies throughout the country. At one point he was confronted with an issue, so he has had direct responsibilities when dealing with these issues.

Senator Kelly said that she certainly agrees with the education component of this. In her view she does not believe that the Commission plays a specific role in that area. The statutory requirements are for the adjudication process. She asked **Mr. Bolinder** if he had attended the meetings since July. **Mr. Bolinder** replied yes. She asked if he had any comments regarding the resources that are available, such as the proposal to shift funding? **Mr. Bolinder** responded they are very fortunate to have the Department of Labor who is willing to integrate their operation into the Commission. On the other hand, he is disappointed in today's economy which forces us to limit the growth of the Commission. Somewhere down the line he believes they will have to be more aggressive. **Senator Kelly** said she hopes that he will continue to advocate for more resources to help enforce these very important laws. Statute gives the Commission authority to advise the Legislature on the Human Rights statues. One issue that came up recently is the possibility of expanding the protections of the Human Rights Act to include gay, lesbian and transgender individuals. She asked **Mr. Bolinder** if he has an opinion on that, and how would he advise the Legislature if he were asked to vote as a member of the Commission? **Mr. Bolinder** replied that it is such a volatile issue so we need to be careful and work hard on it. The commissioners could have some input in that area. It is not a "hands off" type of issue. **Senator Kelly** said a number of cities including Salt Lake City have recently enacted an ordinance that provides protection to those individuals. She asked **Mr. Bolinder** if he supports that type of action? **Mr. Bolinder** stated at this point he doesn't believe that he is very knowledgeable in that regard to give her an answer. He is not opposed to the issue, he just needs to understand more before he can respond.

Senator Davis commented the ordinance that was adopted in Salt Lake City has a limited application. He agrees with **Mr. Bolinder** and **Senator Kelly** that it should include all individuals, and in particular the area of housing and employment regardless of sexual orientation. When dealing with small businesses and housing units it is difficult. Salt Lake City drew a line as to the size of employer to fifteen employees. Idaho's Human Rights Act is five employees. He asked **Mr. Bolinder** if the Legislature chooses to amend the Act, will he enforce the Act as written? **Mr. Bolinder** responded that he would.

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

Charles Hedemark, who was appointed to the Idaho Energy Resources Authority, addressed the Committee and said he has resided in Idaho for sixty years. He worked at Intermountain Gas Company and he retired in 2005 as the Chief Operating Officer. This is a reappointment for him to

the Authority. **Ron Williams,** counsel for the Authority, is here with him today and he works very diligently to acquire energy utilities for the State.

Chairman McKenzie asked **Mr. Hedemark** to tell the Committee how the Authority has functioned since it was created, is it achieving the goals that were anticipated, and are there areas that need improvement? **Mr. Hedemark** responded at this time the Authority is functioning very well. The first challenge was organizing, electing a chairman and then positioning the Authority to be ready to accept funding from electrical generation or transmission and the fees for lease cost funding. The Authority has looked at a few projects since its inception and they have yet to finance one due to the economy. These projects are either on hold or they aren't willing to secure capital. The Authority is in position and ready to assist the State with funding infrastructure projects for generation or transmission lines.

Chairman McKenzie thanked **Mr. Hedemark** and advised him the Committee would vote on his appointment at the next meeting.

The confirmation hearing of **Gary Sayler**, appointed Adjutant General of the Idaho Military Division was before the Committee. **General Sayler** stated that he joined the U.S. Air Force right out of college and he has served for thirty eight years. He spent six years on active duty with the Idaho Air National Guard and he has been a member since that time. During his time in the Air Guard he has been a commander at every level. Over five years ago he was appointed the Assistant Manager under General Kane, where he was in charge of all the Air National Guard matters for the State. **General Sayler** said there are three areas that take up most of his time. First, the 116th Brigade will deploy later this year. He has to make sure that over 3,500 soldiers are prepared, trained and have their family matters in order. On the Air National Guard side, the Air Force has selected Gowen Field as one of the finalists for the F-35 aircraft. There is a team of forty people at Gowen Field this week looking at the facility, air space and what it would take to place that mission here. Finally, the Military Division works very closely with the Bureau of Homeland Security to ensure they are prepared and ready for any national disaster.

Senator Darrington asked **General Sayler** to comment on recruitment, the strength of the Guard and do they understand that they may be deployed? **General Sayler** replied the Army National Guard is at 107% strength and the Air National Guard is 116%. Nationally there are limits imposed as to how many they can recruit. The men and women who serve in the Guard are extremely dedicated as the retention rate is well over 90%. Recruitment is strong and during that process they are told about the possibility of deployment. No one backs away because they do not want to deploy. This deployment will be similar but not quite the same as the last one. It will be shorter in duration and the mission has changed. The Guard has not experienced a loss due to deployment.

Senator Davis asked if a solder deployed five years ago, will they have to now? **General Sayler** said although they may have deployed five years

ago and he thought many would leave, none of those soldiers opted to leave the Guard. They are anxious and willing to step forward to do it again.

Senator Geddes said he appreciates his willingness to serve. It appears to him that the Adjutant General alternates between the Army and Air Force. He asked if that is the case, how is that accepted among the troops? **General Sayler** stated that he does not have difficulty commanding. They have a great team and he and **General Gayheart** have worked together as assistants for the past five years. There are some cultural differences as well as some differences between the services. He is not attempting to run the Army National Guard. His job is to ensure that **General Gayheart** does that as well as **Colonel Shawver** who is the new assistant in the Air Guard. He will provide direction and focus and if he needs to step in he does not have a problem doing that. The last two Adjutant Generals were both from the Army and prior to that it was Air. Typically it is the Army National Guard because of the size, which is about twice the size of the Air Guard. Here in Idaho he believes the Governor will make the best choice and he is honored to serve.

Senator Davis said because he is serves in the Air Force, will that help us in any way in acquiring the F-35 aircraft. **General Sayler** said he does not believe that it hurts us. He believes that the Air Force is trying to do a very thorough process in placing the aircraft where it makes the most sense for this nation. With the infrastructure that is in place, the training airspace and the support of the Guard in Idaho, that is probably the biggest factor. The bulk of the reasons are the physical planning such as the weather and the ability to fly and train. **Senator Davis** said sometimes there are politics inside in the military. He asked how much of the determination for the F-35 coming to Idaho will be made within the Air Force versus influences outside of the military? **General Sayler** stated when the news initially came out, the guidance from the Air Force was that they wanted to keep it outside of the political realm. The Air Force surveyed over two hundred possible locations and came up with five locations that they believed were best suited for training. He cannot assure him that politics are not involved, but his goal is to continue to speak with the team members and the decision makers and assure them that the Air Force's goal is to place the aircraft in the right location for the right reasons.

Senator Fulcher said his question deals with the F-35 program but in a different way. He asked **General Sayler** what he foresees in the future for the Guard if Idaho is not chosen? **General Sayler** responded the A-10 is the current aircraft and that aircraft will be in the Guard's inventory for roughly twenty-five years. The A-10 is part of our team and he has received calls from other states asking for them if we get the F-35. Other states are losing their flying missions because planes are being forced to retire due to age. The A-10 is a good sound airplane and it has gone through two major modifications in the last three years. It now has a state-of-the-art weapons system on it. So if we do not get the F-35, we will remain solid for at least the next twenty years. The A-10 mission is ideally suited for Idaho because of the training airspace, the ranges and

the terrain. Some terrain in the central part of Idaho is similar to that of Afghanistan and that is to our benefit.

Senator Stegner said he is interested in the General's background, such as where he was raised and his education. It is not necessarily pertinent to his position but is more of curiosity on his part. **General Sayler** said he was born and raised in central North Dakota and grew up on a farm. His father is eighty-six years old and still has a ranch and feeds his cows every day. He spent his childhood working on the farm and graduated from a small school of two hundred students. He then went to college at North Dakota State University in Fargo, majoring in history and education. When he joined the Reserve Officers' Training Corps (ROTC) he wasn't aware that he could fly in the Air National Guard with only two years of college, or he may have joined sooner. In 1971 he graduated from college and entered active duty in the Air Force at that time. His first operation assignment was to Vietnam where he flew combat. When he returned to the states, he spent four years in New Mexico. **General Sayler** said he met his wife there, who was from Montana and she was a nurse on active duty. They married, left the service and moved to Boise because a friend from college was traveling through New Mexico and told him the Guard in Idaho was looking for people. They have three grown children and two are on active duty in the Air Force.

Senator Stegner thanked **General Sayler** for that information and said his father was from North Dakota. He told him a lot of good people come from North Dakota, which suggest to him that a lot of good people left to come to Idaho.

Chairman McKenzie said the remaining appointment is **Dyke Nally,** who was appointed Director of the Idaho State Liquor Division.

Senator Davis said that the Committee knows **Mr. Nally** very well and hold him in high regard. Although he would love to hear again all his successes, education and accomplishments, he does, however, have one question. Last evening at a dinner with the Beer & Wine Association a comment was made, that our pricing was too low compared to what other states are doing and maybe our pricing is perhaps too competitive. As a result, this has an impact on their sales. He asked **Mr. Nally** to comment on that. **Mr. Nally** responded Idaho is surrounded by control states, which means that the state regulates the business, with the exception of Nevada. Our pricing is competitive with all the states surrounding us, but not Washington. Washington state continues to raise their taxes. Idaho is benefitting from that from our stores that are on their border. He does receive calls regarding that and he does not want to start border pricing, so he tells them they are here for the tourism. That is the only state that is very different in pricing and they watch it very closely. **Senator Davis** said maybe when they are here as tourists they are taking home some souvenirs. He asked **Mr. Nally** to speak to the current economic successes of the dispensary, including whether or not he sees any adverse impact on sales. **Mr. Nally** said they have tracked the last five recessions. Overall liquor sales in Idaho have always been positive. This recession is different because the public is buying the premium products.

This doesn't increase consumption, it does increase the dollar sales which go to the general fund to fund public programs. Our business plan was and still is to sell fewer bottles and not to increase consumption. This economy has changed that and consumers have begun to buy down. Another major change is that they are staying home and the bar and restaurant business is down quite significantly. Consumers are doing their socializing at home and that is a big factor on the retail bar side of the business. Bottle sales to walk in customers have increased and this year we experienced the large profit to date. This is primarily due to the population increase and the purchase of more bottles at a lesser price.

Mr. Nally said when he started fifteen years ago under **Governor Batt**, sales were $37 million. Today they are $135 million. They have built two new warehouses and they are in the final phase of the automated warehouse, which also houses the Center for Disease Control and Homeland Security as a depot for receiving their supplies. With zero based budgeting they went through a reorganization. This is not an ordinary product, it is one of the largest retail businesses for the State of Idaho. The concern is as a monopoly, they are expected to serve the consumer and they may have to shorten hours. His concerns are for safety when there could be one person operating the store. **Mr. Nally** stated in 1995, **Governor Batt** told him he had other plans for him, that he hated to do this to him, but he was sending him out to that liquor dispensary to see if he can settle it down. He is still working on that.

Senator Davis said if we are more profitable selling less expensive brands, has consumption increased. One of our duties in the Constitution is to promote temperance in sobriety. **Mr. Nally** said that is our mission. Sales are secondary irrespective of profits. Bottle sales are always above dollar sales. Consumption continues to remain relatively flat. People are buying down and Idaho is still one of the lowest in the United States in terms of control states and it is 17% below the control states. **Senator Davis** asked **Mr. Nally** if he still has a fire in his belly and does he still have a strong desire to serve in this capacity? **Mr. Nally** replied that he does. He is happy to help the **Governor** and he has committed to at least his first term. He has served the state for forty-one years with uninterrupted service. The day after graduation from college he began working at Boise State as Director of the Student Union for six years, twenty-one years in Alumni Relations and throughout that it has been a pleasure. He is happy to continue serving in any way that he can. **Senator Davis** commented that he finds it interesting that a Mormon can straighten out the Liquor Commission.

S1299 **Mike Nugent** presented **S1299**, the codifer's bill. **Chairman McKenzie** said this is the annual bill which makes corrections to Idaho Code.

MOTION: **Senator Davis** moved to send **S1299** to the floor with a **do pass** recommendation. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

ADJOURN: **Chairman McKenzie** stated that is all the business for today and he adjourned the meeting at 8:58 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	February 5, 2010
TIME:	8:00 a.m.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Stegner, Fulcher, Stennett 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 Committee to order at 8:03 a.m.

GUBERNATORIAL APPOINTMENT: **Chairman McKenzie** said the first order of business is the hearing on **Richelle Sugiyama**, who was appointed to the Idaho Endowment Fund Investment Board (EFIB). He asked **Ms. Sugiyama** to talk about her background and her role on the Board.

Ms. Sugiyama addressed the Committee and said she is a qualified candidate as she received her degree in finance with a minor in international business. She has served on the EFIB since 2006 and she is currently employed by the Public Employee Retirement System of Idaho (PERSI) as an investment officer. Previously she served as the internal manager of investments for the EFIB. Her entire career has been serving the investment industry. Her role on the EFIB is the business representative so to speak. There are six members with business experience.

Chairman McKenzie asked **Ms. Sugiyama** if she currently works for PERSI? **Ms. Sugiyama** said that is correct. He asked what is her specific job. **Ms. Sugiyama** responded she is an investment officer and she assists the chief investment officer in managing the $10 billion investments of the retirement system.

Senator Stegner asked **Ms. Sugiyama** to give the Committee some personal data such as her education and background experience? **Ms. Sugiyama** replied she was born and raised in Honolulu, Hawaii and she had an opportunity to attend Boise State on a scholarship. After graduation she was employed by D.B. Fitzpatrick & Company. Before she was employed by PERSI, she worked for the consulting firm for PERSI.

Tom Kealey, appointed to the EFIB addressed the Committee regarding his reappointment. **Mr. Kealey** said he has served on the EFIB since 2002. He has lived in Boise for fifteen years and he is a small business owner. Over time he has been involved with investments for a private equity group. He serves on the Board ofBlue Cross of Idaho, the EFIB and the advisory board to BSU and the University of Washington. His undergraduate degree is in accounting and finance, he is a Certified Public Accountant and he has worked in public accounting for a number of years mostly in Chicago.

Chairman McKenzie thanked **Ms. Sugiyama** and **Mr. Kealey** and advised them that the Committee would vote on their appointments at the next Committee meeting.

MOTION: **Chairman McKenzie** said the confirmation votes on the gubernatorial appointments from our previous meeting are before the Committee.

Senator Stegner moved to send the gubernatorial appointment of **Bob Bolinder** to the Commission on Human Rights to the floor with the recommendation that it be confirmed by the Senate. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

Senator Stegner moved to send the gubernatorial appointment of **Charles Hedemark** to the Idaho Energy Resources Authority to the floor with the recommendation that it be confirmed by the Senate. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

Senator Geddes moved to send the gubernatorial appointment of **Gary Sayler** as Adjutant General of the Idaho Military Division to the floor with the recommendation that it be confirmed by the Senate. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

Senator Stegner moved to send the gubernatorial appointment of **Dyke Nally** as Director of the Idaho Sate Liquor Division to the floor with the recommendation that it be confirmed by the Senate. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Don Dietrich**, Director for the Department of Commerce, addressed the Committee regarding the Report on the Governor's Business Summit. **Mr. Dietrich** stated **Mark Warbis** from the Governor's Office is with him today and that they are here at the request and invitation of the Pro Tem. It is important to know why these summits took place. About eighteen months ago **Governor Otter** launched his job and economic enhancement program which has been labeled Project 60. Project 60 is a program to grow the economy of the State and it is set out in a very specific way. The first part of the Project focuses on systemic growth, which means working with our companies inside the State and the communities to grow our economy. Recruitment is the second phase, and certainly in Commerce, that is a major part of what they do. Finally, it is selling Idaho products and creating investment opportunities through our international branches. It is a three tier approach to growing Idaho's economy and that is what defines Project 60.

Mr. Dietrich said the **Governor** has done a remarkable job in pulling his departments together in working closely over the past twelve months. This has allowed us to develop areas of expertise. One area is developing a green energy program. When you look at the I-15 corridor there is a tremendous amount of activity taking place there. AREVA is a perfect example of how all the departments that were required to recruit Nordic Windpower in the State were put into use. AREVA started at the Federal level, went through the Governor's Office, rippled through several agencies and ultimately down to the local level. The Department's role in these recruitment projects is to support the locals in their endeavor to land a project. This indicates to him that things are moving in the right direction and that all agencies are working together, from the Federal, through the State agencies and down to the local level. The **Governor's** Top-to-Top Program, which has been incorporated into Project 60, utilizes the senior executives throughout the State to help with the recruiting process.

The **Governor** believes that it is critical to reach out to the business community. Forty one panelists participated on eight industry panels in the summit held on August 31, 2009. Agriculture, natural resources, travel and tourism, construction and transportation, manufacturing, commercial services, health care and social services and retail were represented. The panelists were carefully selected to represent a diversity of views within each industry. The **Governor** encouraged them to provide recommendations for policy changes that might improve business conditions moving forward. After 351 pages of testimony, the panelists recommended a wide range of policy options to promote economic growth. The Department of Commerce summarized the recommendations and came up with eight. These look particularly attractive and not all are doable today given the economic situation of the State. These are not the **Governor's** recommendations, they are industry recommendations. **Mr. Dietrich** provided a copy of the Business Summit Report to the Committee with the various recommendations from the private sector.

Senator Stennett asked **Mr. Dietrich** to explain the Top-to-Top Program. **Mr. Dietrich** replied that this program is made up of sixty private partners. Senior executives across the State have been asked by the **Governor** to join him and grow the economy. Government does not create jobs, it comes from the private sector and with their help, the hope is to make those businesses successful.

Vice Chairman Pearce commented that he is surprised by the eight recommendations. What will bring business to Idaho when there are issues with planning and zoning. He asked **Mr. Dietrich** to speak to that. **Mr. Dietrich** responded the Department believes that planning and zoning resides at the local level. Part of the economic development efforts in place today, is to encourage the communities to establish areas that are available. In order to be most effective in our recruiting efforts, we do have to have areas that have been designated, properly zoned and with infrastructure in place. Our economic development team involves people at the State level, and it is the locals that drive it.

Mr. Warbis commented that the **Governor's** philosophy on this is local control. About one year ago in Council the **Governor** was asked by a developer in the area who was seeking to build a housing development, "why doesn't the State just give us a master plan and tell us how to grow our community." The **Governor** responded, "be careful what you ask for, because you just might get it." The State should not be telling a community how to zone or develop. He trusts the wisdom of the locals to do what is right. The **Governor** is focused on addressing the things that he can control at the State level, like permitting and inspections. At the Summit his question to the panelists was "what can State government do to help you succeed?"

Vice Chairman Pearce said the **Governor's** position is correct except he would suggest it takes leadership. Even though he may not say this is the way it is going to be, he does have more influence there. He isn't suggesting that the Governor re-zone every city and county in the State, but maybe some leadership is needed. We often hear complaints about the difficulties for new businesses coming in and the difficulty in retaining the businesses that we have. He asked **Mr. Dietrich** what are we doing about retention? **Mr. Dietrich** replied the Governor has made an effort to reduce those barriers when possible. In the recruitment process we have that discussion up front and all departments participate and answer those questions for the new company. We do advance the approval of building plans when possible. If we can help to streamline the process we will do that, and that comes from close communications between departments. As we recognize the roadblocks they are addressed with those agencies.

Senator Kelly said she understands that resources are being leveraged statewide and that your department is working with other agencies, local, State and the private sector. That being said, she knows there are cuts being made. She asked **Mr. Dietrich** to talk about his budget, how they are leveraging the resources they have, and what the future may hold for the remainder of this fiscal year? **Mr. Dietrich** responded leveraging is the key word. We do work with the departments across the State to not back up. The Department has been affected, but his team is working and running hard. He does not believe they have taken a step back in any area, they may only have to curtail some plans. They want to keep the communities harmless and the businesses here in the State. Their outreach efforts have not been impacted too much either. They are asking more of their employees, they have rolled up their sleeves and they are not missing any opportunities as a result of these events. **Senator Kelly** asked what is the source of funding for the Department? **Mr. Dietrich** said they currently have fifty-six full time employees (FTE)'s assigned to the Department, and they operate today with about fifty. The Department receives about one third of dedicated funding from tourism, which comes from the two percent bed tax. Twenty percent is federally funded and the balance is funded by the general fund. That is the area where they have taken a hit. While they have given up State funded grants, they were able to garner about $2.3 million from the federal Housing and Urban Development (HUD) grants to replace that. In real terms they haven't lost any funding from grants, so it has worked out relatively well.

Senator Geddes commented this is of keen interest to this Committee. As he looks at the Report and the eight recommendations that come forward, were they prioritized in any way. **Mr. Dietrich** responded they were not put into the Report in any particular order. **Senator Geddes** said **Mr. Dietrich** mentioned that there are one hundred six businesses in the recruiting pipeline. He asked if they see some of these recommendations as the struggles in recruiting businesses to come to the State of Idaho? **Mr. Dietrich** said if you look at the nature of them, many of them will be beneficial to our businesses. The Department wants to ensure that our hometown businesses are treated fairly. When they look at proposals, it does not put our hometown businesses at risk in any way. These recommendations will only help the process. **Senator Geddes** said it seems to him as we try to recruit businesses, they will reside in some city or county. Other states around Idaho are offering some sort of tax incentive. In our situation all property tax falls in the hands of local governments. If Idaho tries to incentivise that effort, we may create a hardship for those local entities before they become profitable. He asked what is the best way to manage that and to come up with something that is competitive with other states, without putting a lot of financial hardship on that local community? **Mr. Dietrich** responded that is one of the recommendations. In general terms when it comes to incentives, someone has to pay for those. This Legislature and our **Governor** have done a great job in keeping the lid on spending. When a business takes a look at any state, they want to make sure that the environment is stable and that they are making a good decision. We will create that environment here and prove to the business community at large, that this is the environment we are going to maintain. It is a huge calling card and the **Governor** has been incredibly accessible in this recruitment process. It does make a difference to CEO's when they sit down eye to eye with a Legislator from the area they are considering. It is a huge advantage and they don't get that kind of service or attention in other states.

Senator Darrington commented that he happens to know that the Governor of California loves Idaho in conversations that he has had with him. He made an interesting case for California this week, when he said we are not a single product state, not just a potato state. The one thing Idaho is known for all over the world is that we are the potato state and that will never change and the destination we are known for is Sun Valley. He asked **Mr. Dietrich** if there is any evidence that the emphasis on Idaho being the potato state has been a detriment for a business? **Mr. Dietrich** said the Department does not go out of their way to shy away from potatoes. There is room for potatoes and a lot of other things. It is important to sell our entire package and he would welcome a photo of **Governor Schwarzenegger** getting off his aircraft in Sun Valley to vacation and spend time. It would be a great ad. **Senator Darrington** said he has never seen any evidence but what the potato designation is helpful to Idaho. It does give us identify and it separates us from Iowa.

Senator Fulcher said we are facing similar budget challenges like Oregon, but we are taking a different approach. If he believes the outcry of some of the business communities in Oregon, that business community is not excited about some of the actions that our colleagues in Oregon

have taken. He asked **Mr. Dietrich** what can we do, what should we do to reach out to some of those businesses across the border and say, consider Idaho? **Mr. Dietrich** replied we have not missed an opportunity to reach out to Oregon. In fact they have an ongoing campaign with Washington, Oregon and California. With the actions that Oregon took this past week, they have probably damaged themselves more than they thought possible. The Department's phones have been ringing all week and they are pursuing Oregon companies aggressively and following up on the leads that have come in. Idaho is all about jobs and that is the name of the game today. Sixty-eight thousand Idahoans are unemployed today and we are able to stay about a percent below the national average, when it comes to unemployment figures. Wherever we can show an effort that creates a great opportunity for a company, we encourage them to come and check Idaho out.

Senator Fulcher asked **Mr. Dietrich** to describe the recruitment process, do they turn the lead over to a specific region, and how do they make sure that lead is followed up on? **Mr. Dietrich** responded first, they have about fifty economic organizations around the State in various areas. Within the Department, they have broken up into regional experts to work with communities in the State. When a lead comes in they ascertain the components of that such as property, a free standing building and any other specific requirements. Rarely do they ever identify a city, typically it is isolated to a region. The Department immediately goes to work to make sure the requirements are in the hands of the regional expert. The target is one week to make sure that information is provided to the company who requested it. The entire economic community is used to responding very promptly as they know how important it is to stay ahead of the curve. Once the company has taken a look at the documents, they often take that company out to that region and get the questions answered that they may have. Ultimately, it is turned over to the local level as they have to decide if they want that company in their backyard. It really depends on the company, the location and what the local expertise looks like. There are a lot of factors, but at the end of the day, the Department ends up behind the curtain and they just assist with what the locals want. **Senator Fulcher** asked if the process is any different if the company asks for confidentiality? **Mr. Dietrich** answered that it can be. Ninety-nine percent of the companies they deal with require confidentiality, some more than others. It really varies until they release them from that.

Senator Stegner said unfortunately he has a few criticisms of the Report. He wants to make a specific point. First, in the example of heavy trucks it states that Amalgamated Sugar saved nearly $300,000 on transportation. Certainly they may have gained some cost savings by that shift in State law that allowed them to use higher truck capacity. This is not new business, but constant business that goes on every year in this particular company. No new jobs were created in Idaho. That savings probably represents a loss of jobs to other sectors in the economy. That savings probably represents the loss of independent truckers that could not compete at that level, and therefore had to lose that job. It was a transfer from one segment of our economy to another. Amalgamated Sugar is probably the benefactor of that. Undoubtedly, **Senator Stegner** stated,

there was a loss in that transaction. Another example is on the first page with regard to personal property taxes. When there is a shift in personal property taxes, a savings to one segment, which would be the business community, is automatically transferred to someone else in the way of a property tax structure. It might be a good business savings, but that cost is being transferred to someone who has to pick up that cost. This is caused by the fact that tax policy is altered all the time by the people who yell the loudest and by the ones that have the best representation. The Department needs to recognize these changes and be careful about championing things that have the opposite effects in another segment, because they are not being heard. **Senator Stegner** said he points to those two examples as areas that really need further explanation in his opinion, in a Report like this, which presents them as positive economic changes to the State of Idaho without considering the ramifications. Personally, he has thought for twelve years that the personal property tax should be removed, but he has also been responsible in suggesting an alternative method to make up that tax shift, so that it isn't automatically shifted to someone else. He does not believe that the Report offers any suggestions as to how we protect the people from the efforts made by that move. This is his observation about the Report and he welcomes the opportunity to talk to **Mr. Dietrich.**

Mr. Dietrich said he appreciates his observations. This Report does not come by recommendation from the Department of Commerce, or from the **Governor**. It is a collection of recommendations that were made by the private sector, that is what is before this body to consider. As part of the process in determining whether these are things that should be done, there is still a lot of work to do. The Department needs to make sure they are answering the questions that **Senator Stegner** has raised. In order to strengthen our economy we can't think of Idaho as the backyard, this is global, and companies compete in a global economy. We need to make sure that we are positioning our companies to be able to take on global competitors. If we can trim a few cents off getting the wheat from the farm to the local elevator, then we have just made that farmer or company more competitive. It may come at the expense of another business, but these are the unintended consequences that require review. **Mr. Dietrich** stated he does not stand before the Committee as an advocate of any of these recommendations. They simply wanted to present what the leaders and our business community are saying would make a difference, and what would make them more competitive from a global standpoint. It is ultimately up to this body, and the Department is happy to assist in the process of analyzing each of the recommendations. This information is being provided to look at in a transparent way and see if it makes sense.

Senator Stegner said he understands that and he appreciates **Mr. Dietrich's** comments.

Senator Kelly asked **Mr. Dietrich** if there are any initiatives that he will be bringing to the Legislature, that the **Governor** is advocating in terms of policy changes? **Mr. Dietrich** said maybe the **Governor's** Office would like to respond to that. **Mr. Warbis** stated at this point there is at least one piece of legislation that is being worked on closely with the

Department of Commerce. It involves an investment tax credit and ways to encourage investing in our State. In addition to that, the **Governor's** Office is exploring with the Department other ways to provide reasonable and measured incentives for businesses to come here. There is nothing directly related to this Business Summit Report that the **Governor** is looking to bring forward. As stated in his state of the state address, the **Governor** wants to share with the germaine committees of the Legislature those issues that were brought to him at the Business Summit, as well as the Innovation and Finance Summit. These are listening sessions and opportunities for the **Governor** to hear directly from the people who create jobs in our economy and what they need to succeed and to be better advocates for Idaho in working with Project 60. This Report represents what the **Governor** heard. **Mr. Warbis** said one of the biggest advantages we have in Idaho is the stability of our tax structure and the certainty and predictability of our tax and regulatory structure. This is a great strength to help grow our economy internally and externally.

Senator Geddes said his experience is only minimal and he only has a small glimpse of all the work being done. He has never been disappointed or embarrassed, only proud of the work that he sees coming from the Department of Commerce. He sees that in the communities that he represents. There is a lot of focus on commerce and development in attracting new enterprises to our State. He hopes that a lot of people are listening via the internet today, because he believes the information that has been presented gives a totally different and contrasting view of what they hear sometimes through local and national media outlets. **Senator Geddes** stated that he is sympathetic to this cause because no matter how much is being done, it is never enough. He doesn't want **Mr. Dietrich** to leave today, at least from his standpoint, without knowing how significant it is what the **Governor** does and that the Department supports him. The word is getting out with regard to what the **Governor** is doing and his agencies to bring jobs to Idaho, and to protect the jobs that are so critical for Idaho to maintain and enjoy. **Senator Geddes** said he is going to call **Kevin Miller**, of KIDO Radio, and invite him to the Capitol. He said that he has never met the **Governor**, and some of what he is espousing on his radio show is not accurate, true or representative of what the **Governor** or the Legislature are doing. The good things need to be applauded that are happening in our State.

Chairman McKenzie thanked **Mr. Dietrich** for his time. **Mr. Dietrich** said the full report is available on the Project 60 and the Department of Commerce's website.

MOTION: **Senator Darrington** moved to approve the minutes of January 22, 2010. **Senator Geddes** seconded the motion. The motion carried by **voice vote.**

Senator Stennett moved to approve the minutes of January 25 and **Senator Fulcher** seconded the motion. The motion carried by **voice vote.**

Senator Stennett moved to approve the minutes of January 27. **Senator**

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

AdJOURN: **Chairman McKenzie** said there will be no meeting on Monday. The Committee will meet on Wednesday, February 10. He adjourned the meeting at 9:16 a.m.

Senator Curt McKenzie Chairman	Deborah Riddle Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 10, 2010

TIME: 8:00 a.m.

PLACE: Room WW55

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Stegner, Fulcher, Stennett 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 8:01 a.m. and stated the first two items on our agenda are **H412 and H413.**

H412
H413

Dennis Stevenson, from the Office of Administrative Rules, addressed the Committee and stated that **H412** eliminates the requirement that the Idaho Administrative Code be published and printed in bound volumes. It also ensures that the electronic publication of the Idaho Administrative Code will be the official copy, and that judicial notice can be taken of all documents published electronically. This legislation will align with the current practices and reduces costs. Secondly, this legislation will amend the statute regarding temporary rules to reflect current practice. Currently, State agencies send their temporary rules to the Administrative Rules Coordinator, not the Legislative Services Office (LSO). The Administrative Rules Coordinator then sends the temporary rules to LSO. This will eliminate the need for agencies to file with LSO.

In 2004, **Mr. Stevenson** said, one hundred fifty sets of rules were being printed and the cost was about $50,000. Currently, all administrative rules and rules related documents are available through the State's website at no charge to the public. If necessary, State repositories will continue to receive the annual Idaho Administrative Code publication on CD-ROM, or other electronic media at no charge. They print only about thirty five sets at a cost of $15,000, and now they are at the breakeven point with twenty six paid subscribers. They have a shortfall of $10,000 when it comes to the publication of the bulletin. So the $10,000 shortfall between the code publication and bulletin publication is made up by the agencies per page fee. By eliminating the paper publications it will save money.

Senator Kelly asked **Mr. Stevenson** if all the repositories have electronic capabilities? **Mr. Stevenson** answered that is correct. They surveyed a

number of the libraries, university libraries, college libraries as well as the city libraries, so he believes they all have that capability. Most have on-line access as well. Some libraries have requested that they do not send copies any longer. **Senator Kelly** said the intent and Constitutional obligation is to have them readily accessible for the public. She is a little uncomfortable with that answer. If electronic access is not available to the public, then there is a potential problem. **Mr. Stevenson** responded if someone does not have that access, they can call and a paper copy will be produced for them. When the rules were first placed on-line, the requests for individual copies almost went away completely.

Senator Kelly said the reason there are repositories throughout the State is to ensure that this information is accessible. A person in a rural community may need a hard copy available, and you are asking us to endorse the concept of going totally electronic. Although she appreciates the fiscal responsibility that he is showing and the greater accessibility that it provides, she still has concerns that the Legislature is being asked to change the rules. If the repositories no longer have hard copies, she hoped that he could have answered yes, that he had contacted all sixty six of them and that they can make it available electronically**. Mr. Stevenson** replied in 2004 the repositories were notified that the intent was to provide them with a CD-ROM only, and that has been going on for the past five years. They have received no complaints for any of the repositories and there have been no public comments that it is a problem. Using that data and the experience of providing strictly a CD-ROM, has not created a problem for the public to access this. If someone contacts them and says they do not have access, it is cheaper for them to provide a copy for free to those few individuals who request it. Over the past five years, he believes that this has not impacted the public in their ability to access this information.

Mr. Stevenson said that **H413** will allow the Idaho Administrative Bulletin to be published electronically and eliminate the requirement that the Idaho Administrative Bulletin be published in a printed document. Most people are accessing the Administrative Bulletin electronically and they now have only twenty two subscribers. Again, the libraries are requesting that this information not be sent as books because they are running out of room. **H413** will allow for judicial notice to be taken of all documents published in the electronic version of the Idaho Administrative Bulletin. The shortfall on **H413** is about $10,000 annually between the revenues produced from the sales, subscriptions and the cost of mailing and putting them in binders.

Senator Geddes said in the past it seems to him that every agency is scrambling to get their rules published. Using the electronic format, will the pressure still remain for the agencies to meet the specified deadlines, or will it be easier in the future to make an exception for them**? Mr. Stevenson** answered they will be nimble in their ability to work with the agencies. They currently do whatever they can do to assist the agencies, and this will give them more time to work with them if changes need to be made at the last minute. This will streamline the process. **Senator Geddes** said he isn't sure that is the good news he was hoping for if that

structure is to remain in place. **Mr. Stevenson** responded same process will remain in place.

Senator Kelly asked **Mr. Stevenson** if other states have gone totally electronic? **Mr. Stevenson** replied they are all going in that direction and there are probably a handful that have done this so far. This is always a topic of conversation at the association he belongs to. Idaho is one of the first states to actually have their administrative rules on-line for free. When states did that nationally, we all lost half of the paid subscribers.

MOTION: **Senator Stegner** moved to send **H412** and **H413** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion.

Senator Kelly said she will support the motion. In her district she is very confident that the public can access this on-line, but she still has some concerns for the rural areas, who may not have the ability to provide their patrons access to the rules and the bulletin when they need it.

There was no other discussion on the motion. The motion carried by **voice vote.**

H437 **Tim Hurst,** Chief Deputy of the Secretary of State (SOS) presented **H437** to the Committee. **Mr. Hurst** said this legislation authorizes the SOS to accept on-line filings for lobbyist reports and campaign finance reports under the Sunshine Law. Currently 75% of the candidates file the sunshine reports with fillable forms or other type of electronic means. The other 25% still do it by hand and the SOS will continue to accept those. The ones who use fillable forms, print it out and hand deliver, fax or mail it. Then the SOS staff has to reenter that information and correct any mistakes. By doing it this way, it will reduce the chance for error. Everything will still be provided on-line, and posted like it was hand delivered to the SOS. There are approximately three hundred fifty lobbyists and two to three hundred candidates that do this once a year. **Mr. Hurst** stated this will be beneficial and helpful to the SOS as well as candidates.

Senator Stennett asked **Mr. Hurst** if there will be any fiscal impact by moving these reports to electronic, and how much labor will there be to do this? **Mr. Hurst** responded the SOS staff will do this and they have already created the lobbyist report. They are in the process or rewriting the old system and they are just trying to make all reports on-line. They have looked at other states. Washington and Oregon have offered their software, but they will have to modify it. It should be available next year.

MOTION: **Senator Fulcher** made the motion to send **H437** to the floor with a **do pass** recommendation. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL APPOINTMENT: The confirmation vote on **Richelle Sugiyama** was before the Committee.

MOTION: **Senator Geddes** moved to send the gubernatorial appointment of **Richelle Sugiyama** to the Idaho Endowment Fund Investment Board to

the floor of the Senate with the recommendation that it be confirmed. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

The confirmation vote on **Tom Kealey** was before the Committee.

MOTION: **Senator Stegner** moved to send the gubernatorial appointment of **Tom Kealey** to the Idaho Endowment Fund Investment Board to the floor with the recommendation that it be confirmed by the Senate. **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 8:25 a.m.

Senator Curt McKenzie Chairman	Deborah Riddle Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	February 12, 2010
TIME:	8:00 a.m.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett and Kelly
MEMBERS ABSENT/ EXCUSED:	None
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
CONVENE:	**Chairman McKenzie** called the meeting to order at 8:03 a.m. and stated the first order of business is the Gubernatorial Appointment of **John Ewing,** who was appointed to the State Building Authority.
GUBERNATORIAL APPOINTMENT:	**Mr. Ewing** addressed the Committee and said that he has been in the construction business for over thirty years. Through the years, the State Building Authority has dealt with private contractors and his role is from the side of a contractor. That is his area of expertise. **Chairman McKenzie** asked **Mr. Ewing** if he has served on the Board since 1989. **Mr. Ewing** responded yes. He enjoys his position on the Board as it is a change from what he does every day. **Chairman McKenzie** thanked **Mr. Ewing** and advised him that the Committee would vote on his appointment at the next meeting.
H390	**Dyke Nally** presented **H390** to the Committee and said **H390** is a housekeeping measure that seeks to clarify language that refers to the liquor-by-the-drink licensees. When the name of the Liquor Division was changed, some of the language was not picked up. **Mr. Nally** said this language will correctly refer to the liquor-by-the-drink licensees as "licensees rather than premises" as defined in chapter 9, title 23, Idaho Code. It will eliminate all ambiguity and it renders references thereto consistent throughout the Liquor Act. Additionally, housekeeping measures are required and set forth at Section 23-207(g), Idaho Code, to eliminate unnecessary, confusing text and at Sections 23-311 and 23-610, Idaho Code, to revise terminology to render consistent reference to the Idaho State Liquor Division as the "division" and not as the "dispensary." There is no fiscal impact.
MOTION:	**Senator Stegner** moved to send **H390** to the floor with a **do pass**

recommendation. **Senator Fulcher** seconded the motion. The motion carried by **voice vote.**

RS19615

Senator Winder addressed the Committee regarding the print hearing on **RS19615**. **Senator Winder** said this is a revision of **S1270** that was introduced as a personal bill. Since then, they received an opinion from the Attorney General's Office, as well as input from the Idaho Hospital Association and the Idaho Medical Association. The revised language reflects a serious effort to accommodate the concerns raised, and it makes these conscience protections more workable for the healthcare industry. **Senator Winder** stated that he would prefer to wait before providing the details of **RS19615** in the hopes that the Committee will print it. As most are aware, Congress is working on a national healthcare revolution and none of the current drafts have any strong language for protection of conscience. One of the first acts that our current President performed, was to cancel the previous rules of the Bush Administration regarding right to conscience. In addition, there has been a ruling in the 9th Circuit Court last summer. This case, in the State of Washington, points towards the need for the states to either have specific legislation relating to conscience and raising the doubt as to whether the First Amendment rights protect the rights of conscience for medical care. Our current statute, Title18, 612, provides conscience protection for physicians and hospitals. This is an effort to extend it to all healthcare professionals.

MOTION:

Senator Fulcher made the motion to print **RS19615**. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote.** **Senator Kelly** requested it be recorded that she opposes the motion.

RS19586

Senator Geddes presented **RS19586** to the Committee and stated this is a very important resolution. He does not believe that anyone can counter the argument, that the work of all the contractors and craftsmen who worked hard to create the beautiful Capitol Building we have now to its restored condition. They need to be congratulated and thanked and that is what this Concurrent Resolution will do. **Meghan Fulcher** is here to speak to this and she is the one who did the research and put it together.

Meghan Fulcher, an intern and freshman at Boise State University addressed the Committee. **Ms. Fulcher** said she was given the privilege of working on this Resolution and doing the research. In the process she has come to appreciate the details and effort that were put into the restoration, and she has compiled a list of six interesting facts about the Capitol. First, Jacobsen Hunt, was given a condition on the funding that the work had to come from local labor. In renovating the Capitol, they tried to focus on providing Idahoans jobs. Some feel they didn't do a very good job, but **Ms. Fulcher** said she believes they did. The second fact is that a lot of doorknobs are cast with the State seal. During the renovation the doors were removed and the doorknobs and doors were refurbished and put back in their original location. Third, the Capitol is known as the Capitol of Light. The clock in the Joint Finance Appropriations Committee (JFAC) room was cleaned and it was discovered that the back is made of translucent marble. There are lighting fixtures behind it so at night it glows. The original builders put a lot of effort with small gestures into

making this building very classy and innovative in the use of light. **Ms. Fulcher** said her fourth fact is that the Senate and House chambers now have a curtain around the walls. Originally, the chambers were separated from the walkway by a curtain. It was necessary to install a wall because sometimes alcohol was passed to the senators and representatives. During the renovation, the curtain was added to maintain the original integrity. Fifth, the Senate and House lounges were the caucus rooms. The original intent was for those areas to be lounges so they were converted back to lounge areas during the renovation. The final fact **Ms. Fulcher** said, is the fact that the light switches are push bottons. She thought it was rather odd at first, but it was an original feature of the building. They are recreations and replicas that had to be modernized in the inside to bring them up to code. These facts are all very diverse, but they all point to one thing. The people who did the work on the renovation put in an immense amount of effort to ensure that all the little details were preserved, and to increase the functionality of the building.

Senator Fulcher asked **Ms. Fulcher** if she knew what the cost of the renovation was? **Ms. Fulcher** replied she believes it was $2,980,455.05. **Senator Fulcher** asked if that was the original cost. **Ms. Fulcher** said it was. **Senator Fulcher** asked if she knew the cost of the renovation that was just completed recently. **Ms. Fulcher** said it is approximately $120 million. **Senator Fulcher** asked **Ms. Fulcher** if she views the cost of the renovation to be worth it? **Ms. Fulcher** stated she believes that it was indeed worth it. It is the people's house and it serves as a symbol of Idaho's freedom and strength as a State. It is also very important that the history and functionality was preserved because it is a symbol of who we are as a people. Additionally, the building is so much more accessible which means to her, that more people will be actively involved.

Senator Fulcher thanked **Ms. Fulcher** and said for the record, he was really more interested in having **Ms. Fulcher** call him Senator more than anything.

Senator Geddes commented that he believes **Ms. Fulcher's** allowance reflects the original cost of the building. Anyone who delves into the history of this building like **Ms. Fulcher** has and understands the history and the work it took to create such a beautiful restoration, truly acquires an appreciation for it, including the events that have taken place here over the past one hundred years. It is truly significant and he wishes that every citizen would do the same and learn as much as they can. The individuals that were here saw the needs and now they can see the work and the quality of the work that went into protecting the building for the next century. **Senator Geddes** said some may find it interesting that Arizona recently sold their State Capitol Building and are now leasing it back. He cannot imagine that ever happening in Idaho. The value of the building has been demonstrated by **Ms. Fulcher** through her personal knowledge and what has been put on paper. They are good reasons, and this Concurrent Resolution has value and merit for us to mark this historical event and to thank the individuals who worked hard in restoring our Capitol.

MOTION: **Senator Fulcher** moved to print **RS19586** and **Senator Stegner** seconded the motion. **Senator Darrington** commented that a move to print is an automatic move to the floor for a Resolution. There was no other discussion on the motion. The motion carried by **voice vote**.

RS19627 **Senator Pearce** presented **RS19627** to the Committee and stated in his district at a town hall meeting in Council, the Superintendent raised the issue that some years ago they had built a heating plant. It was used for biomass and they have a lot of excess because they are not running at capacity. This legislation will authorize school districts to sell their excess hot water and receive the revenue generated from it.

Senator Davis asked **Senator Pearce** if there is a kilowatt hour cap on what they can generate? **Senator Pearce** responded this does not deal in kilowatts. They are not generating electricity so this is a totally different approach. **Senator Davis** said in the reference "to create and develop renewable energy systems," is there a restriction on the size of the renewable energy system. **Senator Pearce** replied there isn't a cap in that sense.

Chairman McKenzie said this is a concept that went before the Energy Interim Committee, and there was discussion about whether there would be an option to sell excess kilowatt hours. There was concern expressed about that, so this legislation provides for the sale of excess thermal energy, which is the hot water. The school district can generate energy for their own consumption. They will not be selling back onto the grid, the investor utilities or anything else, only the hot water.

MOTION: **Senator Fulcher** made the motion to print **RS19627**. **Senator Geddes** seconded the motion.

Senator Davis said he understands the target, to sell excess energy and he is not troubled by that. His worry is if the language is about the sale of excess energy. Does the language accommodate and allow the generation and creation of new energy systems. If the school district doesn't consume it all, will it become excess.

There was no other discussion on the motion. The motion carried by **voice vote.**

MINUTES: **Chairman McKenzie** asked if there were any motions with regard to the minutes.

MOTION: **Senator Geddes** said he has read the minutes from January 29, 2010 and they reflect the discussions of that meeting. He moved to approve the minutes as written. **Senator Fulcher** seconded the motion. The motion carried by **voice vote.**

Senator Stegner moved to approve the minutes of February 1, 2010 as written. **Senator Fulcher** seconded the motion. The motion carried by **voice vote.**

Senator Fulcher said he has reviewed the minutes of February 3, 2010

and found them to be in order. He moved to approve the minutes of February 3. **Senator Geddes** seconded the motion. The motion carried by **voice vote.**

ADJOURN: **Chairman McKenzie** said that is all the business for today. He adjourned the meeting at 8:29 a.m.

Senator Curt McKenzie Chairman	Deborah Riddle Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	February 17, 2010
TIME:	8:00 a.m.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett and Kelly
MEMBERS ABSENT/ EXCUSED:	None
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

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

HCR38 **Representative Eskridge** presented **HCR38** to the Committee and stated that the American Legion Boys State and the American Legion Auxiliary Girls State are programs that teach our youth how government works, while at the same time developing their leadership skills and appreciation of their rights as citizens. As participants in the program, delegates run for municipal, county and state offices, develop their public speaking ability, create and enforce laws, and actively participate in all phases of creating a working government in this exciting and beneficial program. In addition to learning how our government works, they meet other youths from across the State. **Representative Eskridge** said **HCR38** helps support the program and recognizes the importance and value of the Boys and Girls State Programs for the youth of our State.

Senator Fulcher said he agrees with **Representative Eskridge**. He is an alumni of Boys State and Boys Nation and it definitely had an impact on him because of the interest that it generated.

MOTION: **Senator Fulcher** moved to send **HCR38** to the floor with a **do pass** recommendation. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

HJM10 **Representative Wood** addressed the Committee and said she has a CD with a power point presentation for the Committee to view on the F-35. This Memorial, **HJM10,** urges the United States Air force to select Idaho to base its F-35 missions. **Representative Wood** read the Memorial to the Committee.

Colonel Richey, Idaho Special Assistant to the Governor for Military Affairs, addressed the Committee regarding the F-35 presentation.

Colonel Richey said he has been in his position for about ten years, and this has not been a short term project. Over two years ago, they started a letter writing campaign from the **Governor** to the Secretary of the U.S. Air Force and the Chief of Staff. The military affairs for Mountain Home makes an annual visit to the Commander at Air Combat Command (ACC) at Langley Air Force Base, the Pentagon and then to the Congressional Delegation to talk about the issues of Mountain Home Air Force Base. The video of the F-35 was developed with the help of the National Guard. It specifically talks about Mountain Home, but it does apply to all the training activities that take place in Idaho, to sell the fact that Idaho is the best location for the F-35 mission, because of the weather, air training space and the infrastructure at both bases.

The CD was viewed by the Committee, which provided community support for Mountain Home Air Force Base and the impressive training opportunities available for the U.S. Air Force F-35 Joint Strike Fighter aircraft. Strong military values, opportunity for current and future growth, the absence of environmental and encroachment issues all say that Mountain Home is a logical training location for the F-35.

Colonel Richey said the video was delivered to the Four Star General of ACC, the Chief of Staff of the Air Force, the Vice Chief of Staff who is now the Commander of ACC and any senior staff officer that would accept one. The video obviously talks about the great qualities of Idaho and the National Guard at Gowen Field has also produced a similar video. Both bases are the right choice to house the F-35. Gowen Field is being looked at for the formal training unit with three squadrons to be based there. With the departure of the F-15C's at Mountain Home, it opens up the facilities that could house two squadrons immediately. Mountain Home is being looked at for the operational side. Once an airman qualifies in the F-35 at the training facility, then they would move to the operational base and prepare for combat.

Representative Wood stated the Department of Commerce has been very involved in getting the word out and trying to do everything possible in support of the F-35 mission.

Vice Chairman Pearce asked **Representative Wood** when will the decision be made? **Colonel Richey** responded that there are five bases being considered. In late spring a decision will be made for the preferred alternative, then it has to go to the National Environmental Policy Act. The preferred alternative will be made and the remaining bases will be studied and evaluated. The final decision will come towards the end of the year for operations and later for the training.

MOTION: **Vice Chairman Pearce** moved to send **HJM10** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

H414 **Dennis Stevenson**, Administrative Rules Coordinator, presented **H414** to the Committee. **Mr. Stevenson** said that **H414** amends section 67-5221 of the Administrative Procedure Act. **H414** changes the requirement that the public notice of proposed rulemaking be in the current specified

typeface and format used for newspaper display advertisements, but instead will require public notice of rulemaking to be in an official legal notice typeface and format. It will be subject to *Idaho Code 60-105*, the statute that establishes the rate to be charged for official legal notices in newspapers. **Mr. Stevenson** stated currently the legal notice must be published in a newspaper with widespread circulation in each county of the State, whenever a proposed rule is published in the Administrative Bulletin. Currently this legal notice is being published in thirty seven newspapers in Idaho. It will not change the legal notice only the format. Using the official legal notice format instead of the current display ad format will reduce the cost by about fifty percent. The funds come from the agencies for publishing in the bulletin and the administrative code, which is a per page charge. **Mr. Stevenson** said by changing this format he believes it will improve the notice, because the public will generally go to the legal notice section of the newspaper. The display ad can be put in any section of the paper and it rarely appears in the same place twice. The notice will still be published electronically on the website with a link to the notice as well.

Senator Fulcher asked **Mr. Stevenson** to clarify that the only change being made is to the format. **Mr. Stevenson** responded that is correct. The information contained in the ad will remain the same, and the location of the ad will be in the legal notice section.

Senator Kelly asked **Mr. Stevenson** to explain *Idaho Code 60-105.* **Mr. Stevenson** said that code establishes the rates and it specifies how much a newspaper can charge a State agency. **Senator Kelly** asked if that was put in place to provide a cap? **Mr. Stevenson** answered that is correct.

MOTION: **Senator Fulcher** moved to send **H414** to the floor with a **do pass** recommendation. **Senator Kelly** seconded the motion.

Vice Chairman Pearce said if they stop printing bills and everyone uses the internet, does **Mr. Stevenson** think that we will revisit this again and limit publication in newspapers. **Mr. Stevenson** said that is possible, but he can say that newspapers are an important part of this process. Currently they have no intention of eliminating this publication in the newspapers. As readership declines we may have to look at this again and make sure it is economical. It is difficult to say if this is a viable option right now. **Vice Chairman Pearce** commented that it might be interesting to put a notice in the legal section asking how many readers read these notices online.

Senator Davis said on page 2, line 10 the phrase hard copy is being stricken. Current statute states that notice has to be given to view the rule in the bulletin or in hard copy form. He asked if a hard copy can still be viewed in the bulletin? **Mr. Stevenson** said it can.

The motion carried by **voice vote**.

H391a **Representative Clark** presented **H391a** and stated that he has some

handouts that have been provided to the Committee. One is a map which was provided to him by the American Legislative Exchange Council (ALEC). He recently heard that **H391a** is cookie cutter legislation that is being copied. This map shows the number of states that are involved with the health care issue that is happening nationally. The movement actually started in 2008 and he attended a task force meeting in Washington D.C. In Arizona last year, something like this was on their ballot. This is not a tea party movement. It is led by ALEC, and he is the State Chairman for Idaho. The second handout is a response to AARP's literature, and the last handout is a concurrent resolution that the healthcare task force voted on this past summer. This document passed with a 7-5 vote and it opposes the Federal health insurance reform proposal. **Representative Clark** said it is just not about the House being all fired up, this is a well rounded movement to do something statutorily instead of a proclamation or placing it in the Constitution. Statute will give standing in Federal court. This is one of three things this bill will do. The first will shield Idaho from a Federal individual mandate, and it would render any states attempt to require any individual to purchase health insurance, or to forbid an individual from securing medical care outside of the required health care system.

Senator Davis said he is sympathetic to this legislation, but he is having a hard time understanding the point on standing. If he is not standing under the 9th amendment and he has standing under the10th, how will he increase standing by passing a statute. **Representative Clark** replied there are three current cases, *Gonzales v. Oregon*, where the Supreme Court upheld Oregon's right to die law despite a Federal challenge. The second is *Horne v. Flores,* which upheld federalism and the third is *Northwestern Austin Municipal Utility District 7 v. Holder,* which allows a small municipality to adopt certain provisions of the Federal Voting Rights Act. **Representative Clark** said that he believes it is worth a challenge to provide standing and **H391a** does that. **Senator Davis** asked if has a copy of those Supreme Court decisions? **Representative Clark** said he does not, but he can get them.

The other issue is the impact of the bill which has a $100,000 fiscal impact. The congressional budget office estimates the cost up through a 2019 analysis, would be $84 million under the Senate proposal, and $267 million under the House. Additionally, the Goldwater Institute has offered to defend any State who uses the Idaho Health Freedom Act at no cost. If the Federal government does something which is a mandate, there won't be a cost. Putting this in code will help as opposed to a referendum or the Constitution.

Representative Clark stated **H391a** adds Chapter 90, Title 39 and there are four sections to it. Section 39-9003 is a public policy statement, which states, "it is hereby declared that the public policy of the State of Idaho consistent with our constitutionality recognized and inalienable rights of liberty, is that every person within the State of Idaho is and shall be free to choose or decline any mode of securing health care services, without penalty or threat of penalty." When the House amended this language it added "by the Federal government of the United States." The

amendment was added because health care services was added in 2002 to the State Board of Education requiring all college students to purchase health care. If this is mandated by the Federal government regarding health care, we will use **H391a**. If it is the State's idea, it can be done. Idaho has a better idea at this level than at the national level.

Vice Chairman Pearce said this looks a little hypocritical on one hand to tell the Federal government that they cannot make us choose any form of health care, and we require our college students to make a choice or they cannot attend college. **Representative Clark** said he did not say this is a lavatory of good ideas, it is a lavatory of ideas. The reason students are required to have health insurance, is because we don't want them in the emergency room and then it has to be paid for by property taxes. If that is hypocritical, than the issue is that sometimes mandating things are good ideas and sometimes they are bad ideas. The Federal government didn't do that, the State did. It is our right to be wrong with a bad idea. **Vice Chairman Pearce** commented he thinks what is good for the goose ought to be good for the gander. He hoped that he would have included that in **H391a** and fix the State as well as the Federal, but you can't. **Representative Clark** said there are two ways to fix that. We could have exempt them or carved out some sort of exemption. If we carve it out for them, where is the carving out going to stop. If he doesn't think that is a problem, he should look at all the exemptions that we do have. It never stops, if we carve it out for one, then it becomes meaningless.

Senator Stegner said it seems to him that **Representative Clark** has skipped over one of the key points in section 90-9001, and a statement that health care services and regulating it is not found in the Constitution of the United States, and therefore the power is reserved for the States. He would assume that is fairly fundamental in his argument that this is good legislation. He acknowledges that health care services are not found in the Constitution, but the Commerce clause is. The Supreme Court has suggested that the Federal government has the right to regulate Commerce and health care falls under that, so why does he believe that the State can arbitrarily declare that they have sovereignty on the issue of health care. The Federal government can impose that if they so choose. **Representative Clark** responded that he tends to agree with that, but there have been battles before over what the Federal government can and can't do. The first one is the Constitution. It was argued that the Constitution was fine and that we really didn't need a Bill of Rights. The Bill of Rights argued what the states rights really were. The Commerce clause is there, but the Federal government still has to prove that in court, and he thinks it is worth the fight. Especially when the **Governor** is willing to take them to court, so let's give him some help. **Senator Stegner** said that is certainly the prerogative of the **Governor**, he is not sure what he views to be a rather meaningless piece of legislation will help that. The **Governor** can take up that cause and it should be fought in the court system. The State of Idaho cannot just arbitrarily declare themselves above prior decisions made by the Supreme Court. **Senator Stegner** stated that he finds that perplexing.

Senator Stennett said she understands there is a lot of opposition to a

Federal health care bill. It seems premature to her to think that we are up against a fight when there is no guarantee that there will be a health care bill. She asked if he has some insight into that and does he have an idea what the contents will be? **Representative Clark** replied that he does not have any insight as to what should happen. He knows this has been going on since 1934 with eight attempts. The latest one was in 1993 and then it died off since then. This is not going away. The same argument can be made for the Bill of Rights. Is there any protection whatsoever and he is still convinced, that absent any protection whatsoever, this bill is the best that we have now. **Senator Stennett** said is he saying this is a reaction to seventy or eighty years of trying to get health care, and possibly another hundred if we don't succeed with this one. Does he feel this bill will address the possibility that there will be a Federal health care bill? **Representative Clark** said yes, eventually it will happen. **Senator Stennett** asked how enforceable will this be, if he doesn't know what the Federal legislation is? It seems like putting the cart before the horse, and it appears that he would have more ammunition and a better bill if he knew more about what he is up against on the Federal level. **Representative Clark** responded if it is mandated, this will provide protection for that. It is a very narrow issue actually. **Senator Stennett** commented than for him, this is just making a declaration and how the State should respond, that we do not want to play ball if it is mandated. **Representative Clark** said he believes it is larger than that, it is public policy and in statute, that is a pretty powerful statement. **Senator Stennett** said that he just said it was narrow. **Representative Clark** said it is a narrow issue and there are a lot of narrow statements in public policy.

Senator Kelly asked **Representative Clark** why this is in statute rather than a Resolution? **Representative Clark** said he believes it is stronger than a Resolution. A Resolution is just words on paper.

TESTIMONY:

David Irwin, Director for the American Association for Retired Persons (AARP) in Idaho, stated healthcare is an issue that the members are extremely concerned about. AARP stands in strong opposition to **H391a**. Not because it is aimed in part to prevent national proposed health care reform, but because AARP believes that it is bad policy for the citizens of Idaho. **H391a** seeks to prohibit government interference with a person's choice in health care. Namely, a government mandate for individuals to have insurance. The legislation takes aim at one possible component of a nonexistent Federal health care law. **Mr. Irwin** said on its surface, the bill seems direct and simple touting liberty and freedom as its guiding principles. However, the legislation is overly vague, untried, unproven and risky. The short and long term and unintended policy implications could prove a high risk on health care in Idaho.

The AARP has concerns that this contradicts State policy. The bill has been amended so as to not negate existing Idaho policy, that requires all full time students of State colleges and universities to carry health insurance. Without insurance, they cannot enroll. That is a State mandate for some to carry health insurance under threat of penalty, exactly what the legislation opposes the Federal government from

implementing. While this bill no longer negates the State's policy, it still directly contradicts it. **Mr. Irwin** stated the legislation could tie the hands of Legislators now and in the future. While the bill is aimed to address a very particular issue of a nonexistent Federal health care bill, or law, if passed and signed into law, this will be a permanent law for Idaho. Since it might take time to change this legislation, if needed, it could block the ability of lawmakers to fully tackle the State's growing health care crisis in a timely manner regardless of whether Federal health care reform is enacted or not.

In a very tight budget year, this bill will spend up to $100,000 on costly litigation with little chance of success. Legal scholars across the United States have said that the U.S. Constitution clause and Commerce clause would trump a state law such as this. Regardless, the bill will be subject to many interpretations and may draw the State into costly and lengthy litigation, that could cost well beyond the $100,000 that this bill allocates. **Mr. Irwin** said we do not know where health care reform will land this year, at the Federal level, or quite frankly next year. Court interpretation of this law will be binding and Idaho will be stuck with that, whether we like it or not. Subject to its interpretation, potential implementation of a Federal health care reform, this legislation could jeopardize more than $1.6 billion in annual Medicaid and our children's health insurance programs matching funds, that provide health care for two hundred sixty residents, including women and children, the disabled and elderly. The move could result in the loss of thousands of health care jobs tied to the funding. Idaho cannot afford to provide all the funding needed for these essential health and long term care services, and definitely can't afford the possible loss of jobs.

Mr. Irwin said is this unproven legislation worth jeopardizing the health and welfare of vulnerable Idahoans. As more are forced to turn to the State for the basics, losing the funding for these programs could devastate Idaho residents. The bill may serve to destabilize Idaho's carefully constructed insurance regulations. Because the bill is untried we cannot know how it will affect existing State law. This bill could weaken Idaho's ability to regulate health insurance, which includes health plans. Additionally, it could weaken the authority of the Department of Insurance to regulate the industry and protect consumers. This bill could prevent State regulators from doing their jobs. Since this untested language could affect the ability of State regulators to address health insurance and health plans, the insurance market may be destabilized. If that happens, the insurance companies could raise premiums, deductibles and co-pays and drive up the already skyrocketing health care costs for individuals and businesses. Doctors, hospitals, nursing homes and other providers could lose the Medicaid reimbursement they receive now, and find themselves serving many more uninsured patients.

Senator Davis said he is hearing a lot of scary language, all predicated with it may be this awful thing, it could do this awful thing and untested language. He asked **Mr. Irwin** to give some specific examples of a regulation that the language in this bill is going to jeopardize, or another code section that he doesn't have to rely on the words may or could?

Can he tell him with confidence that this will be a legal problem for the State of Idaho. **Mr. Irwin** responded because this is so untried, he cannot point to a specific code. **Senator Davis** is right, there are a lot of mays, coulds and possibles. This is untried and we just don't know. It may have dire implications on existing policy in Idaho. One of those being the law that was enacted earlier this year, that allows consumers who have been denied health care claims from their insurance carriers to appeal through the Idaho Department of Insurance. That is one possible area that could be impacted. **Senator Davis** said with all the mays and could's, the reverse is also possibly true. **Mr. Irwin** replied in their analysis of this legislation, the AARP had a team of attorneys review this. He could be right and this could go either way. AARP's concern is why err in this manner with an issue of this magnitude.

Mr. Irwin stated that Idaho has a worsening health care crisis. Families, retirees and business across the State struggle with the soaring cost of health care, which is leaving more and more to simply go without. Health insurance premiums are expected to double within the next few years and 27% of our State's Medicare beneficiaries fall into the dreaded part B Medicare, where they have to pay 100% of the cost of their drugs. Many have stopped taking needed medications. When someone loses their job, they lose their health insurance for themselves and their family. These are real problems for real people, and we need to protect the Medicare for current beneficiaries and future generations, help them better afford prescription drug costs and ensure that insurance is affordable and accessible. This legislation does none of those. The Idaho Freedom Act simply raises too many unanswered questions, and holds too many unintended consequences. The bottom line is that it is too risky for the people of Idaho, the bill is the wrong prescription for Idaho's health care woes.

Senator Geddes asked **Mr. Irwin** to explain to the Committee the position that the AARP took on the national health care incentive, and explain why your support lends to fiscal responsibility that something our nation and State can't afford. **Mr. Irwin** responded that the AARP supported the House version of a national health care reform legislation, because it was good for our members. It tackled several key issues, it moved to close the Medicare donut hole, it helped people to better afford soaring insurance premiums, it made health care more accessible and affordable. **Mr. Irwin** asked for clarification on the second part of **Senator Geddes'** question. **Senator Geddes** said he was following up on the concern that the program as proposed in the House and Senate version was extremely costly and he wondered what his position is in comparison with what he said, that this is a proposal that we simply can't afford as a State to engage in. **Mr. Irwin** said that the AARP is trying to speak to this legislation, and not in too much to the Federal health care bill. The AARP supports a Federal health care bill, they are opposing this. Largely because at the Federal level they know about the costs, they anticipate more falling into that donut hole with this bill. With rising insurance premiums more individuals will not be able to afford health care for themselves and their families. Drug costs increased 11% last year and they will continue to rise, leaving more older individuals unable to afford

their prescription drugs. The health care situation in the nation and the State is on a crash course for disaster. This legislation does not address those issues.

Russ Hendricks, Legislative Advisor for the Idaho Farm Bureau (FB), testified in support of **H391a**, the Idaho Health Freedom Act. **Mr. Hendricks** read in part the Bureau's policy to the Committee. "We believe that health care is primarily the responsibility of the individual. We oppose compulsory national health insurance, including laws requiring all individuals or employers to purchase health insurance, and a national health plan in any form. Health care policy should protect the right of patients to choose physicians and methods of treatment." The FB's policy is unique in how it is developed and it is different from most other organizations. Policies are generated at the local level by individual members. When these ideas are of concern, they are brought to a county FB policy development meeting where they are debated, amended and voted on by the members of the county FB. The policies that are accepted at the county level then go to the district level where they are again debated, amended and voted upon by elected representatives from seven to ten counties. Those policies that are accepted at the district level, are then presented at our annual convention, where representatives who are elected by their peers from each county FB hear the ideas from around the State and they are again debated, amended and voted upon. Those that are adopted at the annual convention by members from every county FB, are then the policies that we use as we follow bills here at the Legislature. This is not a position that a few of our leaders at the top have taken, but one that truly represents the views of the FB's 63,000 member families.

Mr. Hendricks stated that the FB's members understand that the current health care system is not perfect and there is need for reform. The current situation has resulted primarily from too much government involvement in the field of health care, not too little. **H391a** would send a clear message to the Federal government, that Idahoans would prefer to retain control over their health care decisions rather than relinquish it to Washington D.C. bureaucrats.

Senator Stennett asked **Mr. Hendricks** how many members of the FB have insurance that is provided through your organization? **Mr. Hendricks** responded that is one of the services that the organization provides to its members if they so choose. He asked **Senator Stennett** if she was asking about health insurance or other forms of insurance. **Senator Stennett** said primarily health insurance. If the members have a choice to be insured or not, how many do insure themselves? **Mr. Hendricks** answered that he doesn't have any idea how many insure themselves.

Senator Kelly said that she asked the Attorney General's Office (AG) to have someone here today. As the Committee is aware, there is a lot of responsibility for the AG. **Karin Jones** is here from the civil litigation division and she would like to ask her some questions.

Karin Jones, Deputy Attorney General, said she is happy to answer questions regarding this issue. **Senator Kelly** said one of the issues raised by the sponsor is the question of standing. By putting this in statute will it create better standing to litigate with the Federal government? **Ms. Jones** replied she did not research that issue in particular, but she does not believe it would necessarily provide additional standing. **Senator Kelly** asked **Ms. Jones** to speak about constitutional principles of preemption and how it might interact with the statutory provisions. **Ms. Jones** responded if the Federal government chooses to pass legislation there is a possibility that it could preempt all or part of this bill. **Senator Stegner** mentioned the Commerce clause earlier and that could create some issues. **Senator Kelly** said the amendment that was added regarding the issue of health insurance for college students, limits the application of this statute to a provision of health care services. Every person within the State of Idaho is and shall be free to decline any mode of securing health care services without penalty or threat of penalty by the Federal government of the United States. **Senator Kelly** stated by the Federal government was added in the House partly in response to make sure the State requirement was not being negated. Another issue would be the fact that the State provides services to inmates in the county jails. She assumes that may be another potential conflict. With that said, there are a lot of Federal employees in the State and there are requirements with regard to health care services, such as physicals or immunizations. **Senator Kelly** asked **Ms. Jones** if this codification could have a conflict with the Federal governments requirement of certain things with regard to health care and their employees in Idaho? **Ms. Jones** answered yes, she believes that is a possibility for those Federal employees in Idaho who are subject to carrying health insurance.

Senator Davis said he understands **Ms. Jones** stated that she has not researched the issue of standing, but that she has an opinion and he agrees with it. There is a constitutional and statutory standing that may not gain much. He asked **Ms. Jones** if she has read any of the cases that **Representative Clark** referenced earlier? **Ms. Jones** responded that she has not. **Senator Davis** said in the event that they prevent some augmented standing, is she familiar with the standards that those cases referenced. **Ms. Jones** said she is not. **Senator Davis** asked if she would like a copy of those cases to review and perhaps to provide further clarification, prior to any vote on the Senate floor, to augment her answer on standing? **Ms. Jones** replied she would be happy to take a look and augment her answer if needed. **Senator Davis** said if there is a requirement that it could possibly impact, can she show him the language in **H391a** that is troubling to her. **Ms. Jones** responded section 39-9003, subsection 2 is troubling to her, the definition of penalty is fairly broad. This could discourage someone from choosing a method of health care. This is troubling if the Federal government requires its employees to have health insurance. **Senator Davis** said he doesn't know if there is a Federal mandate requiring Federal employees to carry health care insurance. There are a lot of Federal employees in his district and that is an area of concern for him, and hopefully someone can enlighten him on that. **Senator Davis** asked **Ms. Jones** if she acknowledges that historically there has been judicial tension between the Commerce clause

and the 10th Amendment. **Ms. Jones** said that there is.

Senator Kelly said statute places an affirmative duty on the AG to bring suit, which carries with it an umbrella that the AG is a separate constitutional office. The Legislature is limited in what it can direct the AG to do. Furthermore, the AG is bound, as is any attorney, by principles of legal representation and bar rules. **Senator Kelly** stated the fiscal impact is $100,000 and the AG is instructed to file suit in the event of some unknown Federal mandate in the future. She asked **Ms. Jones** if she has any comment on that. **Ms. Jones** replied it is likely there will be fiscal impact, but it is completely dependent on whether or not Federal legislation is passed. It is speculative to say what that impact will be and it will depend on how much litigation will arise from that. Anytime there are new obligations for the AG's office that come to fruition, it will cause increased work loads. Most State agencies are operating with reduced personnel so they do not have much of a cushion.

Senator Davis asked **Ms. Jones** if she is here on behalf of the AG's Office asking us to pass or not pass this legislation? **Ms. Jones** said she is not expressing an opinion on the bill.

Chairman McKenzie said he has a question regarding the Commerce clause. He is not a constitutional attorney, but he knows in the 1930's when the New Deal legislation was passed, statutes like this were found to be beyond the authority of Commerce to pass. **President Roosevelt** (FDR) threatened to add a new justice to those that were overstepping until he got the vote that he wanted. Some justices switched their opinions on the issue. Since then the interpretation of the Commerce clause by the U.S. Supreme Court has been extremely broad, allowing the Federal government to implement the New Deal legislation and to basically legislate everything. The discussion this morning has raised a concern for him. If the Federal government intends to preempt in this area, is there case law that says a statute like this can prevent them, or are we tilting windmills at this based on the Commerce clause. He asked **Ms. Jones** if this is an issue that she has looked at? **Ms. Jones** responded the cases that she has looked at have not dealt with health care. To the extent that states have tried to ignore Federal statute or ignore aspects of statute, it has always been preempted. The short answer is that it looks more likely that the Federal statute would preempt in this area.

Senator Kelly commented furthermore, if Federal health care is passed and there are conditions attached to it for the State, such as receiving Federal funds, would this statute prevent that pending litigation? **Ms. Jones** asked **Senator Kelly** to clarify that. **Senator Kelly** said if Congress chooses to tie Federal funding or benefits under some kind of health care reform or services, would the State be able to benefit from this. **Ms. Jones** responded that she believes it will make it more difficult for the State. Again, it depends on what the Federal legislation will look like and if it is in direct conflict with State statute.

Representative Clark stated that he has an opinion from the AG, file

number 09-30129 on the Health Freedom Act, dated January 6, 2010 signed by **Brian Kane**. The first draft was sent and the response is in this letter. The draft legislation was changed to satisfy his concerns. This will not tie the hands of future legislators, they can just repeal it. This bill will protect a person's right to participate or not in the health care system. It protects the right of individuals to purchase. This statute simply protects a person's right to not participate. It is a leadership role in defending Idaho's state rights.

Senator Darrington commented it seems to him that this is more than a Commerce clause. It is a 10th Amendment issue that deals with Federal law which is the cornerstone policy of the organization that he belongs to. There are implications from Article 1, Section 8, of the U.S. Constitution which would be necessary and proper for implications. The pendulum swings back and forth on those issues between the U.S. Supreme Court and Congress. He asked if his interpretation is correct, that this is a Federal issue with implications that are necessary and proper? **Representative Clark** replied that he is absolutely right and some of that language is on the first page of the bill under the public policy statement.

Senator Davis said earlier today in Committee **HJM10** was passed. It is a Joint Memorial regarding the F-35 mission. He asked **Representative Clark** if he is aware of any mandate or requirement that requires members of the military in the National Guard at Mountain Home, that it is mandated or compulsory to have an insurance program that might be jeopardized by passing **H391a.** Will it impair Idaho's ability to negotiate in an effective way to have the F-35 mission at Mountain Home? **Representative Clark** said he has no knowledge of any kind of a mandated insurance on the military. He spent twenty years on active duty and he is a retired Lieutenant Colonel. **Senator Davis** asked if he is aware of any other Federal employee, including those at the Idaho National Laboratory (INL) or other departments or agencies that would compel or mandate any form of insurance coverage that the effect of the passage of this legislation would jeopardize their participation or involvement in our State? **Representative Clark** replied that he has no knowledge of anything like that. **Senator Davis** asked if he had inquired? **Representative Clark** stated that he had.

MOTION: **Vice Chairman Pearce** moved to send **H391a** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion.

Senator Kelly said she has one final question for the sponsor. Would he be willing to share the AG's opinion that he just referenced? **Representative Clark** said yes.

Senator Davis commented that he is the first to acknowledge that the issue of preemption is an area since the days of **FDR** that legal scholars have disagreed on, and they will continue to disagree. He appreciates the honesty of **David Irwin**, and acknowledging judicial tension. It is real, it exists, and there is conflict among this Committee as to what the court's will do. Perhaps there are bigger conflicts among this Committee as to what the courts should do to resolve that tension. He does not know what

all the unintended consequences are, but he has confidence in the legislature to make adjustments in the future, as may be needed to preserve the important mission of the military within the State of Idaho and particularly the INL. **Senator Davis** stated that he intends to support the motion.

Senator Kelly said if this bill were a Resolution she would not have the concerns that she has. Amending code and putting language in statute is a big deal. When we are talking about a speculative issue, the mechanism frequently used is to send a Resolution to our congressional delegates and our fellow colleagues in Washington. She believes that is an appropriate mechanism. When we start putting things in code there is a potential for unintended consequences. On an issue as important as health care, it is important for all citizens to have access to health care. Interfering with that access gives her great pause. It is hypothetical and a concern to her as well. Our efforts in terms of influencing what happens, are very well directed at the national organizations that we participate in, working with other State Legislators to provide a strong State voice into how we think the Federal government should resolve issues. Individual states should have an individual voice. We should be directing our efforts with our congressional delegation so they understand how we feel. This particular mechanism that is here before us is a statutory change, and it causes her great concern. She is not questioning the good intent of the sponsor.

Senator Stennett said she too has reservations primarily because we are talking about a Federal health care plan that may not even happen. In this case, we are trying to do a bill for Federal legislation that doesn't even exist. We should address this at that point when there might be a problem instead of assuming that there will be one. She cannot support something that has content that doesn't even exist.

Senator Fulcher said this is a fight that none of us want. Within the last twenty four hours, two members of our congressional delegation came to speak to us. Unfortunately it reinforces in his mind, and the vast comments that he gets from his district, that there is a lack of confidence in what is happening at the Federal level. This is from both major parties. That segment of government has not demonstrated wisdom in fiscal matters and some may argue in other matters as well. But there is a huge trepidation in what the Federal government may do to our health care system. He understands the conflicts and there certainly are some legal issues, and frankly he is anxious about it. On balance he is more interested in the ramifications of doing nothing. He will support the motion.

Chairman McKenzie requested the Committee secretary to take the roll call vote to send **H391a** to the floor with a **do pass** recommendation.

Vice Chairman Pearce - Aye
Senator Darrington - Aye
Senator Geddes - Aye
Senator Davis - Aye

Senator Stegner - Nay
Senator Fulcher - Aye
Senator Stennett - Nay
Senator Kelly - Nay
Chairman McKenzie - Aye

Chairman McKenzie stated the motion carries.

ADJOURN: There be no further business before the Committee, **Chairman McKenzie** adjourned the meeting at 9:40 a.m.

Senator Curt McKenzie Chairman	Deborah Riddle Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	February 19, 2010
TIME:	8:00 a.m.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett and Kelly
MEMBERS ABSENT/ EXCUSED:	None
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

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

PRESENTATION: **Chairman McKenzie** presented **Noah Bush**, the Committee page for the first half of the Legislative session, with a letter of recommendation and commendation for his work. He asked **Noah** what his plans are for the future. **Noah** responded that he is going to Spain for a year after graduation and at this time he doesn't have any plans for college.

GUBERNATORIAL APPOINTMENT: **Harold Davis**, who was appointed to the State Building Authority, addressed the Committee and stated that he has served as a member of the State Board of Education, which was an eye opening experience for him in terms of understanding how the State operates. He believes that experience will help him on the Authority, by knowing the roles of the different entities. **Mr. Davis** said he has a degree in electrical engineering and he and his wife purchased a controlling interest in a corporation that sells electrical wholesale supplies. In that role he works with architects, general contractors and owners of projects.

Senator Davis asked **Mr. Davis** if he has attended any meetings since he was appointed to the Authority? **Mr. Davis** said no there have been no meetings. **Senator Davis** asked **Mr. Davis** if he has had any judicial or regulatory actions taken against him in the last five years. **Mr. Davis** said that he hasn't. **Senator Davis** asked if he has any withheld judgments or does he currently have any violations against him? **Mr. Davis** answered he does not. **Senator Davis** asked if he had ever had a speeding ticket. **Mr. Davis** said he has not, only a ticket for a tail light that was burned out. **Senator Davis** asked **Mr. Davis** if he has any business relationship or financial transaction that might create a conflict of interest in serving the Authority. **Mr. Davis** responded he does not. He is, however, aware of one project that the company his grandson works for has bid on, so he will recuse himself from that. **Senator Davis** asked **Mr. Davis** if he had

ever been a registered lobbyist in the State? **Mr. Davis** said he has not.

Senator Stegner said he will use the term of endearment that the last senator did not, "welcome dad." He commented that it is a pleasure to have him here today. If it were not for the State Building Authority, they would not have been able to issue bonds for the renovation of the Capitol. The Authority has a unique function in the State. With his past history of service to the State, they could not have found a better candidate to serve on the Authority.

Senator Geddes commented what impressed him most are the many organizations, fund raising efforts and community service that **Mr. Davis** has participated in. That in itself speaks well to the consideration and wisdom that he has in his local community, where he has been well known for many years. This is a wonderful appointment for the State of Idaho and he trusts that his judgment, wisdom and decision making process will serve the Authority very well.

Chairman McKenzie thanked **Mr. Davis** and advised him that the Committee will vote on his appointment at the next meeting.

The confirmation vote of **John Ewing** to the State Building Authority was before the Committee.

MOTION: **Senator Davis** moved to confirm the appointment of John Ewing to the State Building Authority with a recommendation that it be confirmed by the Senate. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

RS19502 **Senator McGee** presented **RS19502** to the Committee and stated this was brought to him by a constituent who has a nephew who is serving in the U.S. military. He has a concealed weapons permit and upon his return from Iraq, he learned that he was late in renewing his permit. There is a ninety day period in which to renew it and for the obvious reason he could not. He was charged a fine when he renewed his permit. **Senator McGee** said he spoke with the Legislative Services Office (LSO) to see if code could be refined for those serving in the military.

Senator Kelly asked **Senator McGee** what is the penalty for having an expired permit? **Senator McGee** replied that the penalty is $10 in addition to the renewal fee. **Senator Kelly** said is that the only penalty, and can they carry a concealed weapon when they are on active duty. **Senator McGee** responded when they return from active duty, he does not believe that they can legally carry a concealed weapon without a permit.

MOTION: **Senator Fulcher** made the motion to print **RS19502** and **Senator Geddes** seconded the motion.

Senator Davis said he favors printing the RS, but when he looks at line 39 where it talks about being stationed or deployed, "during the renewal period," the renewal period is ninety days before and after. Does the language mean that the person has to be absent for one hundred eighty

days, and if they return on day eighty to renew, would they be subject to the penalty because there are ten more days in which the renewal period didn't apply to them. He wonders if the language should say during any of the renewal period. **Senator McGee** responded that is something that he hadn't thought of in those terms. If the Committee agrees to print this, he will have further discussions with LSO to see if that is a better approach to this issue. **Senator Davis** said this can always be taken to the amending order to insert necessary language.

The motion carried by **voice vote.**

RS19665

Senator McGee said **RS19665** is an issue in Canyon County that many have been working on for several years. Essentially, this will allow a public housing provider to maintain those premises in a safe and sanitary way. The issue in these public housing arenas, is that people can commit crimes and various other things and not be evicted. Under this legislation any tenant will be evicted, if they are found to be a health and safety risk to other tenants residing in the immediate vicinity, or if they commit a crime or knowingly provide false information as described in this bill. **Senator McGee** stated that this particularly takes place with gangs in these public housing facilities. The gang members may have been convicted of a crime and the housing authority cannot evict them. As a result, those who are abiding by the law and work to provide for their family live in a threatening environment. This bill is not any different than the Federal law and the idea is to codify it in State law to help them deal with these tenants.

Senator Darrington said he supports what **Senator McGee** is doing, but his question relates to the financing of these projects, which are federally financed. He asked if there are provisions in the financing part of the Federal law than the general housing law, that will interfere with being able to do this through the financing arrangements? **Senator McGee** said that is something he doesn't know, if the Committee will print this he will be happy to provide that information. **Senator Darrington** said he asked that question because it is something that has been discussed in conversations that he has had in the past.

Senator Kelly said she believes that as a matter of the Tenant Act and the contract, that there would already be a mechanism in place for dealing with this situation. **Senator McGee** responded when he was first approached by this issue, that is the first question that he asked. In the process of trying to litigate this, it simply does not work in the current landlord tenant laws to evict those bad actors from public housing. He is not one to bring legislation that is repetitive or something that is already in statute. This is still an issue for them.

MOTION:

Senator Fulcher moved to print **RS19665**. **Senator Stegner** seconded the motion.

Senator Stennett said it troubles her when everything like safety and cleanliness is put together. She understands lack of safety, but it appears rather broad and it brings to her mind that a landlord could possibly evict someone unfairly, because the tenant is not clean or sanitary enough for

the development. She asked if there is something in this that clarifies that? **Senator McGee** replied that the cleanliness and sanitary reference goes to graffiti, which is one of the issues. There is an immense amount of graffiti, so that reference does not apply to a person, it has to do with some of the activities that are taking place. **Senator Stennett** asked if that is clear within this, that it means defacing property? **Senator McGee** said he certainly believes that it is the cleanliness of the facility as opposed to the individual.

Chairman McKenzie said there is a motion and a second to print the RS. The motion carried by **voice vote.**

RS19655

Joel Teuber, who represents the Fraternal Order of Police, presented **RS19655** to the Committee. **Officer Teuber** said two years ago the Legislature passed the Victims Address Confidentiality bill to protect victims of domestic violence or stalking. This will mirror that legislation but it will use a different mechanism to accomplish it. It is expanded to cover police officers, prosecutors, judges, correctional officers and those who are in the public safety field that are often threatened. By bringing this legislation forward it addresses the problem, but it also publicizes how easy it is to obtain a police officers home address and to be able to threaten them as well as their family. The definition of law enforcement officers includes detention officers, Federal law enforcement officers, probation, parole and correctional officers.

Officer Teuber stated as some examples, a few years ago an Idaho sheriff was shot when he answered his door. The Department of Corrections has reported several incidents where inmates family members have acquired correctional officers addresses or phone numbers to threaten, harass or intimidate them and their families, sometimes to the point of trying to coerce the staff member to do favors for inmates. In Illinois, a female police officer had a suspect burn her house to the ground, simply because she was a police officer. Her three children were at home at the time, and escaped with burns and smoke inhalation. In 2008, **Officer Jason Rose** of Boise City Police had an incident when he arrested a female a second time for driving under the influence (DUI). **Officer Rose** did not recognize her at first, and when her mother showed up she began telling the crowd where he lived and his address. Eventually the mother posted this information on the internet including information about his children and suggested that they should harass them. In Canyon County a man was arrested by undercover officers, when he tried to buy a stolen weapon in order to ambush and kill the Homedale Police Chief. A Gooding officer tried to serve a search warrant when he was shot at. Recently a Boise City prosecutor brought charges against motorcycle gang members from out of state. When he met with the defense attorney he suggested if he went forward with the charges, he was going to provide his home address to the gang members, so they could take it up with him at his house.

Officer Teuber said there are intelligence bulletins that talk about drug cartels who target officers, because they know they can find guns there. These home addresses need to be kept private, and the best way to do

that is to keep it out of the public entities. Anyone can go to the county assessor's office, look up his name and find his address. This is not only disconcerting to him, but to his family. When officers are on duty it is difficult to protect their families. This bill will allow them to fill out an application, have a signed sworn affidavit by their employer and take it to each public entity to request that their address be removed. A concern that was raised, is that the public entity would not have time to react to this, but the Victims Address Confidentiality bill has been on the books for two years. They have already had to comply with this, just not to this extent with those who may come forward. Taking that into consideration, this will not go into effect until January 1, 2011 to allow time to react to this. The main difference will be that the burden of the Victims Address Confidentiality Act is placed on the Secretary of State (SOS) and this will be handled by Police Officer Standards and Training (POST), who is supportive of doing this. If the agency has a fee associated with doing this, the officer will pay the fee to that agency. The FOP is supportive of this bill, the Idaho Sheriff's Association, the Idaho Chief of Police and the Idaho Prosecutor's Association.

Senator Davis said on page 5, it states Idaho residential street address. Some officers may live in areas that surround our State because of the cost of living, and commute to Idaho to perform their job. He asked if they are required by law to be an Idaho resident in order to meet the definition of law enforcement officer? **Officer Teuber** responded the reason Idaho residential street address was inserted is because it would not affect someone who lives outside the State. As far as a requirement for being an Idaho resident, he does not believe that there is one. **Senator Davis** asked will the phrase "alternate main address" apply to this concern? **Officer Teuber** replied he does not understand the question. **Senator Davis** asked if he could think of an example where the information that he is trying to protect is actually Idaho information, that they reside in another state. **Officer Teuber** said this is something that did not cross his mind, but he will look into that.

Officer Teuber said he understands that while public records can remain private, there are issues where personal responsibility will have to be taken to protect their safety. On page 6 of the bill the definition of who is covered is defined and on page 7, line 10 it states that a public agency shall not disclose an address or phone number of a law enforcement officer and their residing household members. On lines 16 to 25, it creates some exceptions, with a court order they could receive that information. The County Assessor's Office would have to have written permission from the officer, because there may be a time when that information is needed. Some codes were changed to voter registration and the department of motor vehicles for driver licenses and identification cards, and for vehicle registration as well. **Officer Teuber** stated that they do not believe it is the responsibility of the Legislature to protect these law enforcement officers, they are asking for a mechanism to protect themselves and their families.

Senator Geddes commented that the intent of this is good, but for the most part our State has many rural areas. It may be difficult to protect

those officers who drive their vehicles home and park them in their driveway at night. He asked how can we protect them in those circumstances? **Officer Teuber** responded there are some officers in those communities. He has talked with them and they do make an effort to try and keep their address private.

MOTION: **Senator Darrington** moved to print **RS19655**. **Senator Kelly** seconded the motion.

Senator Davis said that he intends to support the motion, but there is a difference in the legal definition of domicile versus residence. Will this protect only the Idaho residence and not multiple residences that they may have. This may be more narrow than was intended.

The motion carried by **voice vote.**

RS19662 **Roger Batt**, who represents the Idaho Grape Growers and Wine Producers Commission, presented **RS19662** and stated that section 23-1307 (f) of the County Option Kitchen and Table Wine Act, currently requires wineries who sell wine by the drink, to purchase a retail beer license. This makes no sense to this industry to purchase a beer license in order to sell wine. This requirement also adds a financial burden to these business owners in the State. **Mr. Batt** said that **RS19662** authorizes wineries to sell wine by the drink, and at retail, off of the wineries original licensed premises without having to purchase a retail beer license. He met with **Lt. Clements** at the Alcohol Beverage Control (ABC), and they are not opposed to this legislation. There will be a $1,500 fiscal impact to this agency to make the changes in the agency documents. This will provide a cost savings to the Idaho wineries that by far exceeds that cost to the ABC.

Senator Darrington said he couldn't begin to understand why they would need a beer license in order to sell wine. His question is if there is another definition for beer and wine other than the alcohol content. **Mr. Batt** replied he cannot think of any, only definitions of wine by the drink license. **Senator Darrington** asked **Mr. Batt** if there is a definition in Idaho Code for the difference between beer and wine other than the alcohol content? **Mr. Batt** said he cannot think of one.

Senator Stegner asked **Mr. Batt** what is kitchen wine as opposed to living room wine? **Mr. Batt** responded that the way he understands this, under statute, wine can be manufactured and sold if it is less than two ounces. In statute, the County Option Kitchen and Table Wine Act, allows the county to determine whether or not they will permit the sale of wine in that specific county. A winery must be licensed in order to sell wine and a winery license is $300 a year. **Senator Stegner** asked if he knows why the term "kitchen" is applied to that? **Mr. Batt** replied that he does not. This was enacted in the early 1970's.

Senator Davis said on line 32 the phrase "which do not sell wine by the drink" is stricken. That seems to be more significant than what is being added. He asked **Mr. Batt** to provide him comfort with that. **Mr. Batt** said if a winery currently holds a winery license and sell wine by the drink, they

have to purchase a retail beer license in order to sell wine. This makes no sense and it also applies to a license on premise as well as off. The problem is not with the licensed premise it is with off the premise. When the winery is required to purchase a retail beer license as a prerequisite to also sell wine by the drink, they are viewed as a bar or tavern by the incorporated city and they have to pay additional fees to the city and State for the beer license. **Senator Davis** said he appreciates that it may not make sense to him, but it made sense to our predecessors. He said if the facts have changed since that phrase was first put in Idaho Code and he were to ask the sponsors of the bill why they put that phrase in the Act, what would they use as a defense. **Mr. Batt** replied he has been told that it was an oversight. In the 1935 Beer Act there were a lot of beer taverns across the State. When this Act was enacted in 1971, everything centered around a beer license, which he was told by ABC because of the 1935 Beer Act. When the County Kitchen Act was enacted, it was an oversight on their part.

Senator Kelly said the Statement of Purpose states that ABC claims there will be a one-time fiscal impact. The use of the word "claims" implies that there may be some doubt. **Mr. Batt** said ABC did not provide any written documentation to him. He was told over the telephone by **Lt. Clements** that it is an approximate number. It is not worded that way to be vicisious.

MOTION: **Senator Fulcher** moved to print **RS19662** and **Senator Stegner** seconded the motion. The motion carried by **voice vote.**

RS19668 **Chairman McKenzie** said that **RS19668** comes to this Committee from the Commerce Committee. He has a letter from the Chairman requesting to print and return it to them. **Senator Stegner** stated that **RS19668** is a rule rejection for a plumbing licensing rule. The rejection was requested by the Division of Building and Safety. The Committee had approved it and the Division requested it be rejected because of some language problems. It simply is a matter of a sentence that was left out that changes the meaning of one of the license requirements. The Committee has rejected this rule and **RS19668** will go direct to the Senate floor.

MOTION: **Senator Darrington** moved to print **RS19668** and **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote.**

RS19573 **Senator Geddes** stated that **RS19573** cleans up language that was left in code when changes were made to legislative compensation. As most know, additional compensation was paid to certain legislators when we were not in session. It was recommended by our citizens committee to change this. The section that is being deleted was inadvertently left in code. The primary substance of **RS19573** is to establish the compensation that is paid to members of the Redistricting Commission. The commissioners will be appointed next year and this will establish the rate of pay they receive, to help in the planning process and it will be an incentive for someone to accept an appointment, knowing there is some compensation established. In 2001, when the six commissioners worked on the redistricting plan, the total compensation amounted to about $7,000 which was based on a $50 per day rate. The budget for the 2011

redistricting will be established with $424,000 to complete that effort, with a $75 per day rate, plus travel, food and lodging expenses. The compensation paid to the commissioners will be around $20,000.

MOTION: **Senator Fulcher** moved to print **RS19573**. **Senator Stegner** seconded the motion. The motion carried by **voice vote.**

RS19592 **Senator Geddes** presented **RS19592** to the Committee and said this was introduced last year at a late date, and he agreed to hold it. **Senator Geddes** stated that he has done additional research and he believes that it is good legislation. It essentially looks at the statutes regarding the Public Utility Commission (PUC) and how they are required to act on a rate case that is brought before them. The original language in statute was adopted from California statutes, that were written and drafted in 1913. There were slight revisions in the mid 1970s. The most meaningful aspect of this proposed legislation, is that it will bring Idaho into compliance with the time frame that neighboring states allow their PUC commissioners to act on a rate case. Currently, Idaho allows six months for discovery, evaluation and for a decision to be made. Idaho's surrounding states offer their commissioners between eight and ten months to make the same determination. This will standardize our State and give our commission more time to complete this process and make the determination, that will be beneficial to ensure that the principles of rate setting are followed. In addition to that, it will eliminate *Idaho Code 62-623*. If you read codes 622 and 623, they are very confusing and there have been Supreme Court lawsuits over those sections and how they are interpreted. *Idaho Code 623* needs to be maintained and incorporated into the drafting of this proposal, so that the elimination of 62-623 will not cause any damage to that section.

MOTION: **Senator Fulcher** made the motion to print **RS19592**. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote.**

MINUTES: **Chairman McKenzie** said there are minutes to be approved. He requested a motion related to the minutes of February 5, 10, and 12.

MOTION: **Vice Chairman Pearce** said that he has read the minutes of February 10, and found them to be in order. He moved to approve them. **Senator Darrington** seconded the motion. The motion carried by **voice vote.**

Senator Kelly stated she has reviewed the minutes of February 5, and she moved to accept them. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

Senator Stennett moved to approve the minutes of February 12. **Senator Darrington** seconded the motion. The motion carried by **voice vote.**

ADJOURN: **Mr. Davis** addressed the Committee and said in regards to **Senator Davis'** question as to whether or not he had received a ticket, he did receive one recently in Utah. He was ticketed for following too close.

Chairman McKenzie adjourned the meeting at 9:02 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	February 22, 2010
TIME:	8:00 a.m.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett and Kelly
MEMBERS ABSENT/ EXCUSED:	None
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

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

RS19678 **Senator Siddoway** presented **RS19678** to the Committee. He stated the purpose of this Joint Memorial is to ask the President of the United States and the U.S. Congress, to undertake an immediate and thorough review of federal expenditures under the Equal Access to Justice Act and other attorney fee shifting statutes. This Memorial will also restore the transparency lost due to the1995 Paper Reduction Act.

Senator Stennett asked **Senator Siddoway** to explain why the ranchers can't recover their attorney fees? **Senator Siddoway** said for example, Western Watershed files suit against the Federal government because they aren't protecting the stream banks. In some cases, the Federal government hasn't presented their case, so the grazers on the stream bank file an amicus, and become a friend of the court. The grazer's attorney can argue the point that the stream banks are protected. The rancher would then file suit and hire an attorney, and he will be liable for the court costs whether the government or Western Watershed prevails. Should the government prevail, there are no court costs or attorney fees paid. If Western Watershed prevails, they would win the case and have attorney fees paid to them. **Senator Stennett** said then you are just trying to ask the government to use due diligence and follow up. She asked how do you see this changing for the ranchers? **Senator Siddoway** replied he does not see that the outcome of the cases will change, he is asking for the transparency to show that there are environmental groups that literally make a living off filing suit against an entity. **Senator Stennett** said with all the research he did, did he only look at what has happened between the ranchers and environmentalists, or is this trend impacting others? **Senator Siddoway** responded this primarily looked at ranchers, but there are suits filed against every resource user within the United States.

MOTION: **Vice Chairman Pearce** moved to print **RS19678** and **Senator Fulcher** seconded the motion. The motion carried by **voice vote.**

S1353 **Chairman McKenzie** said there are several individuals that have signed up to testify in support and in opposition to this bill. He will allow the sponsor of the bill to present the bill, and then take their testimony.

Senator Winder presented **S1353** to the Committee and said the intent of this legislation is not to restrict or limit in anyway healthcare services to women or men in Idaho. It is simply an attempt to offer the same right of conscience to allow licensed healthcare professionals, a right currently enjoyed by physicians, hospitals and hospital employees. Idaho Code Title 18 Chapter 6 codifies Idaho's statutes regarding abortion related services. Section18-612 already allows for physicians, hospitals and hospital employees to exercise their right of conscience with respect to abortion. **Senator Winder** stated that he finds it strange that when 18-612 was drafted and subsequently passed, that it did not include all licensed healthcare professionals. **S1353** is an attempt to correct what he believes was an oversight. Along with the co-sponsors he was asked to draft and present a bill that would remove this oversight from Idaho's current code. The initial bill, **S1270** was redrafted after a variety of concerns were raised. **Senator Winder** said that **S1353** represents the collective attempts to address some valid concerns about the previous draft legislation. The sponsors met with representatives of the Idaho Medical Association (IMA), the Idaho Hospital Association (IHA), Planned Parenthood of Idaho, pharmacists and Idaho citizens. Most of the collective concerns were addressed and resolved. If all the objections were accommodated, then it would defeat the intent of the proposed legislation. The concerns of the IMA and the IHA have been addressed. These concerns centered on definitions and patients' rights.

The sponsors worked with the Attorney General's Office (AG) over the past months and believe that **S1353** meets their potential tests. The AG's opinion was provided to the Committee. **Senator Winder** stated some will testify today that if someone does not want to do something they believe is against their conscience, they should just quit or not take that job. But if you are a single parent and your family is depending on you, it may well place that person in a very difficult situation. Those individuals should have the right to exercise their right of conscience without fear of being fired. Or if a pharmacist determines that a prescription may cause the untimely death of the unborn or even an elderly person, they too should have the right of choice to just say no. Some may testify that people in the healthcare profession have no right to object or deny care or drugs wanted by a patient or by the public. They will likely testify that the patient's rights trump those of the healthcare professionals. When medical professionals are stripped of their right of conscience, that could be very dangerous. Some will likely say that this is just another right wing scheme, but those who oppose this legislation should recognize the right of a conscientious objector to military service.

Senator Winder said **S1353** does not restrict or reduce healthcare services, it does not regulate the pill or a woman's access to

contraceptives, it does not require any healthcare professional to do anything, it does not provide for any penalties or fines of healthcare providers and it does not restrict access to Emergency Contraceptives. This only applies when a healthcare professional gives written notice and subsequently wishes to exercise that right of conscience to not do something, that they sincerely believe to be in conflict with their religious or moral beliefs. Section 3 provides for written notice prior to exercising their right of conscience and Section 4 provides that even if they have, and it is a life threatening situation, they have to provide services until another competent health professional is available to do so.

Senator Kelly commented that **Senator Winder** mentioned that the Committee should have copies of the AG's opinions. **Senator Winder** said there are three opinions that were made over the past few months, he will make sure that they are provided. **Senator Kelly** asked if they have been provided in advance. **Senator Winder** said that they were provided, if not, it was an oversight. He did not provide copies this morning, he was told that they were previously provided to them. **Chairman McKenzie** said the Committee does not have them.

Senator Stennett asked **Senator Winder** if employees, hospitals and healthcare providers are excepted from discrimination under Title 7 and the Human Rights Act? Senator Winder responded that under current code, 18-612, doctors, nurses and hospitals are protected and they have the right to exercise that. It does not cover physicians or professionals that are in private practice. **Senator Stennett** said it is her understanding that in Title 7 and the Human Rights Act, no employee can exercise any kind of discrimination because of religious beliefs. She is confused why this would selectively pick some and not others. **Senator Winder** said those are certain types of protections and there is an attorney here that knows more about that than him. He is aware of a case in the 9th Circuit in Washington, *Stormans, Inc. v. Selecky*, that deals with a pharmacist. The court upheld that the first amendment does not protect the right of conscience and if the state wants to protect the right of conscience, they should put it in code so that it is very clear. **Senator Stennett** stated that **Senator Winder** had said that the heart of this bill is in 5 and 6 regarding healthcare providers and pharmacists. She is confused why the abortifacient clause was added. He mentioned emergency contraception and said that this is not about that, it is mostly for the protection of healthcare providers and pharmacists. Her concern is that some abortifacients are also used for other conditions such as stomach ulcers. If you lump this all together a patient may not have access to a medication that is used for a completely different condition. Emergency contraception is not an abortion pill. Putting that under abortifacients is misleading. She asked **Senator Winder** why is that in the bill? **Senator Winder** responded this was one of the more difficult areas of the bill, in terms of coming up with a definition that was acceptable. If you look at Idaho Code, this is not entirely a new definition, but it is different for this. It deals with the taking of an embryo or a fetus through the use of a drug. The healthcare provider has the discretion to use that particular drug for other services, so they may not find an objection to that. This does not limit any physician from doing what they want to do. Idaho Code is very flexible and broad in scope to allow all

sorts of abortions that meet certain conditions. He does not believe this will take away the availability or the practice. **Senator Stennett** said emergency contraception by virtue of definition is not allowing the egg to fertilize, and therefore is not even a part of this conversation. Where do you fall in the argument of embryo, fetuses and abortion, this does not apply. **Senator Stennett** stated that she personally objects to this language because it is very misleading. She said if you keep that in this, it needs to be more precise. She asked why he felt that he needed to include that in this portion of the bill? **Senator Winder** replied this is the area where this definition became acceptable to the parties when we were trying to define it. Part of the issue with this, is that if it should become law, it has to look at what might occur. There are drugs that fall into something in between what they might consider as plan b. This is really an effort to try and let the healthcare professionals who deal with this to make that determination on their own. **Senator Stennett** said that he mentioned that he worked hard to appease or satisfy those who worked on this. She asked who worked on this and the language that is agreeable? **Senator Winder** asked if he could yield to **David Ripley**.

David Ripley, Executive Director of Idaho Chooses Life, said that they were involved with the IMA in the definition of abortifacient. The real difficulty was trying to distinguish between birth control pills versus emergency contraception. The truth is that contraception can prevent fertilization of the ovum, but it can also interrupt the implantation of the fertilized ovum in the uterine wall. So to make that distinction in the bill, it came down to a simple decision to identify that class of drugs known as emergency contraception, or the morning after pill. **Senator Stenett** asked **Mr. Ripley** if he felt there wasn't real clarity about the definition of what emergency contraception is and it was added just in case? **Mr. Ripley** responded that is not correct. Emergency contraception is one of the more important features of this bill. There are healthcare providers who are concerned about that moral question regarding a drug that can end a life. Emergency contraception is very difficult to classify because it works in several possible ways. The issue was trying to distinguish it from birth control pills. **Senator Stennett** asked **Mr. Ripley**, in his opinion, was this the more important part of the bill and not necessarily protecting the beliefs and the rights of the providers? **Mr. Ripley** stated he believes they are saying the same thing. It is the moral beliefs and the scientific beliefs of the healthcare providers regarding the use of this drug.

Senator Davis said if he is interviewing for a pharmacy position and he is in the business of dispensing medication that others may struggle with and benefit from, he needs to make sure that he has professionals that are able to dispense medication. He asked **Senator Winder** if this will make it unlawful for him to ask "will you have a problem dispensing this type of medication", and will he also be able to make the decision to exclude them as an applicant because of their moral beliefs? **Senator Winder** said he doesn't believe there is anything in this legislation or in code that would prohibit that discussion between a potential employee and employer. **Senator Davis** said the language in subpart 2 says no healthcare professional, but it doesn't say they are an employee. The definition of a healthcare professional means anyone that is certified or licensed to do

something, not that they qualify as an employee. In his opinion, healthcare professional could apply to an applicant. The language "shall be required to provide" seems to suggest an act of employment. **Senator Davis** asked if the language in line 41 will prohibit an employer at the front end of the employment process? **Senator Winder** responded it is not his intent to prohibit contractual rights between individuals. There may be other Federal laws involved that could trump what we are talking about. This is an area that he doesn't know a lot about, so he will defer that to **Christ Troupis**.

Christ Troupis, who represents Idaho Chooses Life, said in response to **Senator Davis'** question, an employee or applicant would be considered a healthcare professional and would be included in the application of this bill. The bill does not change any requirements under Federal or State law with respect to discrimination. Therefore, an employer cannot discriminate against a prospective applicant on the basis of their religious or moral convictions. They cannot discriminate against in this case based upon them exercising their right of conscience. **Mr. Troupis** said under Federal and State law, if you could demonstrate undue hardship, the employer would not have to employ that person. In a small community, like Burley for example, where there is only one pharmacy that can provide services, it would be considered a hardship to hire a pharmacist who cannot provide that service. In the Stormans case, the court specifically said that if the service wasn't otherwise available, that the pharmacy could hire those who can provide that service. That exception under exiting law protects those who have a right to conscience and the pharmacists and pharmacy in small communities. **Senator Davis** asked **Mr. Troupis** if the question can be asked in the interview? **Mr. Troupis** said yes, he believes that question can be asked. It isn't discriminatory to ask the question. It is discriminatory if the purpose of the question is to identify an individual that you are not going to hire, where there is no undue hardship. For example, if you are Walmart, and you have twenty five pharmacists on staff, it is easy to schedule a pharmacist or find an alternate pharmacist to provide a service. Walmart cannot say they will not hire anyone who exercises a right of conscience. That would be discriminatory. **Senator Davis** said the precedent that you are relying on is not necessarily a precedent that deals with freedom of conscience legislation. He asked if that is a fair analysis? **Mr. Troupis** said that it is. The *Stormans v Selcky* case is basically the first case that has addressed a right of conscience issues. The issue on this specific area is up in the air. However, Federal law on discrimination is very well established. The extrapolation that he is making is well within the parameters of other employment cases. **Senator Davis** requested that this particular discussion be included in the Committee minutes. For him, it is an important component of possible interpretation of the act judicially, and it should be more substantive. **Chairman McKenzie** said your request is noted, and we will endeavor to do that.

Senator Stegner said **Mr. Troupis** stated that the undue hardship exception would allow a discussion in an employment interview to take place. It would also allow an employer to fire an employee in that small rural pharmacy where the undue hardship makes it impossible for the pharmacy to operate. **Mr. Troupis** responded that it could be

accomplished under the terms of this legislation. If an employee decides to exercise their right of conscience, they have to give notice to the employer in advance. In this case, the employer is giving notice to the employee in the interview that the terms of their employment precludes that notice. If the employee gives that notice that they are unable to comply with the terms of their employment, than the employer could notify the employee that it constitutes an undue hardship that cannot be accommodated. **Mr. Troupis** said that would justify termination. Under case law of Federal discrimination suits, where there is a specific undue hardship that cannot be reasonably accommodated, the employer is entitled to terminate that employee.

Senator Darrington said if that small pharmacy in Burley wants to be competitive and fill the prescriptions that come his way, **Mr. Troupis** stated previously that it would only be a hardship if the person couldn't get the prescription filled. What about the big pharmacies in Burley. He believes the small pharmacy is at a competitive disadvantage if he elects to fill prescriptions rather than elect to exercise his right of conscience. **Mr. Troupis** said there are occasions where an employer could terminate an employee. **Senator Darrington** asked which is it? **Mr. Troupis** replied that he was talking about a small community where there were no other available resources. The question was asked whether or not a pharmacy could elect to not hire a pharmacist who has a right of conscience and chooses to not provide a service. The law is clear, if it means the denial of that service to that a community that the pharmacy is providing, that pharmacy could use that fact to elect not to hire that individual. In your example, since there is an alternative pharmacy to provide that service, it means that pharmacy would not have that option. The right to undue hardship is determined on the individual employer basis, not the community. **Mr. Troupis** said that pharmacy has a right to conduct his business the way he chooses. If they hire only one pharmacist and they want to be competitive in the community, then that pharmacy can elect not to hire an individual who has opted to exercise their right of conscience, because it will prevent that pharmacy from providing that service. He does not have specific case law to give him a specific answer, but the Federal cases on undue hardship are applied to the specific employer, not to a group of employers in a community. If an employer is only hiring one person and they cannot provide all services, then it imposes an undue hardship on the employer, regardless of the fact there is another pharmacy down the street that can provide those same services. The employer can make that determination based on their business. **Senator Darrington** said thank you, but you are the one who raised the issue of a small pharmacy, and you stated only if the service was not otherwise available in a small town. Now **Mr. Troupis** states if they are at a competitive disadvantage they could exercise, so which is it? **Mr. Troupis** responded there are two aspects to this question. First, the right of the employer and second the right of individuals to have the service in a community. With regard to individuals in a community who want a particular service, there has been case law which was discussed in the Stormans case. It was the only pharmacy in town and those individuals might be denied service, so with respect to their rights, that issue was raised. He was trying to address that. Case law that he has seen, states that an employer can assert that if

they have that undue burden that cannot reasonably be accommodated if they are required to hire or retain a particular individual. That is on an employer basis, not a community standard.

Senator Stennett said if there is a single provider in a community and someone has a life threatening condition, and the pharmacist decides not to dispense or provide help to that person, where do they go and where does it start and stop with the rights of the employer and the patient. **Mr. Troupis** responded in paragraph 4 and 6 it provides that in a life threatening situation the immunity for liability and the immunity or exemption from the duty to provide care is extinguished. In that case, the life threatening situation trumps an individual's conscience rights and care must be provided until another capable qualified healthcare professional is available to assume that care. **Senator Stennett** said there is ambiguity there and someone could fall through the cracks. This is disturbing to her if they are in a life threatening situation and it is up to the pharmacist to decide whether it is reasonable or not. In a life threatening situation and there is no where else to go, is there something that provides where the next provider is, and who will give them help if that person needs that in a timely fashion to get the service they need? **Mr. Troupis** said they have not included any other provisions in this bill that would add other duties in the case of a dispute of that nature. They have provided for the life threatening situation and there is an exclusion for potential liability in that situation. These are healthcare professionals who make decisions in difficult situations all the time. There are many situations that are ambiguous in the medical practice that can't be avoided. In this instance it would have to be an individual pharmacist, not a person employed who gave advance notice. If an individual pharmacist was in this type of situation, the fact that there is potential liability for making a gross err in judgment, they would protect the life of that person. Again, we are talking about religious and moral convictions and he believes those who exercise these decisions, are people who respect life and he does not think anyone would treat that situation callously.

Senator Winder commented someone is not going to walk into a pharmacy with a life threatening situation, they will go to a hospital. So this issue would be rare. He does not see someone who has been in an automobile accident walking into a pharmacy requesting something. A pharmacist can only dispense prescriptions that are controlled substances with a prescription that is ordered by a physician.

Senator Kelly said this just doesn't apply to a pharmacist who administers medication. **Senator Winder** said the question that was asked dealt with a relationship of a pharmacist. **Senator Kelly** said this same situation could apply in an emergency hospital situation where the healthcare provider is not a pharmacist, but a doctor or a nurse. There could very well be someone in an emergency situation and they could potentially be denied healthcare. This is putting that emergency care provider in a situation where they have to make a quick decision. **Senator Winder** said those individuals deal with those situations every day and he believes the healthcare professionals already deal with that and handle it very well. This will not change anything from that perspective.

TESTIMONY: **Mark Mering M.D.**, a family practitioner physician, testified in opposition to **S1353**. **Dr. Mering** said that he has delivered over one thousand babies and he works with women in family planning, reproductive healthcare, and as a general practitioner he deals in all areas of medicine including end of life and beginning of life issues. This bill appears to primarily deal with abortion, including emergency contraception, but it does a lot more. It interferes with the doctor patient relationship. It interferes with his ability to help patients guide their healthcare decisions. Emergency contraception is not an abortion pill and it is not exactly clear how it works. It interferes with the fertilization, it does not cause an abortion, and it is approved by the FDA. It is available to those over eighteen years of age without a prescription. **Dr. Mering** stated that he does not see this will provide protection for the patient. As a physician, he has taken an oath to help his patients. He does not believe that individuals who are not closely connected to patients should interfere and place their belief systems on patients.

Senator Geddes said that he has received emails saying that a pharmacist cannot dispense the morning after pill. They claim that a doctor would administer that because it requires follow up care and monitoring. He asked if that is the case. **Dr. Mering** responded an individual who is eighteen years or older can get that from a pharmacist, it is not available off the shelf. He is not sure if a pharmacy technician can dispense and they do not need a prescription.

David Ripley testified in support of **S1353** and stated that this will create statutory conscience protections for our healthcare professionals, and it has become a crucial matter because of national developments. **Mr. Ripley** said it is likely that Congress will enact healthcare reform which is a very troubling development that will have dramatic consequences for all of us, including doctors, nurses and pharmacists. Both versions of Obamacare intentionally fails to protect the conscience rights of healthcare professionals. **S1353** is an essential component of protecting Idaho healthcare professionals from being forced to participate in abortions or to be forced into participating in rationed care for the elderly or disabled. By protecting the conscience rights of our doctors, nurses and pharmacists, we are actually protecting ourselves. It has been assumed that professionals have conscience rights. But a recent ruling from the 9th circuit suggest that this presumption is incorrect. That case was dismissive of claims that pharmacists had conscience rights under the 1st amendment, and more stock was placed in the power of state statues to regulate healthcare professionals. That creates a real opportunity for this legislature to lay down clear protections, protections designed to safeguard the integrity of our medical professions.

Mr. Ripley said if it were up to him, this legislation would be an ironclad protection against dismissal or retribution for any healthcare professional who refuses to participate in dispensing emergency contraception, or from participating in a morally objectionable act. However, it is not up to him and this legislation is considerably watered down from the pharmacist protection that was presented last session. That legislation was an absolute right to refuse to participate in morally objectionable practices.

This legislation does not provide ironclad protection for our healthcare professionals. It provides their right to object and it balances their rights of conscience with their employers private property rights. It does require employers to provide reasonable accommodations to those who wish to exercise their conscience rights. At the end of the day, that is all that it requires. If an employer demonstrates that they cannot reasonably accommodate those conscience objections, then there is no protection in this bill for dismissal or discrimination.

Senator Geddes said he understands the dialogue that **Senator Davis** and **Senator Darrington** had with **Mr. Troupis**, and there are some complicated factors as to how a pharmacy will operate. He asked if there is a requirement for every pharmacy to carry every possible medication that would be prescribed or requested by a doctor or a potential client? **Mr. Ripley** answered there is no such requirement. There is a political movement across the country to force pharmacies and pharmacists to carry certain products that deal with emergency contraception and abortion. Not all small pharmacies can afford to carry every drug that is made or that will be made in the future. **Senator Geddes** said hypothetically, if the owner of a small pharmacy hires a pharmacist that chooses to not dispense that type of morning pill, will the owner of that pharmacy have that discretion to control that, based on whether or not he ordered that particular product to be on the shelf? **Mr. Ripley** responded that is correct. The Federal government has intervened in this case. Emergency contraception is available over the counter to anyone seventeen or older and it does not require a pharmacist to participate in dispensing it. In fact, some pharmacies may have company policies as to how they actually distribute it, and it is actually harder to purchase over the counter sinus medication than emergency contraceptives.

Senator Stennett asked **Mr. Ripley** if he can think of any situation other than for moral or religious reasons, aside from abortifacients and contraceptives, that a healthcare provider would choose to not provide a service or a drug? **Mr. Ripley** replied there has been a lot of discussion regarding the emergency situation in this bill. It is also important to realize that this legislation deals with crucial end of life situations. There are a myriad of challenges facing healthcare professionals who deal with end of life situations and the conflicting demands of patients, including other professionals that they work with. He fears with the implementation of a Federal healthcare system, that states, doctors and hospitals will come under increased regulation with respect to rationing of care. End of life care in this bill raises another issue and this legislation is broader than last year's bill that dealt with pharmacists. On the other hand, it is also more narrow. Because of the discussions last year, the scope was limited to the most morally potent areas of medicine, which involves end of life and beginning of life.

Marty Durand, legislative counsel for Planned Parenthood, testified in opposition to **S1353. Ms. Durand** stated this bill purports to protect healthcare providers who participate in procedures that they may find objectionable. Doctors, hospitals and their employees are already protected by Idaho law from participating in abortions. This bill provides

that pharmacists would not have to dispense abortifacients and this protection is unnecessary. Pharmacists do not dispense drugs that are prescribed for the purpose of terminating a pregnancy. In fact, Idaho law is clear that only a physician can perform an abortion. **Ms. Durand** said that medications given to patients for purpose of terminating a pregnancy can only be dispensed by a physician. A pharmacist cannot dispense medication for the purpose of terminating a pregnancy. Emergency contraception does not terminate a pregnancy. According to the FDA, the Department of Health and Human Services and information posted on the Idaho Department of Health and Welfare website, "emergency contraceptives will not interfere with an existing pregnancy." AMA policies encourage healthcare professionals to discuss this as part of routine family planning and contraceptive counseling.

Senator Davis asked **Ms. Durand** if this doesn't do any damage, why is that emphasized, if an abortifacient is not an applicable standard. It seems to him that we shouldn't be troubled by that. **Ms. Durand** replied Idaho law is clear about abortifacients, but their concern with this bill is that it includes emergency contraception in abortifacient. There are medications that cause abortions to be terminated. A patient has to go to a physician, the physician has to comply with Idaho law relating to abortions, there is a twenty four hour waiting period, and counseling services must be provided. Clearly a pharmacist is not involved with that. On the other hand, emergency contraception is behind the counter and a pharmacist can dispense that and it does not terminate a pregnancy. It prevents a pregnancy. There is often confusion regarding this. **Senator Davis** said what he believes that he heard her say is that she is troubled with blending the science of emergency contraception with the language in the bill. But she would have to acknowledge that the Legislature has within their authority to redraw those lines and not for purpose of science, but for public policy. **Ms. Durand** said that she would agree, the Legislature can define whatever it wants to define. **Senator Davis** asked what are some of the other areas that troubles her? **Ms. Durand** said one of the things that Planned Parenthood finds troubling is the bill just says emergency contraception. Emergency contraception can be plan b, which is purchased over the counter from a pharmacist. But also regular oral contraceptives that we all recognize as the pill pack, can be used as emergency contraception. This will allow a pharmacist not to dispense normal oral contraceptives that thousands of Idaho women take. They also have concerns that drugs used for abortifacients can also be used for other purposes such as ulcers and cancer. This bill will also allow doctors, nurses and pharmacists to deny information to a patient if a women asks if she can do anything to prevent a pregnancy, the healthcare provider can simply say no. Planned Parenthood believes that all women are entitled to all information that allows them to plan their family and to make their own decisions regarding healthcare. **Senator Davis** said if a person made that kind of representation to a patient, as to what they can or cannot do regarding pregnancy, that could open it up for a civil liability. **Ms. Durand** responded as she understands that, if a healthcare provider does not tell a patient about a treatment that may be helpful or that the patient may elect to use, she believes under normal circumstances there may be civil liability. She believes this will take away that liability. **Senator Davis** said

in the example that she gave before, he believes if a patient asks a question and the healthcare misrepresents that by saying "no," that is what he understood her to say. That act of misrepresentation independent of this, in her opinion could still be actionable civilly. He asked if that is correct? **Ms. Durand** said that is an unclear area because provide is defined as counsel, advise, perform, dispense, assist in or refer. So if a woman asks if there is anything that she can do to avoid a pregnancy, she believes under this bill a healthcare provider could say no. **Senator Davis** commented that he does not believe this gives the healthcare provider the authority to misrepresent what science can or cannot do. They may choose to not counsel, but if they choose to counsel, then that counsel must be medically defensible. For him, when he votes that will be an important consideration.

Vice Chairman Pearce commented he believes if a woman has unprotected sex and knew that she was taking a drug that is detrimental to that activity, **Ms. Durand** is telling us that we should force someone else to go against their conscience to help that error. He asked if that is consistent? **Ms. Durand** responded there are ways that conscience protection respects the rights of a patient in providing appropriate balance. Those laws usually include referral language. There is nothing in this bill that says the healthcare provider does not have to refer. So there are laws and ways to appropriately balance the conscience rights of healthcare providers.

Senator Fulcher said he believes that in Washington your organization was instrumental in enforcing pharmacists to dispense emergency contraceptives, and that there is Federal litigation regarding that. Your organization has recently approached the Idaho Board of Pharmacy with the same intent. He asked **Ms. Durand** to comment on that. **Ms. Durand** said they approached the Idaho Board of Pharmacy three or four years ago with proposed regulations and rules that would have imposed upon a pharmacy the duty to fill, which is similar to what happened in Washington. They told us they were not interested and that was the end of that discussion. As far as the Washington case, their board adopted rules and regulations that imposed upon a pharmacy a duty to fill, not the pharmacist. If a patient went to a pharmacy with a valid prescription for emergency contraception that pharmacy had to take certain actions to ensure that the prescription was honored. It did not impose the obligation on the pharmacist. That is still being challenged. Washington has a duty to fill and Idaho does not. She does not see how a court could impose a Washington law on the State of Idaho. **Senator Fulcher** said he is trying to understand where she is coming from. Another piece of information that has been shared has to deal with Planned Parenthood's role in boycotts to encourage Walmart, Target and Idaho to carry certain types of abortifacients. He asked her to clarify or comment on that. **Ms. Durand** said that she is not aware of any such boycott by Planned Parenthood.

Senator Kelly said all this discussion regarding emergency contraception leads her back to the general abortion statutes. There is a definition of abortion in criminal code, 18-604. That definition specifically excludes birth control pills and now this is proposing a definition for abortifacient, which

includes emergency contraception. This potentially blurs the area of where emergency contraception starts or stops, and where birth control pills start or stop. She asked if there is a potential for litigation on this issue, that a court could find that emergency contraception meets the definition of abortion under our general criminal abortion codes. **Ms. Durand** responded that the current definition of an abortion in Idaho code is contradictory, but it does specifically say that contraceptives which prohibit implantation, fertilization and ovulation are not considered abortions. Putting emergency contraception in this makes it less clear and there is certainly a potential for litigation. It adds more confusion to sections of code that are already a bit confusing.

Will Rainford, legislative advocate for the Roman Catholic Diocese, said the bill before you today is of great importance to Catholics. He is not here to argue pre-birth life and definitions of that life or to argue the rights of an unborn child. **Mr. Rainford** stated that he is here for one simple reason. If a Catholic medical provider knows that an action is immoral to them and they believe it, yet proceed to act immorally, they place themselves outside the teaching of the church. He is not asking you to believe what they believe, simply to look through the eyes of the Catholic medical provider and to understand that perspective and the gravity of matter for that Catholic medical provider. If those faith values are violated and they participate in an act that is defined by the church as murder, no excuse in the world such as they were obligated to provide emergency contraception to my patient by my employer, would excuse the gravity of that act. **S1353** recognizes that the deeply held belief by Catholics regarding life ending or life interfering medical procedures and prescriptions is from the Catholic medical providers perspective a reality for them. **Mr. Rainford** said that forcing a Catholic medical provider to choose to violate their faith by providing medical care that is perceived to be immoral, is not just unfair, but a serious detriment to medical care. In rural areas of the state, very few medical doctors and nursers practice, how long will they be able to practice there under the crushing weight of guilt from the knowledge they were committing a mortal sin. Dispensing medication that ends or interferes with the formation of that life, would or could they continue to practice in Idaho. This bill is merely about ensuring that our medical providers are able to continue to provide quality care without being forced to compromise their faith, while providing care.

Senator Kelly asked **Mr. Rainford** if Title 7 of the Federal Civil Rights Act as well as the Idaho Human Rights Act already protect Catholics? **Mr. Rainford** replied that he cannot answer that question. He does believe in Idaho that we have Catholic medical providers that are beholding to provide medical care that was prescribed, that does violate their morals. They do not believe that they can rely on religious protection under the Constitution in providing that care.

Taryn Magrini, policy director for the Idaho Women's Network (IWN) testified in opposition to **S1353**. **Ms. Magrini** stated that the IWN represents the interest of Idaho women, children and their families, in particular, those who do not always have the opportunity to speak up for themselves. Her primary concern with the bill is that it will interfere with a

couple's access to emergency contraception. The most common form of contraception is plan b, which is a high dose of contraceptives that when taken within seventy-two hours of unprotected sex, can prevent an unwanted pregnancy. It is intended to be taken when other forms of contraception fail, and it is a valuable precautionary measure for survivors of rape. It is legally sold over the counter to women over eighteen. **Ms. Magrini** said this bill will have unintended consequences for those who need plan b. In a small rural community if a woman is denied plan b, she may or may not be capable of finding the next pharmacy. This problem is exacerbated by the language which allows the pharmacist to not only deny dispensing the medication, but also to refer. It will have a negative impact for survivors of rape. If she does not go to a hospital or the police to report the rape, she should still have access to plan b. Since pregnancy is not considered a life threatening situation, there is no protection for women in this situation. **Ms. Magrini** stated now more than ever it is important for couples in Idaho to determine their family size. An unexpected pregnancy puts some in an untenable position. They may have to choose between adoption or abortion, which have additional expenses. Legislation like this could increase the number of abortions in our State. All contraception, including emergency contraception needs to be available to all communities in Idaho.

Jason Herring, President of Right to Life of Idaho, said he is testifying in support of **S1353.** They support the principal that no healthcare professional should be required to provide a service that violates his or her conscience. Right to Life of Idaho understands that there are situations where healthcare professionals are faced with treatment that might be considered futile or medically inappropriate. They are not opposed to someone deciding not to make an utterly futile attempt to prolong a person's life, but they do oppose any action taken to hasten the end of a person's life. They believe that **S1353** has found the right balance that is needed for the healthcare professionals. If they are required to give lifesaving care to someone that they felt violated their conscience, they would be responsible to provide that care regardless. However, if a medical professional were required to provide something that would end a human life and providing such a service would violate their conscience, under **S1353** they would not have to choose between losing their situation or violating their own conscience. They believe that the government's responsibility to protect life is greater than its responsibility to protect the freedom of choice, although this bill does not necessarily protect life, it does allow healthcare professionals the freedom of choice and conscience to not provide services that would terminate life. For that reason, **Mr. Herring** said, they stand with the sponsors of this bill and commend **Senator Winder** and Idaho Chooses Life for their work on behalf of this legislation.

Hannah Saona, legislative director for the American Civil Liberties Union (ACLU), testified in opposition to **S1353**. **Ms. Saona** stated that given their commitment to protect individual freedoms, the ACLU is in a unique position to evaluate conscience refusal legislation such as this. **S1353** does little to protect the health and safety of Idahoans. This bill will allow pharmacists and other healthcare providers to refuse to fill prescriptions, to

dispense medications, refer to another provider and even refuse to counsel patients based on the providers personal beliefs, without regard for liability. The ACLU believes that an employer should accommodate a healthcare provider when possible, when their religious beliefs make it necessary for them to refuse to provide certain healthcare services. The AMA, including other associations while recognizing the rights of conscience, have taken the position that patient's needs must be met. **Ms. Saona** said that **S1353** does little to ensure these needs are met, by exempting healthcare providers and their employers from liability. The ACLU would support this bill if it were to require the refusing healthcare provider to provide complete and accurate information about healthcare services, treat a patient with respect, arrange for the patient to be helped by another healthcare provider and provide the healthcare service when there is no one else who can. While a healthcare providers religious objection should be accommodated whenever possible, it is only with these necessary safeguards that we can ensure that individuals are always able to access healthcare services in a timely manner.

Senator Kelly asked **Ms. Saona** if she can talk about the existing Civil Rights Act for protection under the Idaho Human Rights Act for religious belief, and how that translates into action for an employee? **Ms. Saona** said that she is not an expert, but she does know there are protections based on religious beliefs. To her understanding there have not been any conflict under the standing law.

Senator Fulcher asked **Ms. Saona** if she was aware that the IMA was involved in the crafting of the language of the bill? **Ms. Saona** replied that she was not invited to the table and her reference was to the AMA, and their general opposition to bills that do not provide enough patient protections.

Christ Troupis said he would like to respond to a few of the comments made. He believes that what was proposed by the ACLU would impose a new duty on pharmacists as well as other healthcare professionals. **Ms. Durand** stated that Washington has a duty to fill statute and Idaho does not. The Board of Pharmacy declined to pursue the proposed legislation of Planned Parenthood because they have taken the position that a pharmacist has no duty to fill a prescription. What the ACLU and **Ms. Durand** have proposed would create such a duty and potential liability for pharmacists that is new in Idaho code. **Mr. Troupis** said he does not feel that is a wise move. Secondly, the questions about abortifacient in this bill is specifically referenced in 18-604, to ensure that there isn't a conflict between the two. It is a special definition of abortifacient that is specific to this bill. The question as to whether the emergency contraception inclusion would have a potential for litigation, is simply not the case. The bill includes emergency contraception in the definition of abortifacient, so there really is no debate as to what emergency contraception is, and the language in subsection 2, states no healthcare professional shall be required any healthcare service that violates their conscience. The legal question would be whether it is emergency contraception and does it violate a persons right of conscience. The second question is subjective to the person and it would not provide the basis for litigation. **Mr. Troupis**

said that **Ms. Durand** made the comment that the pharmacist could misrepresent or not inform them of alternatives. Presently there is no duty for a pharmacist to provide any information to a prospective customer. In Idaho case law, there is a Supreme Court case that states if a person has no duty to speak, they have to speak truthful. If a person does not speak truthfully whether they have a duty to or not, they can be sued for fraud. **Ms. Durand** also mentioned that emergency contraception could be the misuse of birth control pills. In subsection 5, that has been provided for under the definition of abortifacient. Abortifacient means emergency contraception or any drug with the primary purpose of which is to cause the destruction of an embryo or fetus. The primary purpose of birth control pills is not the destruction of an embryo or fetus. The misuse of those drugs may cause it, but that does not make it an abortifacient.

Mr. Troupis stated the Idaho Trial Lawyers Association (ITLA) has expressed opposition to this bill, and their concern is with the language in this bill that may unduly restrict the ability of patients to bring medical malpractice claims, because it immunizes persons who exercise a right of conscience. He disagrees, because this bill does not narrow liability or restrict any existing liability or duty, since there isn't a present standard of care that would require the provision of care to a new patient. *Idaho Code, 6-1012,* says that in any medical malpractice case you must prove a violation of a community standard of care. If there is no community standard of care requiring a doctor to take on a new patient, or for a pharmacist to take on a new customer, there can be no medical negligence or malpractice for the refusal to provide that care. Providing immunity in this bill for right of conscience will not unduly restrict access to the court for a meritorious medical malpractice claim. On the other hand, by creating an exclusion as proposed by the ITLA, means that the person can sue the healthcare professional. That exclusion will create a duty or a new standard of duty for care, that requires that person to provide some care to a patient.

Senator Davis said in the spirit of intellectual honesty, the Legislature does not establish all standards of care, they can actually be established by the market or by the conduct of others. If a healthcare business is able to provide more broad healthcare services, that in of itself is the standard of care in that community. He asked **Mr. Troupis** if that is correct. **Mr. Troupis** replied it is. The community standard of care is the care that is generally provided in the community. Medical negligence is essential to establish that this is the standard being provided. The issue that he was addressing was a standard as to whether or not there is a duty to initiate care. In this case, the pharmacist does not have a duty to fill a prescription and the doctor doesn't have a duty to accept a new patient for a service that they find morally reprehensible. There is no community standard in Idaho for that. The ITLA proposed removing the immunity for civil liability in the case of the prospective patient or customer who is denied medication. **Senator Davis** said what he believes he hears **Mr. Troupis** to say, is that the argument of ITLA is a two edged argument, and he is swinging that sword back against them. His representation as the attorney for the sponsors of this legislation, is that he does not intend to grant to any beneficiary of this act any immunity from civil prosecution in the event

there is a breach in the existing standard of care. **Mr. Troupis** said that is correct. They do not intend to narrow existing medical negligence responsibility or liability and they do not want to create a new potential area for any medical malpractice lawsuit.

Senator Kelly said if his goal is to avoid litigation, she has some suggestions on how that may be rewritten and she appreciates the counter arguments to testimony that they haven't heard yet. With regard to the informed consent laws for healthcare providers, if they have an ethical reason for a particular course of treatment they have an obligation to refer the patient to someone who can educate them or provide the treatment, but the bill before us does not have that obligation. She asked **Mr. Troupis** to speak to why that is not included in the bill. **Mr. Troupis** stated there is no duty in the state of Idaho for any of these healthcare professionals to initiate medical services or care. Once a pharmacist elects to serve a particular customer, then at that point, she is absolutely correct. In existing law, the pharmacist would have a duty to speak truthfully, provide information and the same is true for a physician. They have a duty, it is not informed consent. Informed consent means that a patient must be fully informed before consenting to a procedure or treatment. This provision was not added because it would create a new obligation or duty for a pharmacist. **Mr. Troupis** said Under Title 7, if a person can refuse care, then we shouldn't have a right of conscience under this bill and it is limited in its application to certain employers. They used existing Idaho law in not creating new duties, and that is why referral was not included in this statute. **Senator Kelly** said it seems to her that you are creating a new duty on behalf of employers to determine if the potential employee may have a religious or moral ethical opposition to perform the job they are applying for. She asked him to respond to that. **Mr. Troupis** responded it is a simple matter. When the employer conducts the interview, they do not have to ask that question. They can simply say they are a full service pharmacy, we provide services which include plan b and emergency contraception and we expect our employees to comply with that. These are the terms for employment. **Senator Kelly** said with the scenario that you just laid out, if the potential employee did have a moral or ethical objection, they would not be compelled to divulge that in the interview. Additionally, the employer could not use that as a basis to not hire them. **Mr. Troupis** replied that Federal law with respect to undue burden and reasonable accommodation, is still applicable to those employees covered by that requirement. She is correct and he gave an example that was over broad. He does believe that the employer can give advance notice of what is expected and they cannot discriminate if they can't establish an undue burden. **Senator Kelly** commented that she would think the employer would need to consult with their attorney prior to any hiring decision, if they are considering using this undue burden exception. This is a huge burden for an independent pharmacy in this case, and it could be an independent healthcare provider in a small town, who will need legal advice. **Mr. Troupis** said he does not deny that, but it is not the first and only law that requires an employer to make a decision not to discriminate. This is an additional change and he does not deny that it could be a burden for some in making a difficult decision. **Senator Kelly** commented what she just heard is that employers have a lot of duties in

hiring decisions and this will just impose one more factor on them. She would counter to that, and certainly healthcare providers have lots of obligations. So one more obligation would be to refer a patient to someone, who can provide the full scope of advice about that particular healthcare treatment that would not be an undue burden on them. She does not believe that this is a good explanation for a referral.

Barbara Jorden, who represents the ITLA, said they are opposed to this bill. They did work with the sponsors after the first introduction to try to remove some of the ambiguities in that bill, and they did ask that the immunity provision for a criminal civil and administrative liability be removed. It was not removed from this bill. When the ITLA discussed this, they determined that they could not identify any potential civil complaint that could be brought against any healthcare provider. It will not impact the patient who would seek this care. **Ms. Jorden** said the intent of this bill is ambiguous and looking to correct a wrong that does not exist. That is why they asked the sponsor to remove the potential for civil liability. The term life threatening situation is not defined so in their opinion it is arguable. Section 6 of the bill refers to a life threatening situation as an emergency and arguable in their opinion. **Ms. Jorden** stated even though the immunity is given it is arguable because it could be argued that there isn't a cause of action. Lines 13 and 16 talk about the healthcare provider having to provide the care unless another capable person is available. The word capable could mean that the person may not be willing. If that person is not willing because of their right of conscience, you have to then look for another person. In a potentially life threatening situation an adverse circumstance could occur. In the Medical Consent and Natural Death Act, Title 39 Chapter 45, it specifically states they have to find a person who is willing to provide the care, not simply capable. ITLA has a concern with that, in terms of the criminal and civil administrative immunity section. In addition to that, ITLA feels there is a potential conflict with that section of code, because it gives the patient the right to determine their end of life care. End of life care on line 29 is not defined. It is ambiguous, because in other areas of law there are definitions for things such as terminal conditions, but not end of life care. **Ms. Jorden** said the language for employer and employee relationship is also arguable. Because this bill is so complicated and ambiguous it will be arguable at every step of the way. She hesitates to say that the ITLA is against this bill as a matter of public policy, because they are not, it is because most of these issues are arguable and a costly piece of legislation for employers and employees in terms of litigation costs.

Senator Davis asked **Ms. Jorden** if the ILTLA is opposed to the bill because it will create litigation? **Ms. Jorden** replied that is correct. ITLA tries to make good law and in their opinion this is not.

Chairman McKenzie stated there are three more individuals who have signed up to speak in opposition to the bill. He asked them to be very brief and to make only additional comments.

Sylvia Chariton, who represents the American Association for University Women (AAUW), urged the Committee to vote against **S1353. Ms.**

Chariton said their concern as a women's group, is that a particular type of emergency contraception readily available to women everywhere will become less available. Any attempt to blur the lines between abortion and contraception in lines 14 through 16, attempts to equate abortion with well established emergency contraception protocols. **S1353** sends a strong message that Idaho is not serious about productive health or family planning services for those most in need. Access to all contraceptives is a vital component to ensure that all Idaho women have control over their reproductive lives. Adequate family planning options increase educational and employment opportunities for women and improve their ability to support themselves and their families.

Duane St. Clair, a retired physician testified in opposition to **S1353**. **Dr. St. Clair** said the wording in this bill is a concern to him. It appears to absolve an emergency room physician who evaluates a woman for an alleged rape, from being required to inform her of all the options available to her in preventing the possibility of pregnancy. Emergency contraception prevents the implantation of a fertilized ovum and birth control pills work in the same manner when taken in the normal way 1% of the time. Whether a contraceptive works by preventing implantation 1% of 100% of the time, should make no difference morally if ones premise is that the fertilized ovum is an unborn child. **Dr. St. Clair** stated the real issue that has not been discussed today, is whether or not the early pregnancy has a soul.

Elinor Chehey, social action chairman for the United Methodist Women, said they are opposed to this bill. **Ms. Chehey** stated that their belief in the sanctity of an unborn human life makes them reluctant to approve abortion, but they are also equally bound to respect the sacredness of life and the well being of the mother for whom devastating damage may have occurred from an unacceptable pregnancy. They support the legal option of abortion under proper medical procedures. The inclusion of emergency contraception pharmaceuticals in the language of **S1353**, speaks only to life threatening situations and not to unacceptable pregnancies, so they stand in opposition to this bill.

Senator Fulcher stated that he was involved in this bill with **Senator Winder**. Throughout the course of this process, the various groups all had interaction with at least one of the sponsors. There was input taken and significant changes were made as a result of those meetings. This legislation allows healthcare providers to opt out of something that they do not want to do.

MOTION: **Senator Fulcher** moved to send **S1353** to the floor with a **do pass** recommendation. **Vice Chairman Pearce** seconded the motion.

Senator Davis commented as he has heard everyone testify, they seem to be dividing the rights of the employer, employee and the patient into three groups. Each group has a principal focus which have some compelling arguments to make. The employer is looking for the right employee and he believes that **Senator Kelly** is right that we may be creating greater challenges for them. That area may need to be adjusted as time goes by. What is notable to him is that the various employer groups are absent from

weighing in, on any opposition to the bill. He infers from that, most of their concerns have been addressed. As to the rights of the patient, they have the right to the healthcare as needed including an emergency situation. The focus of the sponsors of the bill is to be sensitive to the rights of the employer and the patient, but their principal focus is on the rights of the employee and their right to perform the job within their value structure. He doesn't know if this bill strikes the right balance, but with what he knows, it is the best that he can project today. The questions and answers with regard to the employment process and the expansion for the limitation of liability were important factors to him. He has learned over the years, if the courts go in a different direction, then this can certainly be amended. As a result, he intends to support the motion.

Senator Kelly stated she is opposed to the motion. If questions remain about how this bill is written and how it fits into the existing law, they should be answered before we put this in code. Last week this Committee passed the Idaho Health Freedom Act that is pending on the Senate floor. That Act declares that every person within the State of Idaho shall be free to choose or decline their mode of securing healthcare services. When she looks at the bill before us now, healthcare freedom applies to every person except if you are a woman of child bearing age, who wants the freedom to access a legal over the counter medicine. It does not apply to seniors, who are facing life ending decisions and want to understand the options available to them. That is a huge concern to her. This bill does not contain any provision that requires the healthcare provider to refer a patient to someone who can provide them with a full understanding of the treatments that are available. It puts a lot of burden and risks on employers and it will make hiring decisions more difficult. The bill fails to recognize, and she believes the sponsors have failed to explain how this bill fits into our existing protections in the Federal Civil Rights Act and our own Human Rights Act, which clearly protect people from discrimination based on their religious beliefs. Finally, as we are faced with an unprecedented budget crisis in the State, which has a potential for litigation, this is a very ill timed move. There are protections in code for patients and ensuring the people have a full understanding and advice when they are making medical decisions. **Senator Kelly** said this bill takes us a step away from that.

Chairman McKenzie requested a roll call vote on the motion.

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

The motion **carried.**

GUBERNATORIAL The confirmation vote on **Harold W. Davis** was before the Committee.

APPOINTMENT:

MOTION: **Senator Geddes** moved to send the gubernatorial appointment of **Harold W. Davis** to the State Building Authority with the recommendation that it be confirmed by the Senate. **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 10:30 a.m.

Senator Curt McKenzie Chairman	Deborah Riddle Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 24, 2010

TIME: 8:00 a.m.

PLACE: Room WW55

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

MEMBERS ABSENT/ EXCUSED: None

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

CONVENE: **Chairman McKenzie** called the meeting to order at 8:03 a.m. and stated this is our annual report by the Idaho Statewide Interoperability Executive Council (SIEC).

PRESENTATION: **Mark Lockwood**, Chair of the SIEC addressed the Committee and said that he is here today to share some of the accomplishments the SIEC has made this past year. Economically it has been challenging, but they have made some tremendous improvements. **Mr. Lockwood** gave an overview of the power point presentation of the 2009 SIEC Annual Report. A copy was provided to the Committee.

The vision of the SIEC is to work with public safety and public service organizations across the State, to develop interoperable communication systems that they use in the day to day as well as for catastrophic events. Their mission has not changed since 2004 to promote interagency cooperation and to provide policy direction in order to effectively use resources between their interoperable communications across the State. Interoperability is the ability for safety agencies to talk across disciplines and jurisdictions via radio communications systems, exchanging voice and/or date with one another on demand in real time, when authorized.

Mr. Lockwood stated that they have twenty two members appointed by the Governor. Seventeen of the members are volunteers that have provided approximately 10,200 hours of volunteer service. In addition to that, the SIEC has received through local, tribal, state and federal partners over 7,200 hours of volunteer service towards the implementation of interoperable communications processes. Without the service of those volunteers they would not be anywhere close to where they are today. With the assistance from the Idaho Bureau of Homeland Security and the Federal department have awarded the SIEC over $10.4

million for statewide interoperable communications equipment, training and governance over the past five years. This includes $1.8 in match funds from the 2007 Idaho Legislature. This has also been leveraged with local dollars and grants to move them forward with interoperability across the State. In 2008 the SIEC assessment was completed which provided a road map for where they want to be. Through the governance process they looked at the model that was in place and developed six districts. The needs assessment overview looked at usage, governance, technology and standard operating procedures.

Senator Davis asked **Mr. Lockwood** to explain what standards based shared systems versus shared channels are? **Mr. Lockwood** replied when you look at Idaho State Police (ISP) that is statewide and all jurisdictions have the ability to use that, it is a shared channel. A standard based shared system, means the 700mhz system that is based on the state's microwave. This gives them the ability similar to a cell phone to roam throughout the state and always be connected on the system. It is standard based particular to land local radio systems for public safety communications. **Senator Davis** said if there is a problem in Canyon County, and Ada County chooses to assist, the technology will effectively roam, is that a fair characterization? **Mr. Lockwood** said it is. It is seamless, they switch to the channel so they are able to talk to each other. **Senator Davis** asked if they could roam on shared channels? **Mr. Lockwood** responded they can roam, and in a standard based it is automatically sensed like a cell phone. **Senator Davis** asked if the target is to take the districts and try to migrate the remaining counties within the district to a standard based shared system? **Mr. Lockwood** said a statewide system would provide that means. It is up to each individual county if they want to join that system. Those that don't will gateways and paths for them to be able to get on the system and have that interoperability.

Mr. Lockwood stated they need standard operating procedures so there isn't confusion. Over the years the SIEC has developed and worked through a lot of contributing factors that have brought them to the point where they are today. The I-C-A-WIN was developed in 2005, which is a guide for public safety practitioners, on the FCC, and the Department of Homeland Security changes coming to radio communications and how to prepare for those changes. This plan has been continually updated in order to reflect best practices, progress and technological improvements in voice, data and video communications. In 2006, in order to protect their investments they adopted the P-25 standard, which provides interoperability among responder communications devices. The SIEC coordinated with its county and tribal partners in 2007 as they each developed interoperable communications plans. The SIEC had a statewide assessment, and the Technical Resources Assessment was completed in 2008, which validated many of the theories they had and quantified some of the things they had talked about in the past. In fall 2009, the SIEC launched the first phase of the Practitioner-Driven Governance system and established the six statewide districts. The statewide future is to continue to work on that and to build at the local level, so those entities from the very beginning can move forward and

have the ability to stand on their own. This will ensure that everyone is at the table at the right time, that they are all talking the same language, and that we all have the same goal, to have interoperability.

Senator Darrington said that **Mr. Lockwood** indicated that some counties have not opted in. He asked if the reason is because they have not applied for or received grant money to buy the hardware to be a part of the State's microwave system? **Mr. Lockwood** replied some of that is correct. It is their choice if they want do that. Others will be coming on line as State assets are acquired in those areas to get on the system. Some will remain in their VHF radio systems. The technology is on our side, and it changes faster than they can actually apply it sometimes. That gives them the bridge and the gateway to connect those entities seamlessly before they know they are talking on a different frequency. **Senator Darrington** commented in the long run this will be in the best interest for everyone.

Senator Davis said his county, Bonneville has opted in and is participating. He asked **Mr. Lockwood** when he scores that as a participating county is he suggesting that the penetration within that county would include all of the units within that. Or is he referring to a more limited application and some entity may not actually have that technology. Additionally, explain the depth of penetration within each individual county conceptually. **Mr. Lockwood** responded what he is referring to, especially in **Senator Davis'** district, is that they do have a system there, which trickles down to each discipline and they are able to talk on that standard based system. **Senator Davis** said when he looks at other counties outside of Bonneville County, can he assume that there isn't quite the same depth of penetration at this point in time. Or is he indicating that by scoring it as a participating or performing county, that there isn't quite the same penetration to each discipline? **Mr. Lockwood** replied that he is correct. They are in different phases of that changeover. In the interim there is the capability with bridges and pathways to seamlessly connect and to communicate.

Senator Fulcher said the public airways are getting a lot more crowded. He asked **Mr. Lockwood** what issues are they faced with regard to public interference, and is there any use for satellite other than for just positioning? **Mr. Lockwood** replied radio interferences have been a constant problem as we start utilizing those systems, not only in public safety and the military, but also in the commercial market. For example in Sandpoint, they are on a UHF system now and they are in transition moving towards the 700 system. The radio frequency interferes within the city and sometimes it completely squelches out any received channels in the police department. One thing the FCC has done in trying to limit that, in dedicating the 700 MHZ to public safety it was well orchestrated. **Senator Fulcher** asked if he has looked at a different migration path or a different type of technology overtime, as the airwaves are jammed with continued interference. Has he looked at any type of technical roadmap, whether it be satellite or another frequency range? **Mr. Lockwood** said if another frequency were to become available, they would certainly assess that. As satellite technology has the ability to link a celestial link to

another becomes apparent, they will look into that and that will touch some areas in the State now that are virtually radio dead. Right now, it is cost prohibitive and the lack of that interface technology is beyond their reach.

Senator Kelly asked **Mr. Lockwood** if there is a connection between what he is describing and public television. Is it the same system or does the SIEC use a different one? **Mr. Lockwood** responded the SIEC is utilizing a public shared system. Public television is on the same microwave backbone that public safety is. Everyone is sharing that same pipe, if you will, across the State. The medium by which they carry the signal doesn't care what frequency it is, then it is decoded at the right locations. **Senator Kelly** said recently there was as discussion about funding cuts to public television. She asked if there is a relationship between their ability to maintain that system and what we need to do for emergency communications. **Mr. Lockwood** said public television has been a partner on the microwave for many years. He is not versed on what their funding is and where they are with that. They have coexisted and they can continue to do so.

Chairman McKenzie thanked **Mr. Lockwood** and all the volunteers for their work, it is an important function and he appreciates it.

PRESENTATION: **Ron Williams**, said LS Power and their affiliated companies have several large transmission lines planned for Idaho. He introduced **Mark Milburn** to the Committee. **Mr. Milburn**, Assistant Vice President of LS Power Development LLC, addressed the Committee and said they are excited about the projects and he is here today to discuss them. A copy of the power presentation was provided to the Committee. **Mr. Milburn** stated LS Power is not a utility, they are an independent energy company who is involved in the development of generation and transmission projects across the country. On the generation side, they have built over 20,000 megawatts of various types of power generation and currently they are active in a number of projects on the fossil generation side as well as renewable generation. On the transmission side, they have a number of high voltage projects under development and they are also involved in the energy market through acquisition of facilities. LS Power has raised over $4 billion in private equity to help them do that, and they have acquired over 15,000 megawatts of power generation. There are three things that layout the success they have had in the energy market. On the generation side they have developed, are under development, or have purchased other entities. They are the only independent power company in the country that has a coal fired generation plant under construction. In fact, they have two under construction right now, one in Arkansas and the other in Texas. They have another one ready to start construction in Georgia, which demonstrates the work they have done over the last decade.

On the transmission side, they were recently awarded by the Texas Public Utility Commission the ability to assist in their build out of over 3,000 megawatts in transmission. LS Power is one of three non-incumbents that were awarded over 200 miles of new transmission build out in Texas.

The Southwest Intertie Project (SWIP) is the most advanced high voltage transmission project in the western grid, which encompasses the area between Nevada and Idaho. **Mr. Milburn** said the key thing about SWIP is that it was originally started by Idaho Power in the 1980s. They have acquired all the rights to this project and have brought it home and it is ready to start construction. Pursuant to the Recovery Act of 2009, they plan to start construction using stimulus funds as the financing vehicle and then revenues would be returned to the Western Area Power Administration.

Senator Davis said he sees the line for SWIP and the importance that Idaho plays in that. He asked **Mr. Milburn** if there are any offramps from which Idaho would benefit? **Mr. Milburn** said there are three substations on the SWIP transmission line. One is at the midpoint in the northern part of Jerome County. There is a substation in central Nevada and one at the southern terminis and they are all permitted at this time. **Senator Davis** said by having those substations, does it mean a merchant provider will be able to sell to local utilities within our State for the benefit of consumers in Idaho. **Mr. Milburn** answered yes.

There are three key parts to their development philosophy, meeting the needs of our customers, developing safe projects that are protective of the environment and working with the communities. **Mr. Milburn** said what they have learned over the years in developing these projects, is that the key to success is working, listening and taking action based on what the community input is. The two projects that connect with SWIP are the Southern Nevada Intertie Project (SNIP) and the Overland Transmission Project. The Overland project is in the initial stages of development. The midpoint hub is turning into a high voltage transmission hub for the west. This is where the generation can get to market and it can go in multiple directions. This is important for Idaho because it will expand options for Idaho Power to import and export electricity, it encourages the development of generation projects and it improves reliability for Idaho and the western grid. There are economic benefits as well including construction jobs, sales and use tax revenues, property tax, as well as billions of dollars in capital investment.

Senator Stennett asked **Mr. Milburn** when he is talking about jobs, how much of that is very skilled labor? **Mr. Milburn** replied the job mix will depend on how it is contracted. In general, at least fifty percent is skilled electrician labor and the other is what he would consider general labor. **Senator Stennett** asked if they have done a long project like this before? **Mr. Milburn** said not a long transmission project like this. The SWIP will be their first long transmission project. **Senator Stennett** asked what would the next longest project, and what is the percentage of labor that it will require? **Mr. Milburn** said it is a projection based on discussions with their engineers and other utilities that have built similar type lines.

Senator Fulcher said as he understands, LS Power is interested in two facets, one is the production before the engine, and the other is the pipe or transmission. He asked if that is correct, and secondly what level of involvement does he have with regard to the land acquisition of SWIP.

Mr. Milburn responded they are a wholesale provider of generation and a provider of transmission. They do not have retail customers and if they have a generation project, they sell it wholesale to a utility who has retail customers. With a transmission project, they sell the capacity or pipeline to someone who needs it. As for the acquisition, that is one of the key areas that they are involved with.

Senator Darrington said there are several companies wanting to build in southern Idaho. He asked **Mr. Milburn** if the reason is because of the availability of stimulus money, and is that the incentive for developing? **Mr. Milburn** responded that is a current incentive. These are large projects, those funds are limited, so it is difficult for him to see those projects taking advantage of stimulus money. Most of the projects that **Senator Darrington** is referring to were proposed prior to the recovery act. It is certainly an incentive moving forward, but he believes the real impetus for these projects is the vast amount of renewable energy that is stranded, particularly in Wyoming and Montana, as well as in Idaho and Nevada. **Senator Darrington** said he understands the value of going through the midpoint, but is that such a great value that takes precedence over the shorter route by going directly from eastern Wyoming to southern Nevada or California, where the big market is. **Mr. Milburn** said there are projects that are proposed to do exactly that. LS Power is uniquely positioned because of the advanced status of permitting that connects at midpoint.

Nadza Jusufovic, Project Engineer for LS Power said that she is here to talk about the SWIP project. SWIP is a 510 mile transmission line. The line is expected to carry over 2,000 megawatts of transfer capability, which is greatly needed to the western grid. SWIP is the most advanced high voltage transmission project in the west. A recent key milestone on the project includes the memorandum of understanding (MOU) with Western Area Power Administration as the project lender and the ownership lease agreement with Nevada Energy is the anchor shipper.

Chairman McKenzie said he is interested in the allocation of the costs, risks and rewards in a large scale transmission project. He asked **Ms. Jusufovic** to explain the role of Nevada Energy? **Ms. Jusufovic** replied that Nevada Energy will have a percentage of ownership on the line and they will participate in the costs associated with it.

Ms. Jusufovic said the SWIP will provide access to transmission for renewable generation and it enables the transfer of Idaho renewable energy credits (REC) to the southwest markets. The project brings stimulus funds to Idaho, improves capacity and reliability to the western grid, improves operational flexibility and facilitates seasonal economy energy transfers for regional utilities, by providing options to Idaho Power to access other markets. In addition to significant capital investment, significant tax structures are expected as well as future construction employment and tax revenues. Due to market conditions, Idaho Power has not pursued the development of SWIP. In 2005 LS Power acquired exclusive rights to the right of way grant and continued with the development of the line. **Ms. Jusufovic** stated in 2008 they permitted the

southern portion and they are beginning to start construction on the project later this year. They will permit the northern portion later this year and work with the Bureau of Land Management (BLM) in finalizing the details of construction.

Senator Davis asked **Ms. Jusufovic** if Great Basin LLC is a subsidiary of LS Power? **Ms. Jusufovic** answered that is correct. For the purpose of making this practical LS Power is the umbrella company.

Vice Chairman Pearce asked **Ms. Jusufovic** if this project will help in bringing nuclear power to the area? **Ms. Jusufovic** replied that is difficult to assess at this point, it would be speculation on their part. Extending all the available capacity certainly enables development for other generation facilities. Nuclear power plants produce a lot of energy, so this particular line would not be able to accommodate that. **Vice Chairman Pearce** asked what are the Federal requirements being placed on the project with respect to the stimulus money? Ms. Jusufovic responded through the process of seeking the Federal funds, they were required to do extensive electrical studies.

Senator Stennett asked Ms. **Jusufovic** what percentage of the grid is allowed for something that would be considered as an alternative? **Ms. Jusufovic** asked if she is referring to the capacity on the SWIP for renewables? **Senator Stennett** said yes. **Ms. Jusufovic** replied given that we have already entered into an agreement with Nevada Energy for a portion of the capacity, there is approximately 1,400 megawatts available capacity to sell to interested parties. There is substantial interest to sell that capacity on the line in the open market from renewable developers.

Chairman McKenzie asked **Ms. Jusufovic** if the line across Wyoming will **terminate at the Chugwater wind project that is being developed? Ms.** Jusufovic replied **Ryan Miller** will address that in his part of the presentation.

Senator Stennett said in the overview it states that Idaho should be interested because of increased demand and that we receive half of our energy from neighboring states. She does not see this infrastructure going through an area with a larger population base, that require an increase in demand. How will this partner up or link with existing energy companies that could use some of that utility from the grid. **Ms. Jusufovic** responded by connecting at the midpoint hub it will provide additional options to Idaho Power for importing and exporting power. Although the line will not go through a larger populated area, the access is much broader than that location. The project itself will expand those options and Idaho Power will be able to export renewable generation outside the State, and have access to more options to serve the increased demand in those large areas. **Senator Stennett** commented her concern is that Idaho Power is probably not going to be as up to speed, and she wonders if the infrastructure will be able to take on and transmit to those areas existing capacity. **Ms. Jusufovic** said as part of the permitting process they have requested and negotiated a connection agreement with Idaho Power.

Ryan Miller, Project Engineer for LS Power, continued with the presentation regarding the Overland Transmission Project. **Mr. Miller** said the Overland Transmission Project is similar to the SWIP. The project is a 550 plus mile, overhead, high voltage, direct current transmission line. It begins in the Chugwater area of Wyoming, crosses southern Wyoming and Idaho, and connects at the midpoint just north of Jerome. Its purpose is to collect wind from southeastern Wyoming and provide a direct pathway for the energy at the midpoint hub. It will carry up to 3,000 megawatts of transfer capacity.

Idaho is heavily dependent on other states to supply its energy needs, so the Overland project will provide increased access to diverse energy resources and help lower energy costs for consumers. It will provide a direct transmission path relieving increased transmission congestion on the current grid. **Mr. Miller** stated one of the benefits of this project is that a major private sector investment in energy infrastructure will establish a base for a stronger economic future. Along with that, it will create hundreds of construction jobs and generate millions in annual tax revenues for Wyoming and Idaho counties. The development risk for this project is shouldered by Jade Energy, not local taxpayers or ratepayers. This shows the confidence and value of this project that all the capital investment and risks associated with developing the project are paid up front by them.

Mr. Miller stated that their development approach is different. When a project is defined, the permitting activities begin. They identify all alternatives and then present them to the public. During this process, they reach out to local and state officials, landowners, and community leaders to consult with these stakeholders throughout the project development phase. They are dedicated to meaningful stakeholder participation on key criteria and guidelines, to ensure a development process that reflects all appropriate concerns and sensitivities. They don't have a predetermined route for a transmission project, they simply need to get from a to point b, and they want to utilize those who live in the area.

Senator Davis said his understanding from **Ms. Jusufovic** is that after the permitting process, the environmental impact analysis has been completed. He asked **Mr. Miller** if this is also true with respect to this project, then how do you complete an environmental impact statement when the route has not been determined? **Mr. Miller** replied the SWIP and Overland projects are two distinct projects. As such, the SWIP is near construction, and the Overland project is in its infancy. They have not yet begun those permitting activities associated with what is required. It is not at that point as of yet. **Senator Davis** asked **Mr. Miller** if the permitting process includes the environmental analysis? **Mr. Miller** said that is correct. **Senator Davis** said when **Mr. Miller** and **Ms. Jusufovic** talked about development risk, as he understands this, the SWIP project is shovel ready, and relying in part on loans and funding from the stimulus package. The Overland Project is not shovel ready and will be driven by more traditional financing alternatives such as the bond market. He asked **Mr. Miller** if that is a fair conclusion? **Mr. Miller** responded it is. The Overland Project is new and as it develops or progresses, they will

establish long term agreements with entities who want to ship power on the line. That will provide the security that is needed to establish the findings needed to assist with the funding. **Senator Davis** said what he believes is a critical component of LS Power's proposal is the power that is being generated is reliant upon the Jade Energy component of the process. He asked if that is a fair conclusion? **Mr. Miller** said the Overland Project and SWIP are two distinct processes. They both serve a need independently of each other. There is interest from generators from Wyoming to Idaho, Nevada and beyond. He personally can't speak to who those shippers may be, but does know there is substantial interest from people across the whole area and not specifically reliant on when energy production comes from Wyoming. **Senator Davis** said he is wondering if the cart is before the horse. Don't they need the Overland Project in order to make the SWIP meaningful, because you need to get the power from point a to b, before it can be transmitted from point b to c. There may be intermediate beneficiaries of it along the line, but the principle generation is going to be transmitted on the Overland Project. He is missing a detail there and would appreciate more information on this.

Mr. Milburn responded and stated as **Ms. Jusufovic** mentioned, they have undergone an open season process where they invite generators, utilities or whomever who have an interest in shipping capacity on the SWIP to provide a bid to them to evaluate. Part of the process included bidders to use the Overland line as a connection to SWIP and bidders to use other proposed lines. Each potential bidder may be coming from a different place and have a different number of megawatts, so this is really an economic question. When they evaluate all the bids and identify what is the optimal economic package, that will determine what gets built and when. If all the capacity that they are selling on the SWIP was coming from southeastern Wyoming, then it is possible there wouldn't be a need for SWIP and Overland will be built. In reality, they have had interest from others not just in southeast Wyoming, and that includes the use of the capacity of the SWIP by local utilities in Nevada. They are a piece of the puzzle and there are additional pieces that will fit together and those generators that will use the SWIP may come across Overland or some other source.

Senator Davis said as he looks at the different proposals and how they may come in to SWIP, it may well be that they will choose not to come in at Midpoint. He asked if that is a fair statement? **Mr. Milburn** replied that is correct, they may come in at a different substation location, or they may propose a new interconnection. The reality is that isn't probably very economical. It is if they were to choose one of the planned substation interconnections. **Senator Davis** said when you referenced earlier that construction will begin in 2010, what he believes he also heard is that no determination today has been made as to exactly where each of those projects will be. That decision will not be made until you have had an opportunity to review the different proposals, where they will tie in and then you will decide what components of SWIP will be initially built, and that may or may not include Idaho in 2010. **Mr. Milburn** said the short answer is that is correct. The deal they have in place with Nevada

Energy, is focused on starting construction of the south portion in 2010. There is an incentive for us and for them to get the remainder of SWIP built and to start construction in 2011. Nevada Energy would benefit from that capacity. As **Ms. Jusufovic** has eluded to, they still have over 1,000 megawatts capacity to sell. In order to justify construction of the northern portion that goes into Idaho, he is correct. They have to finalize the evaluation and bid process to make that economical in order to start construction on the northern portion.

Mr. Miller stated the next step will be the introduction of Jade Energy and the Overland Transmission line to state and local leaders, community members and stakeholders. Public information meetings will be conducted and community group members will provide input on potential routing options. After that, they can finalize the routing alternative analysis and proceed with the evaluation of the project, and then initiate other permitting activities. This process will take approximately three years, which will lead to construction and completion is estimated to be 2015.

Senator Darrington asked what is the largest power line that they build? **Mr. Milburn** said 765kv is common in the eastern grid, particularly in Ohio and Virginia. In the western grid 500kv is the highest that has been built. **Senator Darrington** said the reason is because the 500kv is more cost effective than the 765kv, is that correct? **Mr. Milburn** answered that is correct. **Senator Darrington** commented he knows what they are in for in his area, based on the experience they are having there. He stated maybe it would be better to have two 500's instead of one 765.

Chairman McKenzie commented that at recent conferences that he has attended for the western states and provinces, transmission is always one of the top regional issues. The more transmission we have, the more stability we will have in the western grid. He is happy to see that some generation projects are going forward in a feasible manner that considers the local landowners as well.

ADJOURN: **Chairman McKenzie** said there is no other business before the Committee today. He adjourned the meeting at 9:29 a.m.

Senator Curt McKenzie Chairman	Deborah Riddle Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE: February 26, 2010

TIME: 8:00 a.m.

PLACE: Room WW55

MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Pearce, Senators Geddes, Davis, Stegner, Fulcher, Stennett, 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 8:03 a.m.

S1379 **Roger Batt,** representing the Idaho Grape Growers and Wine Commission, stated that *Idaho Code section 23-1307(f)* known as the County Option Kitchen and Table Wine Act, requires wineries to purchase a retail beer license to sell wine by the drink. **S1379** removes this requirement and authorizes wineries to be able to sell wine by the drink and at retail, off of the wineries original licensed premises without having to purchase a retail beer license. At the print hearing **Senator Stegner** asked for some history regarding the Wine Act. **Mr. Batt** said the Wine Act was passed by the Idaho Legislature in 1971. The reason why kitchen was added to the name of the act is while the act was being drafted, there were talks about folks using table wines for cooking food in the kitchen. The act was passed during a time when you would not be able to find table wine in grocery stores. Folks would travel to Oregon or other states to purchase table wine. The only wine you could purchase at that time was kitchen sherry, a cooking wine that was salted down to keep people from consuming the product like table wine.

Mr. Batt said the definition of wine under this statute includes table wine and dessert wine. Table wine by definition means any alcoholic beverage containing not more than 16% alcohol by volume through the natural fermentation process of sugar in the fruit. Dessert wine is defined as containing more than 16% alcohol by volume and not exceeding 21% alcohol by volume. We have to call it dessert wine because we are not authorized to call it Port, Madeira or Sherry due to the European Union and Federal Standards with regard to a Certificate of Labeling Authorization (COLA). The beer licensing requirement is currently in the Wine Act because the Beer Act was passed in 1935, during a time when no wineries existed in Idaho. Also, there were no wineries in Idaho during the passage of the 1971 Wine Act. For a long time, the licensing from the

Idaho State Police Department for the sale of alcoholic beverages, has been structured around a beer license due to the 1935 Beer Act. When the Wine Act was drafted in 1971, the provision to hold a beer license to sell wine was placed in the Wine Act, to alleviate changing the beer licensing structure and because there were no wineries in Idaho during that time to justify changing the requirement. Now that the wine industry is flourishing, there are currently thirty eight wineries in the State. It is an optimum time to remove the beer licensing requirement for wineries to sell wine by the drink. **Mr. Batt** stated because wineries are currently required to purchase a beer license to sell wine by the drink, they are then viewed by incorporated cities and counties as a bar or tavern. The city or county then charges an additional $200 to $300 to the winery for a city or county beer permit for selling wine.

Wineries are businesses that pay a lot of taxes compared to other businesses. They pay a State Excise Tax of $.45 a gallon on all wine sold with the exception to wholesalers and distributors and they pay Federal Excise taxes of $1.07 a gallon. In addition to that, they pay State sales tax, a license fee for the winery of $300 by the drink and a retail wine license fee of $100 for each premise. Paying additional fees for beer licenses and permits to sell wine only adds more financial burden to these taxpaying businesses. As to the fiscal impact, he met with Lieutenant Clements with the Alcohol Beverage Control regarding this legislation, and they are not opposed to it. There will be a one time fiscal impact in the amount of $1,500 for an IT person to make corrections to the agency's documents. The fees that counties and cities currently receive for the additional beer permit will also be removed.

Mr. Batt said the wine industry believes with the passage of this legislation, it will provide a beneficial cost savings to Idaho wineries and more incentive to conduct wine tasting in downtown corridors. It also means wineries would likely spend money to acquire additional retail wine and wine by the drink licenses to sell their product off the original licensed premises, which means additional revenues to the State, county and city.

MOTION: **Senator Stegner** moved to send **S1379** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion.

Senator Stegner commented that he appreciated the history lesson. With the change in this industry it is obvious that this will fit much better. The only thing he would point out is when **Mr. Batt** made reference to the large amount of taxes that they pay, it is a small wine tax based on a gallon basis. It may need to be reconsidered by the Legislature.

The motion carried by **voice vote**.

S1354 **Vice Chairman Pearce** said a biomass plant was established in Council, Idaho. It was built using a Federal grant to change the heating system for the school district, which was a major savings. John Watts will explain the bill in more detail.

John Watts, who represents McKinstry, an energy efficiency company,

stated the purpose of **S1354** is to do three things. One, to authorize a school district to build, maintain and operate a thermal hot water energy system; two, allow the school district to sell excess thermal energy hot water for the benefit of the school district; and three, to include thermal hot water energy systems as a bondable purpose within school district bonding law. **Mr. Watts** said this measure addresses renewable resource goals for the State of Idaho, and it also addresses what the Governor said, that we need to move towards as much energy independence as possible. This also allows the school districts to be able to reduce the expense of their footprint, and convert those funds into an educational fund. In summer 2009, they worked with all the major utilities and education organizations, including conservation groups to see if this was a good idea. There are many states and school districts that generate their own energy and there are different approaches to this across the country, some use wind, solar, geothermal and hydro. It just depends where the school is located, what natural resource is available and what technology they can bring to bear on the situation. **Mr. Watts** said **S1354** will allow school districts to generate that hot water through three means, solar, biomass or through geothermal. This is a consensus bill, there is no opposition to it from the utility companies and there is support from the School Board Association and the Superintendents Association.

The first section of the bill allows school districts to establish thermal energy facilities and or systems. The second section allows the school district to either use, sell or exchange the hot water energy and it must be for the benefit of the school district. The last section makes clear that the thermal energy is an allowed bonding purpose. **Mr. Watts** said there were questions at the print hearing regarding a cap on the size and the amount. There really isn't a need for a cap, because geothermal hot water can only go so far with the hot water before it loses its teeth and then it has no value. So in order to sell it, it has to be someone who is nearby with the intent and purpose of heating something. With regard to **Senator Davis'** question as to who would use this energy, **Mr. Watts** said it would be more of an opportunist situation, someone who is nearby that recognizes the hot water and would like to avail themselves of that excess hot water. Lastly, other than Council, who else might be doing something like this. Garden Valley is already doing some thermal heating and Cascade is using geothermal. He does know that the Wood River school district is very interested in moving towards geothermal. **S1354** will begin the process for schools to address some of their budget needs, it creates a steady volume of revenue for them, and it has the opportunity of creating some curriculum and educational opportunities as well.

Senator Geddes asked **Mr. Watts** how will the dependency on this affect the entity if it can't be provided for a time period? He asks this because one of his sons lives in Russia and he has three choices, hot water, cold water or no water. Is liability addressed in this legislation, or should it be addressed? **Mr. Watts** replied with regard to the supply of the hot water, that will have to be figured out between the parties. One of the strengths of this proposal is in order to go forward, it will require a two thirds super majority vote in order to pass a bond that would allow them to build these facilities. So there will have to be some discussion between the school

board and the patrons of the school district. As for liability, the school districts are accustomed to that and the responsibility that they have. Schools contract for a variety of things, each day they are under contract and have the liability and responsibility of transporting children on school buses. It is common and inherent for the operation of a school district.

Senator Stennett asked **Mr. Watts** how much effort is needed in setting up an infrastructure such as this? **Mr. Watts** answered someone else is here today to address that.

David Naccarato, Business Manager of McKinstry, said there is always a backup heat source, if there is a disruption in a geothermal, solar or biomass system. When you introduce this as a heat source to a user, they have an existing system, so the good news is that these renewable energy systems are usually implemented over an existing system that may be older, but still functional. So that would prevent any disruption. More and more, public entities across the state are looking to utilizing local energy resource services. A Caldwell school is looking at putting in a biomass boiler, which is right next door to a county building. If this is done there is already some interest in using the excess. Thermal energy is either hot or chilled water. As we look at these developing projects around the State, they typically get a lot of local attention in their community. These systems can be biomass, geothermal, or solar, it is based upon proximity and typically it is limited to a fairly short distance, up to two hundred yards at most. This can be hot water, it can be steam. **Mr. Naccarato** said once you implement the initial capital cost, it isn't much more to go a little larger. If there is a reliable user long term for the excess thermal energy, it can be a win/win for the school district to sell that excess heat and it allows the other entities in the community to utilize that to their benefit. It is not difficult to implement, you simply put in a boiler. Many schools use boilers, some burn coal, some use natural gas and some are electric. This is simply a boiler system that utilizes a different form of energy. When they make hot water it can be piped to their own school, and when implemented it makes sense to run pipe for other users to use that heat. If it is steam, it can actually be used to generate cold water.

Senator Kelly asked **Mr. Naccarato** to speak to the air quality regarding the biomass boiler proposed in Caldwell. **Mr. Naccarato** replied first it has not been determined that they will do that, it is just one of the possibilities. The good news on these systems, is that they burn very efficiently, and they are actually as efficient if not more efficient than many of the existing natural gas boilers. In case after case, when these systems have been implemented, it is an improvement in the overall quality because the renewable source burns so efficiently. Having said that, any time they put in a biomass system there is a requirement by DEQ for the citing and permitting and emission controls. **Senator Kelly** said in her experience some technology requires a lot of maintenance and oversight. She asked if the schools will be doing that and will there be ongoing maintenance provided by your company? **Mr. Naccarato** responded to begin with, all mechanical systems require ongoing maintenance, and schools do that regularly. Using woody biomass as an

example, that requires a specific set of maintenance protocols that are part of the training process in any new system. It is really no different than the geothermal system that they may be installing in Blaine County. **Senator Kelly** asked if his company is the one involved in providing the ongoing maintenance services? **Mr. Naccarato** replied training is provided for every project that McKinstry does. They have a commitment to long term support to make sure that systems are maintained and are performing at maximum efficiency.

Murray Dalgleish, superintendent for the Council School District addressed the Committee regarding **S1354**. **Mr. Dalgleish** stated in 2003 the District applied for a Fuels for Schools Grant (USDA/FS), which is an Idaho Department of Lands and the U.S. Forest Service cooperative grant to create biomass systems in school districts. They are the first school district in Idaho to receive the grant, and they have had two bond elections to create the revenue to make it a reality. They did this because their systems were forty-five to fifty years old, they were very inefficient and needed to be replaced. The total cost of the project was $2.86 million. They received $510 thousand from the grant and they bonded for $2.2 million. They have a $0 interest loan to support the bond. Due to the energy savings, the school district decided to pay $1 million of the bond so the actual bonding to the community was $1.2 million. The school district will use the energy savings to pay off the remainder of the bond. **Mr. Dalgleish** said their biomass system makes them one of the most energy efficient school districts in the State. It heats and cools 75,000 square feet for two main buildings and 3,000 square feet for greenhouses that are used year round. One of the benefits of the biomass system is that it teaches their students about the community, local resources and economy. This has created the opportunity for their staff and students to work with forest service professionals. This is a year long process where they collect seeds in the fall, they are put in cold storage, they germinate them and in the spring they plant them in the forest, which is a great opportunity for the students. Last summer they started a community garden and they grew thousands of pounds of fruit for their seniors and the food bank. This year they will utilize the greenhouses and they hope to double the amount of fruit to be used in the local community.

Mr. Dalgleish said they would like the opportunity to explore the option of expanding their system to once again be a pilot, to show others how they can create a heating system for Council, while expanding their education and outreach programs in the community. There is interest in the community to create a heating district. The nearby historic courthouse has approached them to tap into their system to heat and cool their building. There is also the possibility of the museum, the post office, county extension office and two large churches within reach of the school that could benefit as well. **Mr. Dalgleish** said they have the land and the buildings that are nearby to these users, they have chip storage capabilities and this would be a win/win for everyone in their community. It will create a revenue source for them, use natural resources, put people back to work, and teach their students how to be creative using renewable resources, by adding value to a product that no one really

wants. They do not use other chip users because they use things that others do not want. This would not be a distraction for the school district as it will expand the curriculum that they already have. Three students have been trained to operate, maintain and clean their biomass system. They have students who take care of the plants and greenhouses, which has become a very practical hands on experience in addition to their curriculum.

Nick Miller, an attorney with Hawley Troxell, stated their firm advises school districts as a bond council for school districts in the State. **Mr. Miller** said they are often asked whether the school district has the power to a do a certain thing, and if they are going to issue bonds, whether the purpose of which are covered in statute. In looking to see if this would be covered, they looked at the fact that most other municipal entities like the cities, irrigation districts and counties all have legislation that specifically identifies this as an authorized purpose for their political subdivision. So the better choice was to include all school districts because existing statute is limited to what can be done on school property. From a coverage standpoint, they believe this is a better way to enable the school districts to do this, with specific legislative authorization.

Senator Davis asked **Mr. Miller** if he believes it is necessary to have a unique statute with specific language that will authorize every action the school board makes, as it relates to the bonding market? **Mr. Miller** replied from the bond council's standpoint, they are pretty conservative, but they don't feel comfortable coming to the Legislature asking for some blank check. It will always be a balancing test as to whether the statute works or should they address a specific need.

Liz Woodruff, who represents the Idaho Energy Collaborative said they are in full support of **S1354**. They believe this is an excellent first step towards further implementation of the 2007 Idaho Energy Plan.

MOTION: **Senator Fulcher** moved to send **S1354** to the floor with a **do pass** recommendation. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Liz Woodruff** addressed the Committee regarding the implementation of the 2007 Idaho energy Plan. **Ms. Woodruff** said that she is an Energy Policy Analyst for the Snake River alliance and the coordinator of the Idaho Energy Collaborative. She is here today as a representative of the Collaborative. Over the last six months they have gathered nearly 2,000 signatures asking the Legislature to implement the plan. The Idaho Energy Collaborative is an action-oriented group of over 30 non-profit organizations, energy businesses, state agencies, academics and energy advocates striving to create positive policy changes related to energy in Idaho. They work to promote energy efficiency and conservation and to promote policies that will enable the development of renewable energy. They meet once a month to exchange ideas, track current energy issues, and listen to key stakeholders in energy related fields. This petition was their first effort to combine public education on Idaho's energy policy with a vehicle for that educated public to communicate with the Legislature.

Ms. Woodruff stated the 2007 Idaho Energy Plan was passed by this Legislature in a consolidated vote of 86-18. The Plan provides an excellent roadmap for Idaho's energy future by prioritizing energy efficiency, conservation and renewable energy as the first resources of choice. The Office of Energy Resources and the Public Utilities Commission (PUC) submitted a thorough report abut the progress made towards the implementation of the Plan this past December. Much of that report acknowledged that legislative action is needed to fulfill the intent of the Plan. Their focus is on the electrical sector recommendations of the Plan, and not on transportation. In particular, they believe there are a series of no cost recommendations in the Energy Plan that should be viewed as possible solutions to our economic hard times. Using this Plan as a roadmap lays the groundwork for cost savings on energy, investment in cutting edge technologies, and potential job growth.

The recommendation of E-2 would require the PUC to set conservation targets for Idaho's investor owned utilities and recommendation E-4, would facilitate the development of shareholder incentives for IOUs when they reach those targets. Ms. Woodruff said these recommendations dovetail with the recently finalized Northwest Power and Conservation Council's 6th Power Plan, which confirms that 85% of energy efficiency savings in the northwest region is yet to be achieved. Energy efficiency saves money on electricity. In order to achieve high levels of energy efficiency, labor is needed for installation of equipment and manufacturing of technologies. While both of these recommendations fall under the purview of the PUC, their recent report and testimony before the Interim Energy Committee indicates that the PUC will look for legislative signals before acting on these recommendations. The petition that was circulated is a clear signal from the pubic that your constituents want the legislature to actively implement the energy plan, and it will require legislation. The recommendation of E-11, simply asks that the State government be a model of energy efficiency and that it allow for a series of pathways towards implementation. Other members of the Collaborative will speak today about the many possibilities that exist for implementation of this Plan. The passage of **S1354** or a hearing on **S1273** are key ways this session could show a marked commitment to this Plan.

In closing **Ms. Woodruff** stated, that she wants to highlight a success of the 2007 Idaho Energy Plan. The only "shall" in the entire Plan was E-18, which requires Idaho's investor owned utilities to annually report their fuel mix to customers. Last year legislation was discussed with regard to making this a requirement. They opted to pursue a dialogue with Idaho Power to look at fuel mixes. Idaho Power has committed to including this annually in a mailing and they believe that they have set the bar for what a consistent and uniform fuel mix looks like. When the ratepayers know where their energy is coming from, they are better able to make choices about their own energy use and to be prepared for rising energy costs associated with our current energy resource mix. This Energy Plan is a good document, it is being looked at, but more can be done and we hope that the Legislature will help to secure a brighter future for Idaho through thoughtful, precise, and robust implementation of the 2007 Idaho Energy

Plan.

Vice Chairman Pearce said in E-10, what is the size behind the international building code? **Ms. Woodruff** replied she has someone here that is an expert on that issue. She would like to defer that to **Ron Whitney**. **Vice Chairman Pearce** said it is a good idea to hook up with some groups in Washington D.C., if you are selling something. He asked **Ms. Woodruff** if she is automatically supporting building codes, and is that a fair way to do business? **Ms. Woodruff** asked for clarification on the question. **Vice Chairman Pearce** said if he has a company that wants to sell a system and if it could be included in the national building code, it appears she is just giving this a rubber stamp. Is that a safe way to do business? **Ms. Woodruff** replied she would like to defer this specific question to **Ron Whitney**. She does know that these codes have been strictly vetted and worked out both on the national level and the State with all the concerns. **Vice Chairman Pearce** said he believes that **Ms. Woodruff** is dodging his question. We have seen numerous systems in our society that are supported by groups like this, and if you rubber stamp it, it is a rather interesting approach. **Ms. Woodruff** responded this is a recommendation from the Legislature's energy plan.

Ron Whitney, an energy advocate, said that he appreciate the comments made, because he has been a voting member on the International Code Council, and he participated in the final code actions. In this instance, the specifics of the energy code are to set minimum standards for buildings, such as windows, insulation, efficiency of appliances, the floors, walls and ceilings. It involves a multitude of different products that go into the actual building. **Mr. Whitney** said that **Vice Chairman Pearce** is correct there are times when a manufacturer actually writes something into the code that qualifies their product to be an inclusive product for the use. He has not seen that as much in the energy codes, as it is more material related. The energy codes deal with efficiency of the building based on its performance, and not on specific items that go into it.

Mr. Whitney said that he is before the Committee today because of a position that he took last year with the Northwest Energy Coalition, as their energy efficiency advocate for the State of Idaho. He has been a custom home builder in the Treasure Valley for the last seventeen years. The relevancy is that concerns for our State's energy future extend throughout many diverse businesses, associations and individuals, only a few of which are represented here today. Idaho had the foresight to develop a State Energy Plan and he is anxious to contribute to its ongoing implementation.

Objective number 4 of the Plan states that the State should promote sustainable economic growth, job creation and rural economic development. **Mr. Whitney** stated with the current meltdown of our national economy, Idaho has a significant opportunity to take the reigns once again and be a leader in innovation and benefit from the subsequent job growth that innovation brings. Energy efficiency upgrades to existing buildings and renewable energy projects will create new jobs. Technology and manufacturing in photovoltaics, LED lighting, wind

turbines and other related equipment need to be considered. The Hoku plant in Pocatello is a prime example. As a State, we need to be aggressive in promoting our interest in next generation energy resources in an effort to entice as many energy related jobs to our area as possible.

Mr. Whitney said the second item he would like to address is the E-10, which states that Idaho should adopt International Building Codes on a 3 year cycle, as a minimum for building energy efficiency standards, and it should provide technical and financial assistance to local jurisdictions for implementation and enforcement. The State Building Code Board, of which he is the chairman, has promulgated the rule for the adoption of the 2009 International Energy Conservation Code (IECC), which is currently before the State Legislature for approval with the intent of the code becoming effective in January 2011. The Northwest Energy Efficiency Alliance's 2008 assessment of Idaho's energy code, suggest that Idaho jurisdictions are approximately 70% compliant with the currently adopted 2006 IECC. During the next eight years, as conditionally required of Idaho for accepting Recovery Act dollars, the State will need to show a code compliance level of 90% in reference to the 2009 Code. The Division of Building Safety has formed an energy Code Collaborative for this purpose with stated strategies for implementation. Awareness of the State energy plan and the subsequent commitment to the Department of Energy relative to the 2009 IECC is critical.

Dave Krick, a board member for Sustainable Community Connections of Idaho (SCC), addressed the Committee. **Mr. Krick** stated as a board member of SCC he oversees energy issues. The SCC manages the programs Think Boise First/Think Nampa First and Treasure Valley Food Coalition. Additionally, he is a board member for Greenworks Idaho, and they were the online host for the Idaho Energy Plan petition. These organizations represent 400 small and mid-scale businesses in the State. Although he cannot speak for all of those members, he is here representing the views of the board of directors for both organizations.

The energy plan was passed in 2007 by the Idaho Legislature and included key recommendations to secure Idaho's energy future. The plan identified energy efficiency and expansion of renewable resources as the highest priorities for our State's energy security. In addition it called for setting energy efficiency and conservation goals and working to keep energy affordable in Idaho. This plan will cost the taxpayers of our State approximately $300 thousand and the petition was an effort on their part to ensure the taxpayers would get a follow through on a plan they agree with and support. Since the passage of the plan some objectives have been addressed and many have not. **Mr. Krick** said there are a number of areas that should be acted on, specifically as it relates to opportunities for jobs and long term financial savings for taxpayers.

E-11 of the Plan states that State government will demonstrate leadership by promoting energy efficiency and use of renewable energy in all facets, they will work to address all barriers and disincentives to increased acquisition of energy conservation and efficiency. **Mr. Krick** stated the newly remodeled State Capital is a shining example of this effort. From

his home in the lower foothills, the Capital is the brightest building in the Boise night sky, seven nights a week, all night long, including daytime when the lights are left on, the Capital is blessed with ample natural light. High performance buildings only operate as well as the culture permits, of those who occupy the building. The Capital was remodeled with great intentions to promote energy efficiency, but the culture change is missing. Without measurable goals, we can't begin to reduce energy use in State facilities. He would suggest that it is possible to reduce our energy use in all State controlled facilities 30%, by doing no more than simply turning off lights when not in use and adjusting HVAC systems. He did this in his own business and realized a 35% savings in 2007 and 2008. After spending $140 million on the remodeled State Capital, he wonders why we didn't think to demonstrate leadership to expand renewables by adding a small solar array.

Senator Davis said he appreciates being scolded here today, but **Mr. Krick** is failing to acknowledge the energy and conservation efforts that are incorporated. He sees the facade of mistakes and the opportunity to improve. But he is not including what is happening in the inside of the committee rooms, hallways and the like. As he drives by, and as he sits in his home, he doesn't believe that very limited exposure gives him the right to gloss over the significant efforts that were made and that are being done on a daily basis. That being said, he does find value in the general concept that we can and should be doing more.

Mr. Krick responded that his intent was not to scold them, and he does appreciate the work and the effort to promote energy efficiency. He used the Capital as an example, because it is an example of what the State can do. He has walked through the Capital and paid attention to the efforts that were made, he appreciates the connection to geothermal that were made, including the efforts to use natural light. He would just suggest that sometimes the simple things are missed, like the cultural change. The single biggest barrier to the expansion of renewable energy and assets, is access to capitol. Energy production requires investment no matter what scale the project is. Nuclear developers were given $8.3 billion federally, and elected leaders from this State are calling for tens of billions more. **Mr. Krick** said where is his loan guarantee for solar power to his home or business, or to expand his geothermal system in his business. Seventeen states have provided a pathway to homeowners and small businesses to tap into the same types of loan guarantees given large developers. The program, Property Assessed Clean Energy (PACE) is available to Idaho. PACE is a market solution to energy efficiency and the key is leveraging loans against property tax collections.

Mr. Krick stated energy conservation and efficiency is something we all agree should be our highest priority and it requires a cultural shift. To achieve real energy independence and security inside the lines of this State, we need to remove the barriers that prevent Idaho's participation in programs like PACE, which allow citizens to participate in the ownership and production of their own energy needs and to build job rich industry that will be in high demand for the unforeseeable future.

Ken Miller, Energy Program Director of the Snake River Alliance, stated he has been involved in the development and execution of the Idaho Energy Plan since 2006. He views the Plan as more than a roadmap for Idaho to meet its future energy needs. Most of the recommendations would create new energy jobs and bring new investments and tax revenues to our State and communities. Idaho would be less dependent on the kindness of outside interests to ensure affordable and reliable electric, natural gas, and transportation sectors. The Plan identifies energy efficiency and energy conservation as Idaho's energy resource of first choice, followed by renewable energy and as needed, conventional fossil fuels. Recommendations E-1, E-2 and E-4 deal with energy efficiency. E-1 recommends that all Idaho utilities should fully incorporate cost effective conservation in their biannual integrated resource plans. E-2 recommends that the PUC establish annual conservation targets based on those cost effective energy efficiency opportunities, and E-4 recommends that the PUC establish shareholder incentives for those investor owned utilities that achieve those conservation targets.

Senator Davis said in his written testimony it indicates that there will be no new coal plants in the region through the 20-year planning period. He asked **Mr. Miller** if the Northwest Power Plan is opposed to coal plants? **Mr. Miller** replied it does not identify a need for new coal plants, it lays the framework for the eventual decommission of the incumbent plants in the northwest region. This is anticipated because of the Federal carbon constraints that will elevate the cost of coal fire generation. Oregon, Washington and Montana have carbon reduction targets, that is why it is anticipated that there won't be any new coal plants. **Senator Davis** asked is there a reliance on coal plants from other regions that is imported to the northwest, and will the northwest continue to benefit from that? **Mr. Miller** said most states, not including Idaho, have standards that require the utilities in those states to obtain a percentage of their power from renewable resources. The northwest imports coal fired generation from outside the region. Idaho does import from Wyoming, but not coal from outside of the region. **Senator Davis** said he doesn't know the current status of the project in central and southern Utah, but Idaho Falls has some hiccups and barriers. He asked **Mr. Miller** if he knows the status of that project. **Mr. Miller** said that project has been discontinued. He is aware that the city of Idaho Falls did approve it by the super majority vote, which is the Intermountain Project #3. **Senator Davis** said a lot of concerns that he is expressing is over the use of coal fired merchant plants, and that he has strong confidence something else is eminent or likely to occur in the near future. **Mr. Miller** responded there will likely be a carbon constraint, like a tax or maybe the Environmental Protection Agency will regulate carbon dioxide. Idaho is not anticipating doing something with carbon like other states have, but Congress probably will. All the utilities in Idaho are contemplating some sort of a carbon constraint. As coal becomes more expensive, wind and other resources become more competitive which affects resource decisions.

Jeff Burns, owner of Burns Energy, stated that he is a small business man who deals in solar power. **Mr. Burns** said small businesses are the last great hope in reviving the economy and providing jobs. He believes

that he is doing that. A chart was provided to the Committee regarding the growth of Green Jobs. Every time that he has residential project he creates five jobs. After the installation he calls on Idaho Power to inspect the system which connects it to the grid. Then a city or state inspector comes to the job site to sign off on it. **Mr. Burns** said when a customer decides to install solar power there is a positive impact in terms of creating new jobs. All the companies listed on the chart are local, except for two. Currently, Idahoans pay a 6% use tax on all renewable energy equipment. The current law as written states that any system generating 25kw or more of power is exempt from this use tax. They pay the tax and then it is refunded in the form of a rebate. By having that number in there, it eliminates about 98% of all homeowners from taking advantage of that rebate. A typical system that he installs is 2 to 3kw, which is the average installation on a home. Rather than eliminate that tax, that 6% use tax could be diverted into some type of renewable energy program. Most of his customers do not like paying the tax, but he believes if they knew that money was going towards furthering energy efficiency and renewable energy, they may be more accepting of it. It will grow these industries and it demonstrates that we are creating jobs. The 2007 energy Plan is a good roadmap in moving forward to a more sustainable energy plan for the State, and at the same time it is creating jobs.

Senator Davis asked **Mr. Burns** what is the cost to the homeowner to install this type of system? **Mr. Burns** replied that is one of three questions he is asked by a customer. For a 2 to 3kw system, he can install it for about $5 per watt. That equates to about $10 to $15 thousand for that size of system. The customer will receive a 30% Federal tax credit to offset that. **Senator Davis** said assuming he were to buy that size system, take advantage of the tax credit, how many years will it take to recoup that investment? **Mr. Burns** replied the reality is with the pricing that he offers and the value of power being produced, the payoff should be between ten to fifteen years. It depends on the individual home and how efficient it is in terms of energy savings. **Senator Davis** asked what are the other two questions? **Mr. Burns** said how much will it cost, and what is the warranty. **Senator Davis** said he remembers as a result of President Carter's efforts and solar energy in the late 1970s, that he would see solar systems being installed. They did not look attractive. Is the technology such today that they are more transparent. **Mr. Burns** said he deals with a lot of homeowner associations that have that very concern, especially when the south facing roof is on the front of the house. Technology has involved tremendously, instead of the large bulky panels, the manufactures have moved towards an all black format. There are other options such as a pole mount. In his opinion he believes these systems look great. **Senator Davis** asked how many square feet does a 2 to 3kw pole mount system take up? **Mr. Burns** responded the general rule of thumb is for every thousand watts of solar power it requires one hundred feet of installation space. Generally that can be installed on one pole.

Wieteke Holthuijzen, a high school student in Meridian, stated when she started working on her senior project, she learned about this Plan. She contacted Idaho Power to see if they would be interested in doing an energy audit at her school. This was a fantastic experience as she discovered a lot of things that could be improved on. Some classrooms could actually reduce their lighting energy consumption by 30% by removing lights. The hallways could cut their cost by 50%. Other things they looked at were motion sensors to turn the lights off. Through the generous incentives of Idaho Power, these motion detectors will pay for themselves in two months. **Ms. Holthuijzen** said she focused on some of the recommendations in the Plan such as E-1, E-2 and E-4. Energy efficiency saves money, and energy as well. Energy audits have shown that small measures can have huge savings of over 30% to institutional buildings. This can range from energy efficiency lighting in city buildings to street lights, and purchasing all the energy star certified equipment for the city and county use. If this proves to be too costly, there are cost free recommendations in the Plan that could be followed.

Senator Davis said at the beginning of her remarks she indicated that the Plan had not been enacted, did he misunderstand her? **Ms. Holthuijzen** responded in 2007 it was passed, when she started her research she learned that not many of the recommendations had been enacted. **Senator Davis** asked her if she meant implemented. She replied yes. **Senator Davis** said the Plan is a series of goals and not all have been achieved.

Kelsey Waters, a student who worked with **Ms. Holthuijzen** on the audit, stated that they worked with Idaho Power on the Students for Energy Efficiency to create interest in making schools more energy efficient. Idaho Power provided equipment to them for the audit, which they have documented, and now they are working on their power point presentation to present to the Board of Education, to implement more cost effective energy efficient measures in their school.

Senator Davis said with the energy audit, have they been able to persuade the principal or the individuals who manage the facility to implement any of their observations? **Ms. Waters** replied they are working with the janitorial staff with regard to the lights. Right now they are working on implementing a recycling program. They hope to have motion sensors installed in the rooms to save energy. During the audit they observed that two hours after school, lights are left on in many of the rooms, as well as the computers in the labs. **Senator Davis** asked Ms**. Waters** when they remove some of the lights, is the foot candle still within acceptable standards? **Ms. Waters** responded it is above the range.

Senator Fulcher commented that he participated in the Energy Committee and it is very encouraging to see that our youth is involved with this. He does believe they are moving towards conserving energy in many areas. There is always room to improve and there are a number of efforts that have succeeded in saving energy. A number of our utilities have bucked up and have followed initiatives to conserve energy and to improve efficiencies. In the last year 155,000 kilowatt hours were actually

reduced through Idaho Power's programs.

Chairman McKenzie commented that the investor owned utilities are working with the community and students on projects. He appreciates the Idaho Energy Collaborative and their efforts in working to implement the Plan.

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:	March 1, 2010
TIME:	8:00 a.m.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett, and Kelly
MEMBERS ABSENT/ EXCUSED:	None
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
CONVENE:	**Chairman McKenzie** called the meeting to order at 8:00 a.m.
H446	**Treasurer Ron Crane** presented **H446** to the Committee and stated that **H446** is a repeal of *Idaho Code 67-1222.* The State Treasurer's Office is a repository for public debt information. All bonded indebtedness that is issued by any taxing district within the State of Idaho, was required to report that debt to the Treasurer's Office. They have no way to enforce that, so some entities did not report that information. The repository is required by code. The Treasurer's Office receives about one request per year for information related to the repository. In July 2009, the Municipal Securities Rulemaking Board (MSRB) went under the Securities & Exchange Commission (SEC), created a new entity called Electronic Municipal Market Access (EMMA) and required that all entities that issue public debt to report that information to them in electronic form. **Treasurer Crane** said now all of that indebtedness information is stored in that repository. The repeal of this section code will reduce the work load for the Treasurer's Office and the information that is reported is redundant because of the new entity that was created. Anyone can now go online and retrieve any desired information related to any public debt issuance. The revised rule, SEC 15c-2-12 requires the entity to report to them and under this rule, the issuers no longer need to file with multiple repositories, so the Idaho repository is obsolete.
MOTION:	**Senator Kelly** moved to send **H446** to the floor with a **do pass** recommendation and **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote**.
	Chairman McKenzie said the Committee will hear **S1376** now and then take up the two RSs on the agenda.
S1376	**Senator Geddes** stated this legislation sets the compensation for the

members of the Redistricting Commission. When it was formed ten years ago, each commissioner received a stipend of $50 per day for their service. Legislative Services drafted this to increase that amount to $75 per day and they will be reimbursed for their food and lodging expenses.

MOTION: **Senator Fulcher** moved to send **S1376** to the floor with a **do pass** recommendation. **Senator Stegner** seconded the motion.

Senator Geddes commented through the difficulty of the budget setting process this year, the funding to allow the redistricting to continue has been set aside.

The motion carried by **voice vote**.

RS19684 **Vice Chairman Pearce** presented **RS19684** to the Committee. **Vice Chairman Pearce** said the State of Idaho is a Right to Work state and the unions have come in and developed a means to evade the principles of the Right to Work. **RS19684** will remove the ability of contractors and subcontractors who directly or indirectly receive a wage subsidy, bid supplement or rebate on behalf of its employees, or provide the same to its employees, the source of which are wages, dues or assessments collected by or on behalf of any labor organization(s), whether or not labeled as dues or assessments. Additionally, no labor organization may directly or indirectly pay a wage subsidy or wage rebate to its members in order to directly or indirectly subsidize a contractor or subcontractor, the source of which are wages, dues or assessments collected by or on behalf of its members, whether or not labeled as dues or assessments. **Vice Chairman Pearce** stated this was drafted for the purpose of stopping any funds from the subsidizing contractors to the detriment of nonunion companies. It is illegal for Idaho contractors to accept the job targeted money. This is a critical piece of legislation and we need to stop this activity. Idaho needs jobs and less regulation so that our businesses can thrive.

Senator Stennett asked **Vice Chairman Pearce** if someone can choose to join a union and pay dues? **Vice Chairman Pearce** responded that is correct. **Senator Stennet** said she is not sure what he is trying to do with this. **Vice Chairman Pearce** said when a job is put out for bid, the union contractors come in with a very low bid, lower than the average wage in an area. They win the bid and in order to meet that prevailing wage, they bring in outside money under the table and pay these workers through the union contractor and raise their wages back up. So they have effectively squeezed out our local contractor who is paying the prevailing wage. Last year, one particular contractor brought in $12.8 million and used it to subsidize wages for a job in the State of Idaho. That is money that is collected from other union members. **Senator Stennett** asked if these individuals are Idaho citizens or part of the labor organization that won the bid on that contract? **Vice Chairman Pearce** responded he believes they are probably all over. When a union gets a job, they bring workers in from everywhere. They don't just have a local group that they use.

MOTION: **Senator Fulcher** moved to print **RS19684**. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

RS19683 With the absence of **Senator Goedde**, **Chairman McKenzie** asked **Jane Wittmeyer** to address **RS19683**. **Ms. Wittmeyer**, who represents the Associated Builders & Contractors, Inc., stated that **RS19683** deals with the implementation of project labor agreements. When the contractor signs a Project Labor Agreement (PLA) they agree to only use union workers on that project. They are prominent across the country and there is an effort nationwide to implement them in states and within the private sector. This will prohibit PLA's in the State of Idaho. Ninety percent of the workforce in construction and building projects are nonunion. This legislation basically says that Idaho will not allow this.

Senator Davis asked **Ms. Wittmeyer** what are the poor performance and other numerous failures on union-only PLA's as stated on line 34? **Ms. Wittmeyer** replied that language is usually found on a PLA. There is no guarantee that there won't be unrest on a job or that there won't be issues associated with the job. The reason that language is highlighted is to ensure that there won't be problems on a job.

Senator Stegner said he is not a big fan of legislative intent especially when it makes a statement that he has no idea whether it is true or not. This is asking the Legislature to recognize a report that we have not seen. This is an extremely unusual way for the Legislature to make an assumption that this is a well founded study that is meaningful to the intent of the legislation. He asked **Ms. Wittmeyer** if she is going to provide a copy of that 2005 report that states this finding regarding poor performance and other numerous failures. **Ms. Wittmeyer** said she has a copy of that and she will provide it later this morning to the Committee.

MOTION: **Vice Chairman Pearce** moved to print **RS19683**. **Senator Stegner** seconded the motion.

Senator Kelly said she will support the motion to print the RS, but she hopes the Committee can have a thorough discussion regarding the implications of the language in both RSs. It is a huge concern to her and she suspects there may be constitutional issues, as well as potential costs associated with the restrictions that they place on the individuals who are contracting for projects, and the costs associated for potential litigation.

The motion carried by **voice vote.**

ADJOURN: There was no other business before the Committee. **Chairman McKenzie** adjourned the meeting at 8:25 a.m.

Senator Curt McKenzie Chairman	Deborah Riddle Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	March 3, 2010
TIME:	8:00 a.m.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett and Kelly
MEMBERS ABSENT/ EXCUSED:	None
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENE: **Chairman McKenzie** called the meeting to order at 8:04 a.m. and stated that we are having some technical difficulty getting **Ms. Anderson** on the phone today so we will reschedule her for Friday.

GUBERNATORIAL APPOINTMENT: **Roy Decker,** who was appointed to the Bingo-Raffle Advisory Board said that he is a veteran and that he runs the bingo at the VFW Hall. He enjoys working on the Board.

Chairman McKenzie asked what do they do with the proceeds? **Mr. Decker** replied that it goes to the youth activities, veterans and their families, it really goes right back into the community.

Senator Darrington asked **Mr. Decker** if the hall that he manages is on Highland in Burley? **Mr. Decker** said that it is. They have bingo games every Saturday night.

Chairman McKenzie thanked **Mr. Decker** and advised him that the Committee will vote on his appointment at the next meeting.

H491 **Ben Ysursa,** Secretary of State, addressed the Committee regarding **H491. Mr. Ysursa** stated that **H491** relates to the publication of the voters pamphlet for Constitutional Amendments. When an initiative qualifies for the ballot it is mailed to 400,000 households. A few years ago Constitutional Amendments were added to the pamphlet including the pros and cons. In order to save general funds the bill would remove Constitutional amendments from the pamphlet. It has never been, so they are not taking anything away. There will most likely not be an initiative this year to qualify for the ballot, so the pamphlet will not be published. Adding the Amendments to the pamphlet would cost around $130,000. **Mr. Ysursa** said that Constitutional Amendments are published three times in every legal newspaper, including the text and the pros and cons.

The Amendments will also be posted on the website. It appears there will be four or five Constitutional Amendments on the ballot. This is a way to save $130,000, but if there is an initiative that qualifies, they will put the Constitutional Amendments in the pamphlet. **H491** states unless the pamphlet is published for an initiative, they will not put Constitutional Amendments out in this form.

Senator Kelly said why would you publish the pamphlet for an initiative, but not for the Constitutional Amendments. **Mr. Ysursa** replied they have done initiative pamphlets since 1935, and this will not affect that. A few years ago the idea was to include Constitutional Amendments in the pamphlet. Legislation was passed to include Amendments in the pamphlet, and if there isn't an initiative they would do one for the Amendments. This bill takes away the secondary option that has never been implemented.

Senator Davis said what he is understanding from Senator Kelly's question is that if it is important enough to do this for an initiative, then why isn't it just as important to include the information regarding the Amendments. He asked **Mr. Ysursa** to readdress that question. **Mr. Ysursa** said right now there is a constitutional requirement for amendments only. That constitutional requirement in Article 20 has nothing to do with the initiative process and it predates it, which was added in 1912 and implemented by the Legislature in 1933. In a perfect world we should do a pamphlet all the time regardless, but when he was asked to look for savings to the general fund, he did that and this is where we are. Voter education is a primary focus of his office, but if there are funds that could be better spent elsewhere, this is an opportunity to do that. **Senator Davis** said there is certainly no doubt in his mind that **Mr. Ysursa** has a commitment to voter education. He wonders if there should be a time limit in which to gather signatures for the initiative process. He asked if there are any time limits, as a matter of case law can we put limitations on it and should Idaho as a matter of public policy have a time limit? **Mr. Ysursa** responded he would say yes to each question. There is an 18 month circulation period before the election, so it is in case law and within the power of the legislature to put a limitation on the initiative period. They have looked at this because it should be as close to the election that it will be on. Some states have a six month process.

Senator Stegner said if he is to understand the logic of this, since there is a constitutional requirement for publishing Constitutional Amendments, is **Mr. Ysursa** suggesting that the statute requiring an additional pamphlet is redundant, unless you are already publishing a pamphlet for initiatives. He asked if that is correct. **Mr. Ysursa** replied basically yes. **Senator Stegner** said he doesn't have a problem with that. In his professional opinion does he believe given the nature of the print media, is publishing it three times an adequate announcement to the electorate, and will it adequately educate the public on the nuances of the Constitutional Amendments? **Mr. Ysursa** responded no, they don't believe it is adequate that is why they brought this legislation a few years ago, to include this regardless of any initiative. This is not the best way to get information out, and they will have this information posted on the internet.

They will have a general voter information pamphlet, but it won't be as specific. He believes the average voter cannot ascertain the unintelligible ballot questions presented by the legislature. They need a more simplistic way to explain Constitutional Amendments. **Senator Stegner** said that the Constitutional Amendments that are before us this year are very concise. He is concerned that there may be an attitude in the electorate to vote against things they do not understand. If that is the case, he is concerned with the lack of education to the electorate this year, it may generate a negative response. Although he realizes the need to find all the money they can possibly find, this may not be the year to initiate this. **Mr. Ysursa** said he understands the situation and he does not dispute it. They will try to do everything within their power and funds to get the information out there on the Amendments.

Senator Kelly asked **Mr. Ysursa** to elaborate a little more on an informative voter pamphlet. **Mr. Ysursa** responded they have to wait until after the primary when they know who the candidates will be. It is a generic voter information guide as to how they register, and it may include a voter id component this year. **Senator Kelly** asked if they are legally obligated to do that? **Mr. Ysursa** stated no, the guide is not mailed to every household. It can be downloaded from the website. **Senator Kelly** asked why isn't he here with a proposed Constitutional Amendment asking to change the printing requirement in the newspapers, recognizing that it is no longer an effective means of getting information out to the public. **Mr. Ysursa** replied he debated that issue, and any change will not be effective until the next time. This year they decided to go with this first and then look at that.

MOTION: **Chairman McKenzie** said **H491** is before the Committee. There being no motion, **H491** died in Committee.

S1378 **Joel Tueber,** who represents the Fraternal Order of Police (FOP), stated this bill is designed to protect law enforcement officers and their families. **S1378** provides for them and their current household members to use an alternate address in place of their residential one on public records. It will require public agencies to not disclose this information without permission under certain exceptions. **Officer Tueber** said this legislation is modeled after the Victims Address Confidentiality bill passed a few years ago. All the public agencies affected by **S1378** are already complying with these types of requests. Law enforcement officers receive threats against them, their homes, spouses and children because of the jobs they do to uphold the laws of Idaho.

Officer Tueber stated they considered the public agencies and how this would affect them. In light of that, this will not take effect until January 2011. The difference between **S1378** and the Victims Address Confidentiality bill, is that the financial responsibility is on the officer making the request and the Secretary of State will not be responsible for their mail or to run the program. The Idaho Police Officer Standards & Training (POST) has agreed to place a standardized form on their website to be used in this program. This legislation has the full support of the FOP, Idaho Sheriff's Association, Idaho Chief of Police Association and the Idaho Prosecutor's Association. There were some concerns from the

Allied Dailies and the Idaho Department of Transportation, which have addressed with some amendments to accommodate those concerns. **Officer Tueber** provided a copy of the proposed amendments to the Committee. They have removed judges and other elected officials because of the public's right to know who they are. Secondly, "former" has been removed as it relates to law enforcement officers. This will only apply to current law enforcement officers. The need for public agencies to have two addresses was removed.

Senator Davis said can he assume that the underlined portions of the proposed engrossed bill is the language to be added, and he asked what are the red portions. **Officer Tueber** responded the underlined portions are the original changes to existing law and the red portions are the proposed amendments. **Senator Davis** asked how does he identify the removal of any of the proposed insertions in the bill. **Officer Tueber** replied that is not included as he couldn't figure a way to do that. **Senator Davis** said if there was a deletion of previously proposed language then it is not in the draft, is that correct? **Officer Tueber** said that is correct.

Officer Tueber said the officers will use their work address as their official address and a renewal period was added, which requires the officer to notify the public agency within thirty days if they are no longer eligible. They do not believe that it is the State's responsibility to protect them, they are asking for a mechanism to allow them to protect their families like what was done in the Victims Address Confidentiality law.

Senator Davis said on page 6 of the draft, line 38, it states the term law enforcement officer shall not include an elected official. He does not understand the phrase an official who may stand for reelection. **Officer Tueber** said that is language that was worked on with **Jeremy Pisca**. It applies to those who are running for election. **Chairman McKenzie** commented it could include those who hold an elected office, but they were appointed to that position. As a candidate they would disclose that information. **Senator Davis** said if it includes an elected official, wouldn't they be an elected official all through the process. **Chairman McKenzie** said they would be. This covers the situation when someone was appointed to an elected position and they are now seeking to be elected.

Senator Darrington said one of the newspapers indicated that if anyone wants to find someone they can. This would be a roadblock to slow that process, but nevertheless if someone is determined to find someone they can do it by following them when they leave work and follow them home. **Officer Tueber** said if someone put in a 110% effort they probably could. Officers are taught to take different routes home and to watch if someone is following.

Senator Kelly asked if this will include Federal officers, and is there a Federal law that addresses this issue? **Officer Tueber** said they worked with Federal law enforcement officers from the Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF) and the Federal Bureau of Investigation (FBI), who indicated that they checked with their local administration and attorneys and there isn't anything in place to protect

them. The definition for a Federal law enforcement officer is very broad. **Senator Kelly** said this includes household members, will they use that address too? **Officer Tueber** said if they voluntarily participate in this program, their home address will be the law enforcement officer's employer.

Vice Chairman Pearce said on page 7, he is curious why he used a short period of thirty days to notify the agency if they are no longer employed. **Officer Tueber** responded in the long run they would like to include former officers, but they could not come up with a mechanism to cover them. They ran into difficulties as to what is considered former or if someone retired. In the future they hope to figure out a way to include retired officers.

TESTIMONY:

Michael Masterson, Boise City Police Chief, said that he has provided a letter from the Idaho Chiefs of Police Association with unanimous support for **S1378**. **Chief Masterson** stated the safety of his employees is of the greatest importance. As police leaders they can help with safety through policy improvements. They cannot create policy and laws that protect their families unfortunately. They turn to the lawmakers to help create greater safety for their families. As professionals in the criminal justice system, they expect to be threatened because of the job that they do. Most of the time the threat is just talk, but one to two percent of the time the threats are real as well as the consequences. **Chief Masterson** stated that he too has stories that he could share, and the concerns he hears from family members and the personal toll it takes on the officers who are away from their homes while working. Although they expect officers to be in harms way, it is not reasonable to expect that we should put their families at risk.

Mike Kane, a lobbyist for the Idaho Sheriff's Association, stated the Association supports **S1378.** His clients are elected, but they have hundreds of deputies who are in harms way. They do not expect this to be a magic bullet, but it is a step and it is appropriate. They will continue to work to include the retired officers in this.

Alan Frew, Department of Motor Vehicle (DMV) Administrator for the Idaho Transportation Department (ITD), addressed the Committee. **Mr. Frew** stated the DMV takes pride in their service. They do not have an issue as to whether or not these officers should be protected. Their issue is more basic, can it be done? Currently they have an automated system that was put together in the 1980s and they have 1.5 million lines of code in that system. There is a way to capture two different addresses on driver licenses and ids. They do not have a way to capture two different addresses for vehicle registration and titles. This creates a problem as they are in the planning stages to replace this automated system and they are going forward with it. They do not expect to have a new system in place until 2016. **Mr. Frew** said he hates to bring a problem without a solution. The solution would be to exempt the implementation of this for vehicle registration and titles until the system is in place.

Senator Davis said he believes that he understands the concern of ITD,

but he struggles with how do they deal with the application of the statute for those who are already covered by the statute. **Mr. Frew** responded there is a provision in place in *Section 49-203 Idaho Code*, which provides for personal information that cannot be released. If this applies to information on titles and driver licenses, it already exists. **Senator Davis** asked **Mr. Frew** to show him what troubles him in **S1378**. **Mr. Frew** replied he hasn't had an opportunity to analyze this, but there are typographic errors on page 13, lines 42 and 44. **Senator Davis** said the draft engrossed copy is the proposed language and he has confidence that it will be corrected. He asked where else is he troubled? **Mr. Frew** said on page 14, line 10 causes ITD a problem because they cannot capture two addresses in their data base. **Senator Davis** said if the authors of the bill were to write it in a way that it requires the disclosure of only one address, would he be troubled by the proposed language on page 14. **Mr. Frew** responded probably not, but they would still have to look at other sections of Idaho code to see what the provisions are. The requirement in Idaho code is that the actual physical address needs to be provided to them. **Senator Davis** said as long as they are provided an address for emergencies or otherwise, the officers are able to buffer their residential address. As long as the ITD has an address identifying a physical address it really is a policy issue for this Legislature. He asked what else in the draft form of this bill troubles ITD? **Mr. Frew** responded they are chapters 4 and 5 of Idaho code, which deal with vehicle registration and title. Those are the provisions that ITD would have difficulty complying with. **Senator Davis** asked **Mr. Frew** to show him that language. **Mr. Frew** said on page 14 and 15, Title 49 Section 504 of Idaho code, that deals with identification cards and driver licenses. **Senator Davis** said on page 15, lines 13 to 16 regarding the alternate address would require ITD to use only one mailing address, would that alleviate the concerns of ITD? **Mr. Frew** said also on lines 28 through 32. **Senator Davis** asked what other specific language in the bill troubles him? **Mr. Frew** said he believes he has outlined that.

Senator Stennett said as she understands this, the physical address they would use is the department's address. She asked **Mr. Frew** if that would work for ITD? **Mr. Frew** replied that is correct.

Senator Fulcher commented that he understands his concerns. He asked **Mr. Frew** if a lien holder typically accesses ITD's data base to find a current address? **Mr. Frew** responded *Chapter 2, Title 49, Section 203 Idaho Code*, has very limited purposes for the disclosure of motor vehicle records. Other information may be disclosed on a very limited basis and they are carefully spelled out in this section of code. They may ask for a motor vehicle record that is provided for a fee after they certify that it is for a legitimate purpose.

Senator Davis asked **Jeremy Pisca** to tell the Committee with these amendments, that his client is comfortable with this legislation? **Jeremy Pisca,** a lobbyist for Idaho Allied Dailies stated initially when the legislation was drafted, they had some concerns with **S1378**. They contacted the FOP and they very graciously accepted their concerns, they have been dealt with and they have no concerns with the current form.

Senator Davis asked if he would like to restate that? **Mr. Pisca** replied with the proposed amendments, they have no objections if it is amended in that manner. **Senator Davis** asked if he would be willing to work with **Officer Tueber** to revisit the questions that ITD has made to see if they can be sensitive to those concerns. **Mr. Pisca** said he is always willing to work with anyone on every piece of legislation.

MOTION: **Senator Darrington** made the motion to send **S1378** to the **amending order**. **Senator Davis** seconded the motion. The motion carried by **voice vote.**

ADJOURN: **Chairman McKenzie** said there is no other business before the Committee today. He adjourned the meeting at 9:15 a.m.

Senator Curt McKenzie Chairman	Deborah Riddle Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	March 5, 2010
TIME:	8:00 a.m.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett, and Kelly
MEMBERS ABSENT/ EXCUSED:	None
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
CONVENE:	Chairman McKenzie called the meeting to order at 8:02 a.m.

GUBERNATORIAL APPOINTMENT:

Rayelle Anderson appeared before the Committee via telephone for appointment to the Bingo-Raffle Advisory Board.

Senator Davis stated he sees on her form that she has Certified Fund Raising (CFR) certification, and he is unfamiliar with that. He asked **Ms. Anderson** to explain that and the value it has for the Board. **Ms. Anderson** replied it is an international certification for a non-profit employee who has a minimum of five years fund raising experience. It has to be at a higher level than just a basic management position. To be certified it requires that she have so many hours annually of continued learning, but more importantly to have effective fund raising management and leadership. A certain dollar amount must be raised over the course of each year as well to be re-certified. She achieved that status in1998 and has upheld her credentials since that time. It is an honor for her and her profession to hold that status. **Senator Davis** said he sees that she has had seventeen years of experience in non-profit raffle and fund raising experience in Idaho. He asked her to talk about what that experience has been and how it has been helpful to her with the Board. **Ms. Anderson** said eighteen years ago she was hired by North Idaho College to start a raffle. She has a degree in business and marketing. When she came on board her role was to get the business going and to research and figure out how a college and foundation could hold a raffle. She has been very involved with setting up the raffle, marketing and the overall management of it. Now she oversees it, and her involvement with the raffle provides a value to the Board because of her experience from administering the raffle, and the integrity of a non-profit in handling a raffle from the state, Federal and local level. **Ms. Anderson** said her area of weakness is bingo.

Senator Davis said it seems that many of the individuals that we have confirmed to this Board have principally had bingo background and not a strong raffle experience. He asked **Ms. Anderson** if that is true and does her participation help them understand the raffle nature of the Board? **Ms. Anderson** said there are six members on the Board and she has only met them by teleconference. She doesn't know the background of each of the individuals. Her experience is only with raffle and she has worked over the years with other states and they operate under Federal guidelines. She believes that her experience is unique as it relates to raffles.

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

The confirmation vote on **Roy Decker** was before the Committee.

MOTION: **Senator Darrington** moved the appointment of **Roy Decker** to the Bingo-Raffle Advisory Board and recommended that it be confirmed by the Senate. **Senator Pearce** seconded the motion. The motion carried by **voice vote.**

S1375 **Senator McGee** presented **S1375** to the Committee and stated this piece of legislation is simple. It will waive the penalty for members of the armed forces who are serving overseas, when they return to the State and renew their concealed weapons permit. If they are past due there is a $10 penalty and this would waive that fee. Since the print hearing, he had a conversation with **Senator Davis** who suggested that it include all active duty personnel who may not necessarily be serving overseas. In light of that suggestion, he would ask the Committee to send it to the amending order.

Senator Kelly asked what is the amendment? **Senator McGee** said the amendment that he is proposing is for anyone who is on active duty, that they would not have to pay the late fee upon renewal. **Senator Kelly** asked if it would apply even if they are here in Idaho. **Senator McGee** replied that is the proposed amendment. If they are on active duty, and actively serving they would have that fee waived. **Senator Kelly** asked if they are on active duty will they have to renew their permit. **Senator McGee** said that is one of the discussions that he has had. He is certainly open to any amendment or additional language to this bill. For example, if they were to go to California and their renewal comes due, they would be able to renew that permit.

Senator Davis commented he does not believe the language has an application beyond a ninety one day grace period. After that, they would have to go through an application process. He understands **Senator Kelly's** point, but the language on line 39 could be interpreted to mean that they have to be gone during the whole ninety one day renewal period. It could also mean part of the renewal period.

MOTION: **Senator Davis** moved to send **S1375** to the fourteenth order for possible amendment. **Senator Fulcher** seconded the motion. The motion carried

by **voice vote**.

RS19775

Chairman McKenzie said before we get to **S1375**, **Senator Darrington** has indicated that he will have someone present **RS19775**. Rather than have them sit through the debate he would like to take up the RS now.

Senator Darrington said **RS19775** has to deal with the pre-qualifications of public works projects. It has been negotiated with several parties. Boise State is a large consumer of public works services, as are other agencies. **Tim Mason** will present the RS to the Committee.

Tim Mason, Administrator of Public Works, presented **RS19775** to the Committee and stated several years ago the Legislature approved pre-qualification for contractor selection on construction projects. **Mr. Mason** said this will enhance that statute in two ways. The language, "it is deemed by the Department" is being added. Department means Public Works and by the respective State agency means the user of the project when they jointly decide it is in the best interest of the State. The pre-qualification criteria allows for a contractor to be pre-qualified and able to bid on a project. The selection is based on the low bid from the contractors. The reason this is being looked at again is because as the State moves into more complex types of projects, it is increasingly more important for the contractors who bid on projects to have experience in those particular areas.

Senator Davis said the current code talks about prior experience with the State and now the language "past performance" is being inserted. He doesn't understand the difference between prior experience and the phrase past performance. It seems to him that it should be the same. The new language is missing "with the State." He needs to understand how that language works and the phrase "good faith factor." It seems to be a sideboard to a more rigid standard for the bidding process. He does not need the answer today, but he will appreciate some help between now and any hearing that we may have on this.

MOTION:

Vice Chairman Pearce moved to print **RS19775** and **Senator Kelly** seconded the motion. The motion carried by **voice vote.**

RS19765

Senator Geddes stated **RS19765** provides more flexibility for a county commissioner with respect to the board members that they appoint to serve on the board of public health districts. Public health districts have a unique situation because they function underneath and by contract to the Department of Health & Welfare. They also have some jurisdiction with regard to water quality and septic systems. What has come to light throughout the health districts, is the fact that the members that have been appointed to a health district board are not perhaps continuing their service due to election changes as county commissioners. **RS19765** will provide some flexibility to those county commissioners, as they make appointments, if they choose to have those board members continue to be sitting county commissioners, instead of former county commissioners.

MOTION:

Senator Stegner moved to print **RS19765** and **Senator Davis** seconded the motion. The motion carried by **voice vote**.

S1377

Senator Geddes presented **S1377** to the Committee. **Senator Geddes** said in his final review of **S1377** he has identified an error in the Statement of Purpose in the Fiscal Note. **Senator Geddes** said he would like to clear up a potential conflict of interest. He uses electricity, he also uses water, and he works for a company that uses electricity. His employer did not draft this legislation. Deputy Attorney General, **Don Howell** will verify that he helped and supported the drafting of **S1377.** Two sections of code in **S1377** are being combined and eliminating a section because of that combination. **Mr. Howell** will focus on the drafting of this and how it will not impact or change the standard for special contract situations.

Don Howell, Deputy Attorney General for Idaho Public Utilities Commission (PUC) addressed the Committee and stated, in the Statement of Purpose the actual reference to code sections that this deals with are *Idaho Code 61-622 and 61-623*. At the request of **Senator Geddes** he drafted this to combine two statutes and then delete 61-623. Both statutes deal with the PUC's authority to suspend a tariff or rate until such time as they have had an opportunity to review, analyze and contemplate changes. There is a time line when a utility files an application that is required by 61-307 to provide the PUC with a 30 day notice. No rate may increase except after a 30 day notice to the PUC, which is the initial notice that is also reflected on line 42 of the statute. Under existing statute 61-622 there is another period which is 30 days plus 5 months. He isn't sure why the Legislature didn't just say 6 months. **Mr. Howell** said prior to 1975, there was no time limit in which the PUC looked at rate cases. There would be rate cases stacked upon rate cases, because the PUC had not determined the first rate case before it filed the second rate case. To alleviate that concern, the Legislature amended 61-622 in 1975, with an emergency clause that added the 30 days plus 5 months. The PUC needs to complete its analysis of a rate case in roughly 6 months after the initial notice. There was a subsequent case where the PUC did not complete its analysis within that 6 month period. The Supreme Court found if the PUC has not completed its analysis within the 7 month period, the rate proposed will go into effect. That is the consequence for the PUC not being timely. In 1976 the Legislature added an additional 60 days for good cause. As it stands now, 61-622 has a 30 day notice requirement by statute on line 42. There is a 30 day notice plus 5 months in 61-622 and then the PUC for good cause, may take up to an additional 60 days to complete its analysis. There is another period which is reflected on page 2 which allows the utility to agree with the PUC, that additional time might be necessary.

Senator Geddes said this section of code intrigued him. If that time period needs to be extended, on page 2 lines 3 to 6 states if the PUC determines that the time period needs to be extended for good cause, then they can ask for an additional 60 days. This statute says that prior to the expiration of the said period of the suspension, the PUC may, with consent in writing, signed by the party filing. This leads him to believe that the PUC has to get permission from the utility that it is regulating, in order to extend that time period. **Senator Geddes** said who is the regulator in this case. Is it the PUC or the utility, that is why he believes

this statute can be improved.

Mr. Howell said currently 60 days with good cause is a discretionary decision of the PUC. They must find good cause, issue an order showing it, and then it allows them to take up to 60 days. Past that 60 days, the utility must consent in writing for an extension beyond that very last 60 day discretionary period. If the utility does not consent the proposed rate would go into effect. That is the consequence of the PUC not acting in a timely manner.

Senator Davis said his understanding is that in order for a rate case to begin it requires that the utility make a filing with the PUC. **Mr. Howell** replied that is correct. **Senator Davis** asked if sometimes that rate could be an increase or a decrease. **Mr. Howell** said that is correct. **Senator Davis** said if there has been a formal request for an increase, can the utility be relieved of the existing rate prior to the final determination by the PUC. **Mr. Howell** responded the existing rate would continue because the PUC's authority to grant an increase in rate is conditioned in 61-502. It requires that PUC justify the rate increase and then the rate shall thereafter be applied. **Senator Davis** asked if there are instances where the PUC might make an interim increase pending a final review and determination as to what the new rate should be? **Mr. Howell** said there have been instances where the PUC does grant interim rate relief. **Senator Davis** asked why would a utility not want to have an expedited determination of the rate request that they have made? **Mr. Howell** said the utility does want an expedited determination of a rate increase. After the initial filing, that rate can go into effect under the law in as little as 30 days. That authority is in 61-622 and 61-623. **Senator Davis** asked if the PUC can make that determination within 30 days, the new rate is established and they are done. **Mr. Howell** said that is correct. **Senator Davis** said the current statute provides for the first 30 days and then it can be extended up to 5 months, is that correct. **Mr. Howell** answered yes. The PUC does not always take the 30 days plus 5 months. If the rate increase is justified, it should go into effect. A rate decrease goes into effect at a faster pace, but occasionally the PUC wants to examine if the rate decrease is sufficient based on the data provided to them. **Senator Davis** asked if the order of the PUC only has a prospective application? Mr. Howell replied that is correct. **Senator Davis** said then he would assume if he were a utility provider, he wouldn't have a problem if the PUC took their time with a rate decrease. The PUC now has the right to take up to 8 months, he asked if that is correct. **Mr. Howell** said **S1377** is written to replace the additional 60 days with a standard 8 month limit. It is eliminating the showing for good cause of 2 months. In 1935 the Supreme Court in examining the statutes at that time, said the two statues are confusing and ambiguous. The Idaho Supreme Court issued a decision that states 61-622 deals with an increase in existing rates or services. 61-623 deals with new rates, new services and so the suspension periods were each 6 months in duration.

Mr. Howell said he provided a letter to the Committee dated February 16, 2010 from him to **Senator Geddes**. The bulk of the letter deals with special contracts and it is a complex area of regulatory law. There are 7

instances where the PUC sets a rate by what is called a special rate contract. Those 7 areas are identified on page 3 of the letter. Special contracts recognize that there are very large customers who take power differently from a residential customer. They use large quantities of power in large lots and they have the ability to control their usage. Given the existence of those special contracts, **Senator Geddes** asked him if the PUC 's suspension authority would affect those contracts. All of those contracts allow the utility to file a superceding schedule or tariff which would change the rate contained in that contract. However, some special contract rates have been frozen until January 2012 for Idaho Power and PacifiCorp is set for December 31, 2010. The suspension power does not affect those contracts.

Senator Davis asked if the letter principally applies to special rate contracts? **Mr. Howell** answered that is right. **Senator Davis** asked if the two party contracts can be negotiated without the consent of the PUC? **Mr. Howell** replied that is partly correct. Typically these large parties have always had a long history of these special contractual relationships. Their rates are negotiated, however, all contracts are subject to the PUC's approval. The parties negotiate the contract, present it to the PUC, there is a public proceeding, and then based on the evidence, makes a decision whether to approve the contract or not. **Senator Davis** said if there is a contract between the utility provider and the customer, and they add a term for the length of the contract, and then the contract is signed between the time of the application and the signing of the contract, can they come before the PUC and ask to be relieved of that rate? **Mr. Howell** replied it depends on the term of the contract. They can be prospectively changed if the contracting parties agree that the utility may change the increase of the rate.

Senator Stegner asked if page 2, lines 4 and 5 are the crux of this bill. The impact of this bill is whether it is good public policy for the State of Idaho to extend a rate case an additional 60 days if the parties agree. **Mr. Howell** said that is the essence of the bill to change the 6 months plus the discretionary 60 days to a flat 8 months. **Senator Stegner** said as he analyzes the bill he is trying to determine whether or not it is necessary to change the last 60 day period of this process. Or should we continue the practice of allowing the additional time to be discretionary upon the filing utility, is that correct? **Mr. Howell** said that is correct. **Senator Stegner** said he is leaning toward giving that discretion to the utility which seems to be fair to the utility. He asked if he is supporting this representing the Attorney General's Office as a matter of policy, or the PUC? **Mr. Howell** responded he drafted this bill at the request of **Senator Geddes**. The Attorney General's Office is in a neutral position, they are merely providing the legal handy work. Whether or not the PUC supports this, **Ron Law** is here on behalf of the PUC. He believes the PUC supports eliminating the ambiguity in the statutes that are assigned to them.

Senator Stennett said the Statement of Purpose states that it will bring Idaho to a more common schedule with respect to other neighboring states. What is the advantage for Idaho to be like our surrounding states. She asked Mr. Howell to address that. **Mr. Howell** said he did not draft

the Statement of Purpose, as to changing the PUC statutes he would defer that to the sponsor of the bill.

Senator Geddes responded that **Senator Stennett** has identified a key to this. A lot of our customer utilities do deal with and have a customer base in our surrounding states. From his perspective, having Idaho with a standard of 6 months puts us somewhat at a disadvantage. It is not uncommon for states that have a longer time period to take advantage and use that in their discovery to determine if they should raise or lower a rate. With Idaho having the shorter period of time in which to resolve this issue, it puts us at a disadvantage. If Idaho has the same time frame that other states have, the information could be useful to determine if the rate is appropriate or not.

Senator Stennett said it was mentioned that historically there has been a problem with the PUC not being able to keep up on the requests for rate changes. She asked if that is correct. **Mr. Howell** responded there have been occasions where a ruling had not been made, that hasn't happened since 1976. **Senator Stennett** said If there isn't a problem, why do we need to extend the time period? **Mr. Howell** replied he would defer that to **Senator Geddes**.

Senator Geddes said there is one aspect of this that has not been addressed. The PUC provides services to the public, and as he looks at rate setting there is another aspect. Any rate case is a public process and prior to any utility proposing a change in rate, they have spent months or years evaluating to justify the change in rate. By extending the time period the public will have an opportunity to be part of the process. This will make the process more fair and user friendly for the public who ultimately have to pay the rate that is set by the PUC.

Senator Stennett said when there is an anticipated rate change, how are the users notified. **Mr. Howell** replied it is a long involved process. The utility files its application including all the data collected to support it. The utility notifies all parties that participated in the last rate case. Another requirement for an increase in rate, is every customer must be notified and it is usually in the form a bill stuffer. The notice has to state the reason, the amount and the class that is being increased. The utility is also required to issue a press release, then the PUC issues one and invites the parties to intervene in the proceeding. Those parties create a schedule based on the 6 month schedule. During the 6 month period the staff of the PUC conduct a workshop to answer all questions regarding the rate increase. After that there is a public hearing and the Commissioners take public testimony from individuals, which is the customer hearing. Once that is completed the decision is rendered and issued. **Senator Stennett** asked if that provides enough input from the public to participate, based on the current procedure? **Mr. Howell** responded yes.

Senator Davis asked who is usually the petitioning party who requests the 60 day for cause? **Mr. Howell** replied it is the Commission who must make a showing for good cause on the record to grant the 60 days to the

Commission. **Senator Davis** said as he understands this, the Commission determines there is good cause, petitions itself, decide they were right the first time and enters the order on the request they made. **Mr. Howell** said usually the Commission issues the order, states what the good cause is and notifies the company. **Senator Davis** asked if the utility provider has the right to say they don't think good cause exists? **Mr. Howell** said this is not used very often and if the company objects they can file their objection with the Commission.

Vice Chairman Pearce asked **Mr. Howell** how many times has this been used? **Mr. Howell** answered the Commission plans to make their decision within the 6 month period. There was good cause when one of the Commissioners had a death in the family, this is not a common occurrence, he does not know how many times it has been used.

Senator Geddes asked **Mr. Howell** if there is anything in the language that would preclude the Commission from ruling on a rate case before the entire 8 months has run? **Mr. Howell** said there is nothing that would preclude the Commission from making an early ruling.

Senator Kelly said as a practical matter, the time frames that are currently in statute work and provide protections for the PUC and utilities. With the existence of the two code sections, they are redundant and as a practical matter this is not a problem. She asked if that is correct. **Mr. Howell** said he would agree with her. The purpose of this legislation is to eliminate the ambiguity by combining them in one. The current time period is 6 months with an additional 60 days for good cause.

TESTIMONY:

Ric Gale, Vice President of Regulatory Affairs for Idaho Power, said that he has been in the industry for twenty six years, and he has been at Idaho Power since 1991. **Mr. Gale** stated in the time that he has been with Idaho Power, he has brought five different rate cases, four of them since 2003. All were conducted in 7 months, so he represents that this time period works well in Idaho. The utility is required to provide a notice of intent 60 days before filing a rate case, then there is a window of 60 days in which to file. The chief benefit of Idaho's system is that our Commission hears the case, they get it direct, they understand it and are better prepared to make a decision. When rates change they do not want it challenged in the Supreme Court. They do want to have an order sooner, but not at the expense of a record. The Commission writes the order, if they request additional time it is a no-brainer. They don't want an early order if the Commission is not prepared to provide it.

Mr. Gale said as for public involvement, when they file a case they do more than a bill stuffer, they receive a letter from him. It is explained in the letter, it is on their website and a press release is made. They do have public comment nights throughout the whole area. There is a lot of effort to include the public in the process.

Senator Davis said if this bill were to pass, will the longer regulatory time period adversely impact rates to the disadvantage of the consumer. **Mr. Gale** referred to the handout regarding regulatory lag, which is a time line

demonstration on how a case is prepared. Year one is the financial part and the case is developed from that information. Preparation of the case takes approximately 4 months, and it takes about 7 months to process the case. The rates are instituted through the tariffs, so the impact of regulatory lagging is that in year three, they start collecting the costs that happened in year one. If costs are going down, regulatory lag is not necessarily negative, it is the dynamic of what happens in between. If costs increase, it is to the detriment of the company. Adding 2 months will just add 2 months to the regulatory lag. The downside is when rates are delayed, there are cash flow and financial implications.

Senator Geddes asked **Mr. Gale** if Idaho Power has a customer base outside the state of Idaho? **Mr. Gale** responded they did have jurisdiction in eastern Oregon, but they sold it. **Senator Geddes** said Oregon has a 10 month period of time in which to issue an order. He asked if Idaho Power had ever appealed to Oregon indicating how problematic regulatory lag is and asked them to reduce their time frame? **Mr. Gale** said their customer base in Oregon is about 5%, so they tend to settle those cases early. **Senator Geddes** said he realizes how important it is to provide feedback to the customers. He asked him how much public participation is there in the process. **Mr. Gale** said at the initial workshop they are typically lightly attended. Towards the end of the case the customer comment nights are very well attended. **Senator Geddes** asked what percent is that? **Mr. Gale** said it is a full hearing, with maybe twenty or thirty customers. Those hearings, are an exercise for the customer to say what is on their mind. There is also public comments posted on the internet.

Vice Chairman Pearce asked **Mr. Gale** if his opposition to the bill is due to the possibility of regulatory lagging? **Mr. Gale** said he views that as an additional 2 months of regulatory lag and that it is unnecessary. **Vice Chairman Pearce** asked if Idaho Power has given the Commission the additional 2 months when it was needed. **Mr. Gale** said that is their past practice. **Vice Chairman Pearce** asked how many times has that happened in the past twenty or thirty years. **Mr. Gale** replied in his career of twenty six years it is twice.

Joe Miller, an attorney, said that he is representing United Water. **Mr. Miller** stated that he was a Commissioner for the PUC for eight years and he served as President of the Commission for four of those years. Since 1994, he has represented United Water and other parties before the Commission. Based on his experience, the proposed changes by **S1377** are unnecessary and are likely to be counter productive. The main purpose of the bill seems to harmonize Idaho's rate setting schedule with our neighboring states, but it impacts only those who have operations in the state of Idaho. It will impact twenty eight other water utilities and nineteen telephone utilities that operate in Idaho. Of all the utilities regulated by the Commission, only three have multi state operations. **Mr. Miller** said rate cases don't just happen, there is a separate Commission rule that requires a written 60 day advance notice of intent for filing a rate case. The current time provides adequate time for all parties to understand and effectively participate in the proceedings. He

has not observed any circumstance where the citizens have been disadvantaged by a time frame that is too short or compressed. If the time period is extended, it is almost certain that the Commission will use that time, which will result in an additional expense to the utility and to the Commission. **Mr. Miller** said the increased cost associated with a longer process ultimately becomes the customers responsibility.

Brent Gale, Senior Vice President of MidAmerican Energy Holdings Company, a company that owns Rocky Mountain Power, stated that he is responsible for regulation and legislation and he has been for thirty-four years. Currently he has ten states that he deals with in terms of regulation and fourteen states with legislation. The Committee has heard testimony today that the time period for rate cases is 7 months. On line 42, is the language for filing the intent, which is an automatic 30 days. On page 2, there is another 5 months and beyond that the Commission can extend this for 60 days for good cause. The way this currently works, the Commission can take 7 months and for showing good cause another 60 days. **Mr. Gale** said on line 3, that clause is preceded by a semicolon. In drafting legislation, that is extremely important because that clause pertains to all the previous paragraph. The Commission does not need the utilities approval for the 60 day extension for showing cause. The Commission would only need approval if it goes beyond 7 months plus the 60 days. It is also significant to note, **Mr. Gale** stated, on line 5 and 6 the Commission has the ability with the consent of the utility to permanently suspend the tariff. This provision will not modify the show cause, it is an additional extension that the Commission can request.

Senator Davis said what he is hearing now is that it is 30 days, plus 30 days, plus 5 months, plus 60 days, plus lots more time if there is consent. He asked **Mr. Gale** to show him where the 30 plus the 30 days are. **Mr. Gale** answered the first authority is on line 42, and on line 39, 30 more days is being stricken. That is important, because as he reads the bill, it is not an 8 month period, it is 9 months. Pursuant to 61-307 it is 8 months plus 30 days. **Senator Davis** said he has a better understanding of this now. **Mr. Gale** responded that is the first of the ambiguities created by this bill. If you look at the new language in subsection 3 and 4, the language talks about giving the Commission the authority to suspend the effective date of any rate. In subsection 1 it refers to existing rates, 2 refers to new increased rates, and subsections 3 and 4 do not refer to new and increased rates. They refer to any rate. In his opinion, this bill could be interpreted to allow the Commission to suspend existing rates. The Commission would need to set a temporary rate and the bill does not authorize them to do that. The Commission would also need to decide what happens if the temporary rate differs from the final rate, are there refunds, and are there surcharges. It may be a simple matter to clarify that.

Mr. Gale stated the objective of regulation is to match investments with rates, so the customers do not have to pay more than what they should pay for the prudent investments that the utility makes. But they should start paying for those investments when the investment starts providing service. Rate cases are filed when a transmission line or a coal plant

goes into service and the utility can get rates for those new plants. That is what determines the timing of rate cases. When a longer time is provided without other mechanisms, that creates a problem and it is the lag that the other **Mr. Gale** referred to. The utility is trying to reconcile their costs with rates. Other states do have different time periods with mechanisms in addition to rate cases, that allows them to effectively put into rates large investments the day they go into service for the rate cases. All of these things impact a longer suspension time. Idaho does not have a mechanism, it is not simply a matter of adding 30 or 60 days to the suspension period. **Mr. Gale** stated they are happy with the Commission in Idaho, it is the best by far.

Senator Geddes asked **Mr. Gale** to speak to public participation and involvement, and to highlight what he sees from that perspective. **Mr. Gale** responded in Idaho they do have intervention in rate cases, they are typically from the irrigation industry, some industrial customers will also intervene, and environmental groups. There isn't a lot of participation from the commercial sector. They are fortunate here in Idaho as all the utilities have low rates. As transmission is added, there will be rate increases. They do have customer participation in their rate cases and it does make a difference.

Neil Colwell, who represents Avista Corporation which is a gas utility that operates in Idaho, stated they oppose this legislation. He would summarize and agree that there doesn't seem to be issue with adjudicating rate cases in a reasonable amount of time. There have been very few instances where they have gone beyond the statutory period. **Mr. Colwell** said that he would concur with his colleague, **Mr. Gale,** that perhaps if there is a problem, that may need to be addressed, they should work on this off line. He encouraged the Committee to hold the bill in Committee and allow the interested parties to work on this.

Senator Geddes said from his experience the public is an insignificant component in the rate making process. He bases that on his experience when the telephone companies were looking to expand service in Idaho. Idaho is unique compared to other states, who have a citizens advocacy section of their PUC, where there are dedicated staff who look out for the interests of the consumer and the general public. Idaho does not have that. Southern Idaho was not included in that case, simply because the PUC staff had the conception that Idaho's community of interest in that part of our State was actually common to Utah, and they did not need to be part of that process. He got involved in that and public hearings were scheduled in Grace, Idaho, with a population of 425, 650 people showed up. They expressed clearly to the PUC that they did not want to be left out of the process, and that the staff had in fact misinterpreted their interests. As we have heard about regulatory lag, it means having a delay in having your utility rate increased or decreased. Part of that regulatory lag is frustrating to him, because the general public does not have enough time to weigh in on these issues. **Senator Geddes** said if you look at the practice, extending it by a couple of months, is only the same time period that is currently available to those PUC Commissioners. This legislation does not say that the PUC will take the full time allowed to issue a

decision on a rate case. It simply says they should be given and allowed extra time to ensure that the decision is the right one. It is good public policy to allow more opportunity for the public to get involved.

MOTION: **Senator Fulcher** made the motion to send **S1377** to the floor with a **do pass** recommendation. **Senator Geddes** seconded the motion.

SUBSTITUTE MOTION: **Senator Kelly** moved to hold **S1377** in Committee, and **Senator Stennett** seconded the motion.

Senator Kelly said it seems to her that the current statute is working just fine. If we extend the time frame it will encourage more inefficiency and potentially hurt the rate payers.

Senator Geddes said they have heard one aspect today and that is representatives of the utilities. Not one consumer was represented, which exemplifies the problem that he is trying to address. He would hope that is taken into consideration. Another aspect that this motion speaks to, is that well enough should be left alone. He did speak with two of the Commissioners and they told him that they do not have a position on this legislation. They are an entity created by the Legislature, and if it takes 6 months plus 30 days or however long, they will do the work within that time frame. If the Legislature dictates something different, then they will comply with the statutory changes with what is deemed appropriate.

Senator Davis stated that he is not going to support the motion to hold the bill in Committee. But he does not intend to vote in favor of advancing it, because for him he doesn't believe it is the right policy step. He does agree with **Senator Geddes** that we should do everything we can to encourage public participation and involvement. He is not convinced that the additional time is the right way to encourage that.

Chairman McKenzie requested a roll call vote on the substitution motion to hold **S1377** in Committee.

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

The motion **failed.**

Chairman McKenzie requested a roll call vote on the motion to send **S1377** to the floor with a **do pass** recommendation.

Vice Chairman Pearce - Aye
Senator Darrington - Nay

Senator Geddes - Aye
Senator Davis - Nay
Senator Stegner - Nay
Senator Fulcher - Aye
Senator Stennett - Nay
Senator Kelly -Nay
Chairman McKenzie - Nay

The motion **failed.**

MINUTES: **Senator Darrington** moved to approve the minutes of February 17 as written. **Senator Kelly** seconded the motion. The motion carried by **voice vote.**

Senator Fulcher stated that he reviewed the minutes of February 22 and he moved to approve them. **Senator Stegner** seconded the motion. The motion carried by **voice vote.**

Senator Geddes stated that he did not have an opportunity to read them.

ADJOURN: **Chairman McKenzie** adjourned the meeting at 10:16 a.m.

Senator Curt McKenzie Chairman	Deborah Riddle Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	March 8, 2010
TIME:	8:00 a.m.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett, and Kelly
MEMBERS ABSENT/ EXCUSED:	None
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
CONVENE:	**Chairman McKenzie** called the meeting to order at 8:07 a.m.
GUBERNATORIAL APPOINTMENT:	**Senator Kelly** moved to send the gubernatorial appointment of **Rayelle Anderson** to the Bingo-Raffle Advisory Board to the floor with the recommendation that it be confirmed by the Senate. **Senator Stegner** seconded the motion. The motion carried by **voice vote.**
S1303	**Senator Jorgenson** presented **S1303** to the Committee and stated that this bill is intended to uphold a pledge to protect Idaho and it's citizens. The cost to Idaho taxpayers to provide for illegal aliens is an estimated $200 million per year and covers services from the Department of Education, Health and Welfare, and the Department of Corrections. There are some that question the state's responsibility versus the Federal government's responsibility in this matter. According to the 1986 Immigration Law, the Federal government leaves a path for states to address illegal immigration through the enforcement of laws to hold employers accountable. The Federal government has the primary responsibility, but a state has the duty and the right to pursue and protect the state, and that is what this bill purports to do by "attrition through enforcement." **S1303** focuses on a portion of the program called E-Verify, that requires all employers and agencies to use it as a search mechanism for employment. Currently, there are over 700 E-Verify users in the State of Idaho and for the past five years all state agencies and departments have used the E-Verify system. Employers who use this system are in construction, agriculture, and temporary agencies. There are small, medium, and large companies who agree this is a fast, effective and fair process with very few problems. As of February 10, 2010, 1,658 sites in Idaho use E-Verify and there have been 26,534 queries made since January 1, 2010. Some of the opponents to this program use E-Verify in order to obtain state contracts, grants, or state support.

Senator Jorgenson described the process of how to use E-Verify, what was required for documentation for an I-9, and the difference between using an I-9 and E-Verify.

Senator Stennett asked if the E-Verify could be used as a pre-hiring tool. **Senator Jorgenson** said it cannot be used as a pre-employment tool. **Senator Stennett** asked if this will put the employer at risk? **Senator Jorgenson** replied that E-Verify offers employers a great deal of protection. You can't be prosecuted for hiring an illegal person if you use E-Verify. It also removes the employer's liability for discriminatory actions. **Senator Stennett** stated that the Department of Homeland Security showed a 54% accuracy rate in their own system and that is where the value of E-Verify would be. How is that percentage addressed to make the system more accurate? **Senator Jorgenson** deferred the question to **Dr. Kris Kobach**. Professor of Law, University of Missouri will discuss all of your questions in his presentation.

Dr. Kobach, Professor of Law at the University of Missouri, stated this bill, will assist cities and states to discourage illegal immigration within their jurisdiction. He is experienced in drafting and defending laws allowing the use of E-Verify. There are eight areas where a state has legal authority under the Constitution and these areas are all backed up by a body of case law. There are also things a state cannot do like deporting people or creating it's own work authorization system. Arizona operates within the narrow parameters of the eight legitimate areas and has been the most successful in addressing the issue while California has not only declined to do the things they can do, they have actually violated Federal law and, in certain instances, resorted to illegal actions. California has suffered huge costs because they have not been able to control the flow of illegal persons in that state.

Senator Davis said because of the actions the state of Arizona has taken, are they fiscally in solid shape. **Dr. Kobach** stated that every state has it's own fiscal mess but in the area of immigration, Arizona has made great strides in moving forward.

Dr. Kobach stated immigration policy started with the Welfare Reform Act of 1996 .The I-9 system has been a failure for two reasons: 1) an employer has to look at the documentation and determine if is legal or counterfeit; and, 2) it is easy for an unscrupulous employer to glance at the document and file it away, no one sees that document.

The system started out as a pilot program in 1996, and in 2004 Congress made it a nationwide program for employers to use. In 2006, the program was renamed E-Verify. Since then it has added about 1,000 employers per week nationwide. Currently 188,000 employers are signed up nationwide. There are 6.0 million queries in any given year.

The most recent survey completed (2009) by Westat found that 93% of the inquiries are instantly verified within two seconds as "work authorized." Tentative non-confirmation comes back 7% of the time due to: 1) name changes at the time of marriage; 2) time lapse when someone

received citizenship but was not yet in the system; and 3) typos. There is about a 1.4% error rate.

Senator Fulcher sad if E-Verify is that quick and accurate, not do it before the hire. **Dr. Kobach** answered that Congress framed it that way so it could not be used as a screening tool. There was a concern that employers would use this tool to screen out those that were legally authorized to be hired for discriminatory purposes.

Senator Davis stated that most Idaho businesses are small, family businesses. This bill says that if a family member is a potential employee, the E-Verify system must be used. Those business owners know who that family member is. Idaho is not considered a sanctuary state. How can this big state, big city fix work for a little state and small employers? **Dr. Kobach** responded once the employee is hired, they cannot be fired for eight days, they have eight days to correct the information. Most potential employees will be legally qualified. Most of those that were not authorized can rectify that claim and correct the problem. There are very few that remain unqualified. Most unqualified people who know that E-Verify is being used do not apply. The employers who are using E-Verify the system claim that it works 99% of the time. **Senator Davis** restated his question about hiring a son in a family business. **Dr. Kobach** said that if an employer uses E-Verify, everyone, even a son, must be processed through that system. It is a Federal policy, everyone is treated equal and there cannot be a claim for discrimination.

Senator Stennett asked about the 54% number referred to by Westat. **Dr. Kobach** responded that is the percentage of people who have figured out how to defeat E-Verify, by stealing someone's entire identity. E-Verify is based on indicators of name, date of birth and social security number. This is not 54% of the subset but 54% of all aliens.

Dr. Kobach touched on other information from the 2009 survey. E-Verify is free and the only cost is the set-up time with the tutorial. Employers who use this system indicate that the costs associated with the program were no burden at all or only a minimal burden. If a computer is not available to the employer, there are third party vendors who will check E-Verify for a small fee.

Senator Stennett stated that it appears the budgets from several state entities will be impacted to get the full value of E-Verify. How would the stress on those entities be minimized? **Dr. Kobach** replied that the majority of the costs of E-Verify are covered by the Federal government. As improvements are made to the system such as pictures, etc., those costs will, in all probability, be covered at the Federal level as well. The Attorney General's Office will be involved if complaints are filed, but the costs are covered by the Federal government because hiring was authorized through E-Verify.

Senator Jorgenson reported that he had discussed the fiscal impact with the Attorney General. Enforcement doesn't require the creation of any new departments. It depends on an actual findings from the Attorney General. There are no costs to cities or counties to suspend a license.

Dr. Kobach continued with his explanation of the Federal requirements already in place that remove all incentives for illegal aliens to receive public benefits on the federal, state, or local level.

Senator Davis asked what is being done within the State to address the issue of illegal aliens. **Dr. Kobach** said that state contractors must use E-Verify as well as all state agencies. Monitoring drivers licenses is also part of the effort. There are no sanctuary areas in the State. Discussion regarding the interaction between State and Federal laws and how that relates to sanctuary cities identified areas where state laws did have better control than Federal law because of the funding the state provided for cities. Magnets that draw illegal aliens are jobs and public benefits. This bill would reduce that attracting force of these two magnets and open up jobs of U. S. Citizens and legal aliens.

Chairman McKenzie asked if the sanctuary city issue is pre-empted by the Federal government and they are in the process of assessing a penalty and the state has a separate penalty, is that pre-empted as well? **Dr. Kobach** answered that Congress created the Federal obligation and there are cities that are breaking that law but currently, there are no penalties. The State is not in conflict with Federal law if it enacts a similar law.

Senator Stennett said what kind of impact will the exodus of those illegal aliens have on the State, was there a drop in unemployment, and was there an increase to revenues. What changes have occurred in the economy? **Dr. Kobach** said that there was definitely a positive revenue impact. A study by the Heritage Foundation, showed that the difference between what an illegal alien family used and what it generated was a negative $19,400 every year.

Senator Davis asked what the “department of revenue” was that was referenced in 44-303(3) of the bill. Idaho does not have a department of revenue. **Dr. Kobach** responded that it would be the treasury and the bill would need to be changed to reflect that. **Senator Davis** requested the legal standard for the “Burden of Proof” in 44-306. **Dr. Korbach** stated that is a criminal burden of proof. Both 44-306 and 44-308 are for mis-classification by employers.

Senator Davis asked if **Dr. Kobach** was aware that most of the small cities and towns in Idaho did not have business licenses. **Dr. Kobach** concurred and added that was true for most states. The only recourse a state has is to cancel a business license. The state has the right to set whatever penalties it chooses.

Senator Kelly asked if this bill is different from the 2007 legislation that provided benefits for children. **Dr. Kobach** stated that the difference is that this bill requires the agency confirming the benefit to verify that the individual is here lawfully in the United States. This bill ensures that all benefits that are available are provided. Existing statutes were reviewed and the Attorney General provided input as the bill was developed, and he did not comment on any conflicting areas.

Senator Kelly requested an explanation of the section on flight risk. **Dr,**

Kobach stated that the standard factors that every court uses relate to flight risk dangers in the community. This bill says that if a person is determined to be an illegal alien, that has to be weighed when considering release. It is well documented that 87% of illegal aliens will flee either during the hearing or right after the hearing, because they know they will be turned over to the authorities for deportation.

TESTIMONY: **Chairman McKenzie** stated that public testimony will begin and that he will take testimony alternately between those who are in support of S1303 and those who are opposed to the legislation.

The individuals who testified in support of **S1303** are as follows:

Hubert Osborne, Retired Dairyman
Ronalee Linsenmann, Citizen, Taxpayer
Craig Campbell, Citizen
Gary D. Smith, City Council, City of Star

The individuals who testified in opposition to **S1303** are as follows:

Brent Olmstead, Lobbyist, Idaho Business Coalition for Immigration Reform
Dr. Will Rainford, Legislative Advocate, Roman Catholic Diocese of Boise
Jan A. Reeves, Program Director, Idaho Office for Refugees
Lucas Baunbach, Contractor, Big Red Painting
Alicia C. Clements, Retired, ICAN
Adam Ramirez, Disabled, ICAN
Dennis Tanikuni, Lobbyist, Idaho Farm Bureau
Bob Naerbutt, Previous Director, Idaho Dairymen's Association
Hannah Saona, ACLU
Alex LaBeau, President, Idaho Association of Commerce and Industry
Sam Byrd, Non Profit, Center for Community and Justice
Claudia Haypes, Citizen, I Care
Maria Audlade, Attorney, Private Practice
Ken McClure, Lawyer, Milk Producers

Senator Jorgenson deferred his closing statement to **Dr. Kobach**.

Dr. Kobach answered questions that were raised during the public testimony. In summary, he stated will all of the outlay be saved right now, probably not. Will there be a significant percentage saved, almost certainly. It takes time for E-Verify to take effect and the illegal labor force to be replaced with a legal labor force. Once that starts to happen, then there will be apparent savings.

Senator Jorgenson stated that **S1303** is not an alternative to **S1271.** Both bills have their place. No where in this bill does it say it imposes restrictions on the Catholic Church in regard to employment enforcement. Milton Friedman said that if you provide jobs and welfare benefits are provided, you create a field of dreams and they will come. Current problems have been invited in. Your vote to send this bill to the amending order would be appreciated.

MOTION: **Vice Chairman Pearce** moved to send **S 1303** to the fourteenth order for

possible amendment. **Senator Fulcher** seconded the motion.

Chairman McKenzie requested the Committee Secretary to take a roll call vote on the motion.

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

The motion **failed.**

ADJOURN: **Chairman McKenzie** stated **S1271** will be rescheduled. There being no further business before the Committee the meeting was adjourned at 11:01 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	March 10, 2010
TIME:	8:00 a.m.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett, and Kelly
MEMBERS ABSENT/ EXCUSED:	None
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

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

RS19780 **Tim Hurst**, Chief Deputy for the Secretary of State's Office (SOS) stated that **RS19780** addresses absentee voting. This legislation makes necessary changes to the state election laws required by the Federal Military and Overseas Voting Efficiency Act (MOVE), which was signed into law and goes into effect for the 2010 general election. The law will make it easier for military and overseas voters to request and vote by absentee ballot. It requires that absentee voting ballots be mailed forty five days before the election. Military members can make this request by mail or electronically. Ballots and registration cards have to be filled out and mailed back to the county in order to be counted. It will be easier for the overseas military to receive their ballots. Additionally, on page 1, line 20 it moves the deadline for voting absentee on the day before the election, to the Friday before the election. **Mr. Hurst** asked if **Colonel Dahle** could speak to the committee regarding the RS.

Senator Davis said he understands there is a House bill regarding photo identification in the process. He has not read the bill and he doesn't know what application it has to absentee ballots. He asked **Mr. Hurst** to speak to that. **Mr. Hurst** responded it will have no effect, as it will exempt photo identification from absentee voters.

Chairman McKenzie stated we do not typically take testimony at a print hearing, but if **Mr. Hurst** would like to defer his time to **Colonel Dahle** that is fine.

Colonel Dahle stated that the military endorses this legislation. It complies with Federal law it will make absentee voting available to our overseas citizens including military members. Idaho is likely to engage in a major overseas deployment and this will affect hundreds of Idaho

citizens.

Senator Kelly said she would like to have a better understanding of the last change that **Mr. Hurst** described and what is the need for it. She asked if it has anything to do with the Federal law. **Mr. Hurst** said that is correct. Almost seventy percent of the ballots cast in the last election were optical scan ballots. This provides that the cutoff date will be on Friday instead of the Monday before, so the clerks can process the information into the poll book and prevent someone from voting again after voting absentee. **Senator Kelly** said voters can vote early in person, will this apply to that? **Mr. Hurst** responded it will, by making the cutoff on Friday instead of Monday. Absentee ballots are mailed and accepted up until 8 p.m. on election day. She asked what will prevent someone from voting twice. **Mr. Hurst** said if they receive a ballot in the mail and they vote twice, it will be recorded at the clerk's office and the polls. Then the county clerk will be able to account for that. Both votes would be counted, but they could be prosecuted for voter fraud. It has happened before. **Senator Kelly** said she doesn't understand what the change is from Monday to Friday. **Mr. Hurst** responded it is for the in person voting. **Senator Kelly** asked if the poll books indicate the absentee ballots that have been accounted for? **Mr. Hurst** said the poll book will show who requested a ballot and if they have voted absentee.

MOTION: **Senator Davis** moved to print **RS19780**. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

HJR4
HJR5
HJR7

Senator Stegner presented the Resolutions to the Committee. He stated these Constitutional Amendments deal with Article VIII, section 3. He provided a handout to the Committee. The first part deals with the general obligation provisions of the limitations on local government and what they must go through in order to borrow money. As he understands, this has been amended more times than any other provision in the Idaho Constitution. The ordinary and necessary clause is in this section of the Constitution and it is quite often called the ordinary and necessary requirements. The three Amendments will not change that language. In the handout, the area between the green and blue line deals with cities and their ability to issue revenue bonds, which requires a two third majority vote. It also limits the use to off street parking, public recreation and air navigation facilities.

Senator Stegner said the next section between the blue and the pink line, deals with cities and other municipal governments issuing revenue bonds for water systems, sewage collection, water treatment, sewage treatment plants, and it may rehabilitate existing electrical generating facilities. That will only require a fifty percent vote of the electorate. Below the pink line is the section dedicated to port districts. Port districts are allowed to issue revenue bonds without a vote of the electorate, and it is pretty liberal as to what they can be used for. Section 3A, of the Constitution deals with the issuance of revenue bonds by counties for environmental pollution control equipment, and this section of code requires a fifty percent vote of the people. **Senator Stegner** stated he isn't sure why this particular section of code was added. 3B is the section

that deals with additional port districts and it does not require a vote. The ability to issue bonds generally fall in two categories. One is for the benefit of the municipality or entity itself. For example, if a port district wants to build an infrastructure for the use and ownership by the district, it would be covered in section 3. If they want to issue nonrecourse industrial development bonds, it would be authorized by 3B. Those are bonds that are issued for the benefit of an industrial entity such as Lewiston has done for grain elevators. Grain elevators are typical along the Columbia River in the northwest and quite often financed by industrial development bonds that are issued through the port. The key is that the port bonds do not in any way obligate the tax paying citizens, or pledge the full faith credit of the port district. The process requires that the entity that wants the bond to find their own financing. The institution who purchase the bonds understand the limitation of credit place on those bonds. It is very specific that it will not obligate the tax payers in any way. That is the reason that port districts are in 3A and 3B.

Senator Stegner stated 3C is for hospitals, which provides for them to engage in revenue generating activities. **Senator Stegner** said personally he would prefer to rewrite all of section 3, but he realized the need to find compromises and to deal with reality. The three Amendments to the Constitution apply to HJR4 to add some language for the hospitals in 3C, **HJR5** deals with airports by the creation 3E and HJR7 deals with power cities added in 3D. The Constitutional Amendments will require three separate votes by the people, which are 3C, 3D and 3E in the next general election. The simplest way to accomplish this was to add the Constitutional Amendments to the Constitution.

TESTIMONY: **Joe Morris**, Chief Executive Officer of Kootenai Medical Center, stated that he represents the twenty public hospitals in Idaho and the patients and communities that they serve. **Mr. Morris** said fourteen years ago he appeared before this Committee asking support for the Constitutional Amendment, Article VIII, Section 3C. At that time due to changing health care environments, it was becoming more complex and competitive for public hospitals and that they should have the same flexibility and operational freedom that non-profit, for-profit and private hospitals have. In 1996, Article VIII, Section 3C was added to the Idaho Constitution. **Mr. Morris** said that **HJR4** will make minor changes to clarify the ability for public and district hospitals to incur indebtedness without a 2/3 majority vote. These revenue bonds will not be secured by the full faith and credit or the taxing power of the state or of any political subdivision.

Senator Davis asked **Mr. Morris** if there has been a reduction in the number of public hospitals in the State of Idaho. **Mr. Morris** responded there has been. In 1996 there were twenty-eight, now there are only twenty. Some county hospitals can convert to non-profit, some hospitals have been acquired by larger profit organizations and some no longer exist. **Senator Davis** asked has that reduction been principally driven by the inability to get financing that they believe they needed? **Mr. Morris** said the conversion of some hospitals to a non-profit status, is directly related to this and there are a number of other hospital who are in the process of trying to convert. **Senator Davis** said in the event that the

Legislature chooses to put this on the ballot, does he believe that those who are in the process of conversion may wait to see what happens in November. **Mr. Morris** replied that he believes they would. Hospitals are watching this legislation, so most will probably wait until after the election.

Steve Millard, President of the Idaho Hospital Association (IHA) stated that he would like to make three points. He represents all the community hospitals in the State through the IHA, and he can tell the Committee that private hospitals are in full support of this. They view this as an important provision for the health system to maintain their strength to keep their viability. In the existing Article VII, 3C, on line 17 and 18 of the bill, the current language of the Constitution provides that no ad valorem tax revenue shall be used for activities authorized by this section. Lines 39 to 41 state shall not be secured by the full faith and credit or the taxing power of the county, hospital taxing district, the state, or any other political subdivisions. **Mr. Millard** said this language adds to the magnitude of the ability for debt and to joint ventures and the like.

Senator Davis said in the event a public or county hospital goes in this direction, can they go through the Bond Bank Authority. **Mr. Millard** said he is not familiar with that term. **Senator Davis** said he sees that other individuals believe the anser is yes, and when we hear from them maybe they can be prepared to answer that question.

Senator Stegner commented maybe we could ask **Brian Kane** to answer that question.

Brian Kane, from the Attorney General's Office, said if they were to go through the Bond Bank that would be found within the definition of a political subdivision within the Bond Banks Constitutional provision and also within the code provision. That definition would capture these public hospital entities. The Bond Bank was organized within the Constitutional provisions to specifically not to pledge the full faith and credit of the State. It is organized and set up as an independent body. The key component is that the full faith and credit of the State is not pledged. **Senator Davis** said his understanding of the Bond Bank is that the State secures the bonds, collects the money and then the State loans the money to the political subdivision. He asked **Mr. Kane** to speak to that. **Mr. Kane** responded in the big picture **Senator Davis** is correct, but the real pledge to back up these bonds is the intercept mechanism. Although the State does something, one of the big battles is that there are funds, but they aren't really your funds. As credit is being evaluated they need to make sure they know they are basing that on the tax intercept mechanism and not on the availability of funds within different State pooled accounts. The rating agencies see the money and thinks it is their money, but that is not the case. It is an independent public body, with its own discreet revenue source and its own credit rating that they are able to latch on to the State's credit rating. That is really the connectivity between the two. **Senator Davis** said when an applicant comes in and they do not have the ability to intercept that revenue, the Bond Bank cannot participate in that process. He asked if that was a fair statement. **Mr. Kane** said it is, and he recalls an instance where the intercepts were clearly not enough to

secure the bonds, and the Bond Bank declined to enter into that transaction.

Senator Fulcher referenced the language that deals with no ad valorem tax revenue and asked Mr. Kane that in his view, does it indicate that other county or municipal funds could be used. **Mr. Kane** said the real key here is that it depends how it is financed, what sort of bond that will be issued as to what will attach to it. In the drafting of this, one thing that all the entities wanted to make sure of, was that all of the available revenues they have that are not tax revenues streams, would be available to pay off these debts. For example, if a terminal was added to the airport, the terminal would bring in revenue, but they would not be able to use the revenues from the existing terminals to ensure there was enough to pay off that debt. **Senator Fulcher** said in the existing language prior to this, has a lease provision in it. He asked with the previous lease provision and the new language would the taxpayer be obligated for a lease instead of a purchase? **Mr. Kane** responded no, because you can't use those ad valorem tax revenues. It is important to note, that in this language it is probably only the hospital districts that are garnering the ability to lease, none of the other amendments contain this language. As he understands, it is how hospitals operate. The equipment they use is sophisticated and expensive and it requires that type of arrangement. **Senator Fulcher** said, he would however say that there is language in **HJR5** that has a lease provision in it as well. His concern isn't leasing equipment, it is for a facility in that regard. When the Ada County Courthouse was built, the county was unable to pass a bond, so urban renewal was used to build that facility and the county leased it. He doesn't know the terms of that lease, but there are lease purchase agreements which leaves an out for the tenant. If this passes, will it potentially be obligating the taxpayer for a lease. **Mr. Kane** said the answer is no, because no matter what the airport or hospital does, the tax revenues cannot be pledged into that project. That is the protective layer that is built into this, it does not pledge the full faith and credit of the entity who is entering into that transaction. With regard to the hospitals, it is how they transact their business and the airports are permitted to lease an airport facility to an entity, not the other way around.

Vice Chairman Pearce said there are looming health care issues on the horizon. Couldn't the Supreme Court change this because it is a public hospital and the taxpayers would be liable? **Mr. Kane** responded it is important to note, the court cannot change this, it can interpret it a certain way. With these provisions it is essentially difficult for a court to reach that interpretation, but he certainly cannot predict what a court will do.

Senator Stegner said on line 35 of **HJR4** is existing language that is common to all of these Resolutions. Any obligations incurred pursuant to this section shall be payable solely from charges, rents or payments derived from the existing facilities and the facilities of projects financed thereby. The language that deals with leases recognizes that a lease is a form of debt.

Senator Darrington said he understands what **Mr. Millard** has said and

what **Senator Stegner** just reiterated with regard to section 3. He asked **Mr. Kane** because of the limitations on the Bond Bank and the full faith and credit provisions that the Bond Bank has, would they be the best source to go to for bonding for facilities? **Mr. Kane** answered the Bond Bank is a great vehicle for the facilities to go through, but in any secure transaction everything has to be evaluated. It is one of the options available.

Senator Stegner said the bond documents clearly state that the ability to repay the debt is limited to the entity and that public credit is not pledged. He asked **Mr. Kane** if that is fully disclosed in the bond documents, and is it the bond's purchasers ability to recognize that limitation that is clearly established in these transactions. **Mr. Kane** answered yes.

Chairman McKenzie stated there isn't anyone else signed up to testify on **HJR4**. He suggested that we hear testimony on the other Resolutions and have separate motions on them at the end. It appears that many of the questions relate to all three Resolutions.

Richard McConnell, Airport Director at Boise Airport, stated that he has been in the airport management business for twenty-five years. He is here today in support of **HJR5**. Recent information estimates that approximately 75% of the passengers who utilize the Boise Airport are not residents. No local tax dollars go to the support, operation or development of Boise Airport. **HJR5** is critical to the economic development, new job creation in the region as well as the State of Idaho. Airports throughout the State are in support of **HJR5.** It is also critical to the support and overall success of initiatives to locate the F-35 joint strike fighter missions to Idaho. **Mr. McConnell** said if you never use the airport or its facilities, you never pay for the airport. The airport generates revenue from five sources, Federal grant funds from the Federal Aviation Trust Fund, passenger facility charges from passengers departing the airport, customer facility charges from airport rental car customers, state grants from aviation fuel taxes and airport cash from rents and charges from airport tenants. The airport protects itself against funding shortfalls through provisions in its airline operating agreements. By agreement, airlines participate in good times through lower rates and charges. Airlines participate in bad times through higher rates and charges to cover their operating losses. There has never been a time when the airport has operated at a loss. The taxpayers are not held obligated for airport operating losses. Boise Airport is an economic driver and resource and should be a community partner to attract new businesses and jobs to the region and State. In that role, the ability to provide for economic development is essential. Two years ago a regional airline was looking for an airport to locate a new aircraft maintenance facility. One of the requirements was for a hangar facility. Ordinarily the airport would acquire debt, construct the facility and lease it to the new tenant under a long term lease with a contract provision for debt default insurance be provided by the tenant. Since Boise Airport could not satisfy those requirements, Reno Airport was selected. As southern Idaho and the rest of the State positions itself for economic recovery, with continued growth the airport must be ready to accommodate those needs. Cargo carriers

such as FedEx and UPS have indicated they will need more space in the very near future. The Idaho National Guard is one of Boise Airports largest tenants. The airport and Guard have been working closely on infrastructure requirements necessary to successfully locate the F-35 mission to Idaho. With the airport's ability to access financial markets in a timely manner is a critical tool in the success of this campaign. **Mr. McConnell** urged the Committee to pass **HJR5**.

Senator Darrington asked if there is a Federal prohibition against companies like FedEx from owning the land adjacent to the runways? Is that the reason why the airport has to build the hangars and then lease them. **Mr. McConnell** replied that is correct. The airport is prohibited from selling property off the airport and they are also prohibited from leasing through the fence, which means that they would own the adjacent property and have access to airport facilities.

Senator Stegner commented that it is important for the Committee to understand that the Resolutions offer two types of bonding. One would be for the revenue that might be generated by the operation of a facility by the airport, that would be managed, owned and operated by the airport. That could be financed under the authorization of this statute. On line 35, is the ability for other projects that would be leased, or sold or otherwise disposed to persons, associations, and corporations that would be beneficial to the overall region and job creation and economic development. So this is offering the airport the ability to only expand their facility base for their own operation, but also the economic tools similar to the statutes in place for the operation of port districts. He asked **Mr. McConnell** if he would agree that is the intent of this language. **Mr. McConnell** responded yes, absolutely.

Senator Stegner said he would like to point out that on line 39, the same identical language is already existing language that is in 3C for the hospitals.

Will Hart, Executive Director for the Idaho Consumer Owned Utilities, said he is here representing Idaho Power Cities. The proposed amendment in **HJR7**, that will amend section 3D, Article VIII of the Constitution with two specific objectives. First, it resolves issues arising from the decision in *City of Boise v. Frazier*, by clarifying that power cities may, without the need of authorizing an election, enter into long term power supply and transmission contracts to serve customers located in their established service areas. Secondly, it provides that revenue bonds may be issued for municipal electric systems on the same basis as municipal water and sewer systems, namely upon the majority vote of the electors. This will modernize the current provision in Article VIII, Section 3 that permits electric revenue bonds on the majority vote, but only for the rehabilitation of existing facilities. **Mr. Hart** stated the powers granted under the proposed Amendment will enable municipal electric systems to enter into power supply and transmission contracts and to make investments into electric generation, transmission and distribution infrastructure that are essential to providing Idaho electric utility services at stable rates.

Senator Stegner stated the three Resolutions are all slightly different and they have been vetted with all the different entities, who have an interest in this. There is a different application for each of them. They are all very tailored and it is ultimately the reason for 3C, 3D, 3E and to be voted on independently. Hopefully this hearing has demonstrated that importance. It was a long process in trying to find a balance for all the players needs.

Senator Stennett said in each of the fiscal notes it indicates that it will cost $40,000 to make the changes. She asked if that amount is for each or is it the entire amount. **Senator Stegner** responded that it is for each one of the Resolutions. The reason for the cost is because of the advertising requirements that are in code to educate the public about the upcoming election and the arguments for and against them. The cost is for printing the pamphlet and publishing in the newspapers across the State. This is what the SOS has estimated it will cost.

MOTION: **Senator Davis** said in the twelve years he has been in the Senate he cannot recall an issue that has been vetted more or had more lawyers in the State of Idaho, including the Bond Bank who looked at the issue of the Resolutions. It was an interesting experience and he would have preferred that we dealt principally with Section 3, but this is a solution and a path forward that he believes is very appropriate. **Senator Stegner** and **Representative Wood** worked a remarkably long period of time to bring forward this legislation and ultimately to the people. They are to be applauded for their efforts. **Senator Davis** moved **HJR7** to the floor with a recommendation that it **do pass. Senator Stegner** seconded the motion. The motion carried by **voice vote**.

Senator Davis moved to send **HJR4** to the floor with a recommendation that it **do pass. Senator Geddes** seconded the motion.

Senator Fulcher said last night was the first time he reviewed the Resolutions. His intent is to vote nay in **HJR4** and **HJR5**, until he has an opportunity to be educated before they go to the floor, and then his vote may very well change.

The motion carried by **voice vote**.

Senator Kelly moved to send **HJR5** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote.**

ADJOURN: **Chairman McKenzie** said there is no other business before the Committee today and he adjourned the meeting at 9:13 a.m.

Senator Curt McKenzie Chairman	Deborah Riddle Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	March 12, 2010
TIME:	8:00 a.m.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, and Kelly
MEMBERS ABSENT/ EXCUSED:	Senator Stennett
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

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

GUBERNATORIAL APPOINTMENT: **Chairman McKenzie** said this hearing will be by telephone conference regarding the appointment of **Lydia Justice-Edwards** to the Idaho Lottery Commission. He asked **Ms. Edwards** where she is. **Ms. Edwards** replied that she is in Kentucky. **Chairman McKenzie** commented that he knows she has served on this Commission and in other branches of government as well.

Senator Davis said he is pleased that she is continuing to serve. He asked if there is anything the Legislature needs to do to give the Lottery Commission the tools it needs to do its job. **Ms. Edwards** responded right now the Commission is a money making machine that is very ably guided by **Jeff Anderson** the Director. It is a half way point of doing what is necessary to encourage the purchase of lottery tickets and to also be discreet about it. The Commission doesn't have any problems at this time, there have been discussions but nothing they would bring in a form of a bill. She is proud of all the productivity and the staff. The problem she sees is that someone has a million dollar ticket out there and has not turned it in. **Ms. Edwards** stated that she enjoys serving on the Commission and it is very well run. **Senator Davis** commented that it is his understanding that the million dollar ticket was purchased in Bonneville County, and he will disclose that he is not that individual.

Chairman McKenzie thanked **Ms. Edwards** for her service and he advised her that the Committee would vote on her appointment at the next hearing.

RS19804 **Chairman McKenzie** stated that he has a letter from **Senator Corder** by unanimous consent of the Agriculture Committee to print the RS and that it be assigned to that Committee.

MOTION: **Senator Davis** said that being the case he would move to print **RS19804**. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote.**

S1271 **Senator McGee** presented **S1271** to the Committee. **Senator McGee** said as the Committee is aware, there has been a great deal of discussion in the State and across the country regarding illegal immigration reform. Some of the legislation that was brought forward this year had issues and concerns, such as the E-Verify. It became clear that there needed to be an additional effort to address this. This bill deals not only with employees and potential employees, but the employers who hire them. It attacks this issue from two separate points.

Senator Davis said we heard from testimony on the other bill that there is some value with the E-Verify program. He asked why not provide a safe harbor in this bill for employers who do use that system. It is his understanding that we do have a lot of employers who are using that system. **Senator McGee** responded it was not part of the effort that he was engaged in, but he has had that conversation with many senators in the past week, mostly as a result of testimony of the previous legislation. If it is the will of the Committee to send this to the fourteenth order, he would consider that to be a friendly amendment.

Senator McGee stated that he has asked individuals to be here today if there are legal questions they can be addressed. As the Committee heard, Federal law preempts almost anything that a state can do with regard to employment of undocumented workers. In 8 U.S. Code, Section 1342(a) it states the only thing a state can do to punish the employment of undocumented workers is to revoke an owner's business license. Idaho does not issue business a license for most kinds of businesses, so revoking one is ineffective and probably arbitrary. For those businesses who do have that type of license, the penalty can be disproportionate as well. **Senator McGee** said he believes one thing that can be done is to remove the benefit of using forged documents or false documentation, to obtain employment.

Senator Davis said that he visited with **Chris Kobach** after the hearing earlier this week, and he had not read **S1271**. He asked him some general questions but focused on safe harbor. He asked him about the criminal intent of that conduct. **Dr. Kobach** suggested that it may be unconstitutional or beyond the limited authority of the eight standards he had in his law review article. He asked **Senator McGee** if he had an opinion from the Attorney General and has he looked at that specific question. **Senator McGee** replied that he has, and he asked a few attorneys to address that very concern.

Senator McGee said **S1271** will not impose sanctions on those who employ unauthorized workers. Rather it will punish those who manufacture false identification, those who use them to gain employment, and those who knowingly accept false identification when hiring an employee. This is very important to understand because it applies to all, not just to those who may be here illegally. Unrelated to their immigration

status, it prevents anyone from using false identification to gain employment. There is sound public policy in support of this legislation. It is appropriate to require a certification to perform some jobs such as CDL for a commercial driver, or a license for an agriculture chemical applicator yet allow those requirements to be sidestepped through the use of false identification. No employer may illegally hire anyone who cannot provide adequate identification regardless of their immigration status. This legislation would make the manufacture, use and knowing acceptance of a false id for employment a crime. The "knowing acceptance " is the key.

Senator Davis said the definition of employer includes a limited liability company. He asked if he were an illegal alien and created a limited liability company or corporation and he hires himself, provide documents that are false, knowing they are false, will he go to jail? **Senator McGee** said under that scenario he believes if he is convicted, he suspects that he would go to jail.

Senator McGee said it is really up to Congress to deal with major immigration reform. States are dealing with this in piece meal ways. This is again another way to approach this issue. Congress hasn't provided much room to enact legislation that deals with illegal immigration, this is not going to take away our tenth amendment right, to enact legislation that will punish the manufacture and use of illegal identification by all people in our State. That is simply what **S1271** will do.

Senator Kelly asked **Senator McGee** if he is going to walk through the provisions of the bill? **Senator McGee** replied he is happy to do that, but it is a very simple piece of legislation and he believes that his summary described it. He has provided an overview of what the legislation will do. **Senator Kelly** said if it is indeed such a simple bill it is probably not simple for those who would be subject to it. Given that, she asked if there are statutes on the books that prohibit the use of false identification? **Senator McGee** said there are, and one thing that this bill does is that it increases the penalties for engaging in this type of activity. **Senator McGee** said he is comfortable walking her through the bill if that is her desire. **Senator Kelly** said that would be her preference.

Chairman McKenzie said there are a number of people here to testify, so he would ask **Senator McGee** to be brief. **Senator McGee** said that he appreciates that and it is why he made his comments brief at the beginning. If there are questions that he cannot answer he does have individuals here to answer those, to the benefit of the Committee. **Chairman McKenzie** said if he wouldn't mind, maybe we could defer to the attorney to address the issue that **Senator Davis** has raised with regard to the constitutionality, and also to address **Senator Kelly's** question about the specifics of the bill.

Senator Geddes said he noticed that this legislation will not become effective until October 1, 2010, he asked why that date is significant. **Senator McGee** replied the idea is to give businesses and entities ample time to understand the implications of this law.

Jeremy Chou, an attorney at Givens Pursley, stated before he goes through the questions that were asked, he would like to address false impersonation. Under Title 18, Chapter 30, Section 18-3001 it specifically talks about every person that impersonates another. In that provision the penalty would be punishable by imprisonment in the county jail not exceeding two years, or by a fine not to exceed $5,000. **Mr. Chou** said with respect to mutilation of documents, that is under Title 18, Chapter 32, Section 18-3201, which talks about officials using or willfully destroying, altering or falsifying or commits a theft in whole or part of a police report or any record kept as part of an official government record. Section 18-3202 specifically states those who are private that violate, are faced with five years in prison and a fine of $1,000. Finally, Section 18-3206 addresses the mutilation of written instruments. If someone tears, defaces or destroys the property of another it is punishable in state prison for not less than one year and not more than five years.

Senator Kelly said if those are felonies, why do we need this bill. **Mr. Chou** answered he will answer that question as he goes through the bill, and he will show the differences.

Mr. Chou said the first section of the bill talks about the definitions. It defines what is an employee and employer are and it does include individuals, corporations, limited liability (LLC) partnerships and such. More importantly it specifically defines what knowing, knowingly and knowledge means.

Senator Davis asked **Mr. Chou** if an individual can employee themselves, will it apply to a sole proprietor who doesn't choose to be an LLC, partnership or the like? If not, why would we have this treatment for an individual who is a sole proprietor versus the same circumstance if they would choose to organize. **Mr. Chou** said under that hypothetical scenario, this provision would apply to that specific circumstance. If that individual is forming a corporation under false pretenses, than hires himself, he would be violating this. **Senator Davis** asked where did the definition of employee come from? **Mr. Chou** said part of that language came from previous bills and in discussions.

Mr. Chou continued and said the next section deals with impersonation for employment and prohibition of such. If a person specifically falsely, verifies, publishes, acknowledges or provides documentation in the name of another, or falsely provides any written instrument in order to gain employment, shall be guilty of a misdemeanor punishable by imprisonment in the county jail not to exceed two years, and a fine not to exceed $5,000. This makes it more succinct and applicable to an employment relationship, and secondly the impersonation of another person will include someone that does not exist. The second portion deals with falsifying documents for employment, which applies to the person who is in the business of falsifying documentation. **Senator McGee** felt it was important to strengthen those penalties and that person could be found guilty of felony punishable by imprisonment in state prison for not more than fourteen years, with a fine not more than $250,000.

Senator Davis asked if a prosecutor can make the charge under 18-2804 as a misdemeanor if they feel that the circumstances justify it? **Mr. Chou** said he does not know the answer to that question. **Senator Davis** said maybe **Chairman McKenzie** can answer that question. **Chairman McKenzie** said if it is listed as a felony, they cannot make the charge as a misdemeanor. They can make a lesser charge of a misdemeanor. If the person is convicted under this, it will be a felony regardless of whether they serve any jail time.

The section for persons using false identification for employment is a new section. The operative provision states that the employer shall not hire the employee knowing that the employee is providing false identification or impersonation of another, or knowingly provides any written instrument in order to gain employment. **Mr. Chou** stated in this particular case, the penalty would include termination of the employee, but also fines not more than $50,000 and a jail term of not more than two years.

Senator Kelly asked **Mr. Chou** to speak to 18-2804. The penalty is pretty extreme for the person who assists them. **Mr.** Chou replied it is a policy question. There are different penalties for a drug user and a drug dealer. There are different penalties for those who use drugs and for possession of drugs. In this particular case they are false id users, but there people who create these documents helping to facilitate the thrust of this legislation. We want to stop the individuals who are making fake social security cards, fake driver's licenses, any fake id for this use. **Senator Kelly** said she isn't sure that analogy works. Existing laws provide for those who are making false identification. **Mr. Chou** said she is correct, his response to that is that this legislation will increase the penalties.

Vice Chairman Pearce asked if there is Federal law regarding the manufacture of false identification? **Mr. Chou** said he is not sure, but there are state laws. **Vice Chairman Pearce** said wouldn't it be wise for us to know that **answer. Mr. Chou** replied maybe someone else knows the answer.

Senator Fulcher said in section 18-2805 on line 33 is the penalty provision for the employer. He asked if that is consistent with statutory language. **Mr. Chou** answered that he believes it is within the parameters of what is considered a misdemeanor. The penalties are mostly policy reasons. **Senator Fulcher** asked **Mr. Chou** what the word "absolute" in the next section means. **Mr. Chou** replied if the employer can show that he didn't know, than he is not held liable.

Senator Davis said there are eight standards that are not preempted by Federal law. It is his understanding from **Dr. Kobach's** review, that Federal law does allow states to have their own statutes that are similar or substantially similar to Federal law. The states can determine whether or not they want to prosecute whether the Federal government wants to or not.

Senator Darrington said he agrees with **Senator Davis.** He believes

that there are quite a few misdemeanors in Idaho statutes that far exceed the penalty that is called for in this. **Mr. Chou** responded it is based on the provisions that they looked at for false impersonation. The penalties are high compared to the penalties that currently exist that deal with false impersonation and mutilation.

Mr. Chou stated as to the constitutionality of **S1271**, it is his opinion that it is constitutional. There are two ways that the court will look at this, on its face if it is constitutional, and with the proper set of facts and circumstances and determine whether or not it is as applied. If it is facial challenge, that standard has to be in every set of circumstances that it would be unconstitutional. If there is one circumstance where it is, than on its face the entire legislation is constitutional. This legislation applies to everyone, not just to unauthorized aliens.

Senator Davis commented that **Dr. Kobach's** concerns centered more around the preemption in the area of criminal misconduct. He has not read the Federal standards, just the law review. If this legislation is advanced, he asked **Mr. Chou** if he would read the article and look at that more narrow question. **Mr. Chou** said that he would do that.

Mr. Chou stated that the court would not look at a hypothetical set of circumstances to determine if this legislation is unconstitutional. In this particular case, as long as there isn't a pretext or motive involved with respect to using this legislation, as applied it would be constitutional.

Chairman McKenzie commented that he has read the article and seen some of the arguments. Under 18-301 for false impersonation, if there were two applicants for a day care center, one used false id because he was a sex offender, the other used false id because they are here illegally, would that statute be unconstitutional to one and not the other, and would it apply to this? **Mr. Chou** replied it would be the same analysis. As applied it would be unconstitutional for the illegal alien and with respect to the sex offender. As long as it is equal application of the statute, he would not think under that hypothetical scenario that it would be unconstitutional.

Senator Davis said that **Mr. Chou** indicated that he had constituents that gave input to this process. On their behalf, if there is a safe harbor for E-Verify, he asked if that would trouble his clients? **Mr. Chou** responded he has not discussed that with those clients. He would be more comfortable if they were to address that.

Senator Kelly asked who are they? **Mr. Chou** said **Mr. Olmstead** is here with respect to the Idaho Business Coalition for Immigration Reform (IBCIR). **Senator Kelly** said in the definition of employee, day labor, casual domestic labor, or contractors performing services as independent contractors were excluded. She asked him to explain why. **Mr. Chou** said for practical reasons, if you were to hire someone to paint your house it is probably a one time thing. As a practical matter it would be difficult for an employer to verify the status of that individual. In a contractor relationship there is usually a 1099 attached to it. **Senator Kelly** said this

does not exclude one time contractors. **Mr.** Chou said in some situations it could. With respect to an independent contractor relationship, they are not a usual employee.

Vice Chairman Pearce said there is a move to use independent contractors, won't this be a big hole regarding constitutionality? **Mr. Chou** responded this would not be a constitutionality issue. He understands what he is saying, but in this case it is someone who usually uses their own supplies, that doesn't take day to day direction from the employer. If you are talking about an independent contractor as a waiter, that type of relationship wouldn't be allowed under the IRS rules.

TESTIMONY: **Mark Masarik**, a concerned citizen, testified in opposition to **S1271.** This bill deals only with enforcement and it does nothing to solve the complex immigration dilemma facing our country and our State. He agrees that it is a piece meal attempt to deal with immigration reform. Employees will be subject to large fines and imprisonment. False identification is merely for people to survive and find work to provide the basic necessities for themselves and their families.

Adam Ramirez testified in support of **S1271.**

Nancy Snodgrass, Director for the Idaho Main Steam Alliance, testified in **opposition. Ms. Snodgrass** stated the Alliance works with small businesses to address the challenges they face with health care, access to credit and economic recovery. They have three concerns, the high cost to the business that makes the mistake, the cost of avoiding mistakes and the cost to communities by creating a demise to the economy. Small businesses should not be put in the position where they are expected to distinguish an authentic document from a false one. It is not fair given the current state of our economy that threatens to bankrupt our small businesses.

Senator Davis said these are thoughtful comments. He understands her concerns, but as he looks at the language it doesn't say mistake, it talks in terms of the employer to have some direct knowledge. That seems to be a much higher standard. **Ms. Snodgrass** said when she speaks of mistake it falls in the category of not understanding the documentation presented to the employer. **Senator Davis** said as he reads the bill, they do not have an affirmative duty to go beyond the document, it is only if they have that expressed clear actual knowledge.

Maria Andrade, who represents Idaho Community Alliance for Immigrant Rights (ICAIR), provided a packet of information to support her opposition to S1271. A copy is attached to the minutes on file in the Committee office. **Ms. Andrade** said the proposed legislation is unnecessary and ineffective.

Chairman McKenzie said in the interest of time there are others here to testify. Ms. Andrade responded upon her review of the bill and the liberal defenses that are provided for employers, it punishes actual knowledge. The bill was drafted to make it nearly impossible to convict an employer.

In terms of punishing someone who may use a made up person to gain employment, it is not identify theft.

Senator Davis asked **Ms. Andrade** to speak to the duplication component that is emphasized in her slides. **Ms. Andrade** said there is confusion that is created by the duplication. If a twenty year old uses false id to purchase beer, they are looking at one to fourteen years. That attorney representing the person would point to this proposed legislation when these individuals would get zero to two. There is a disparity created with this.

Senator Kelly said she agrees with her, but duplication is the wrong word here. This doesn't duplicate what is in existing law, it adds another dimension to it with different standards and penalties that clouds the issue. She asked her if there are Federal statutes that cover similar situations. **Ms. Andrade** said yes there are. Altering any Federal issued document that has a seal is a crime under Federal statutes.

Margarita Ochoa, testified in opposition to **S1271**. **Ms. Ochoa** stated that she has concerns for the children of immigrant parents. It would be a challenge for them and some may even end up in foster homes. She provided over 300 signatures from the community who are opposed to this.

Raquel Reyes, who represents the Community Council of Idaho, stated the Council serves thousands of Hispanic families across the State of Idaho. **Ms. Reyes** said she is in opposition to **S1271** as the bill will put a burden on the community, the State and it will not lead to restoring the rule of law that is desperately needed. **S1271** will add fuel to the flame of a vocal minority that is pushing for an enforcement only type of legislation. This bill will not address the issue of illegal immigration or curb the use of false documents to gain employment. Federal and State laws already exist to go after those who use forged documents to gain employment.

Starr Shepard provided a copy of her written testimony, as she was unable to address the committee. **Ms. Shepard** is opposed to **S1271**.

Abelia Rea, a legal assistant, testified in opposition to **S1271**. **Ms. Rea** said that she believes we do need comprehensive immigration reform.

Christine Tibbens, who represents Catholic Charities of Idaho, testified and stated they have two objections to **S1271**. The term "theft" is too vague. The typical immigrant obtains false identity without ever knowing its origin. **Ms. Tibbens** said should they be prosecuted, yes, but not for merely trying to obtain employment to take care of their family. Second, the State simply does not have the resources to redress illegal immigration. The current immigration system is broken and ineffective. **S1271** does not address the needs of newcomers, if passed this bill will lead to numerous negative intended and unintended consequences through Idaho.

Taryn Magrini, who represents the Idaho Women's Network (IWN),

stated they are opposed to **S1271**. Immigration is a complex issue and should be enacted at the Federal level. Legislation such as this can cause unintended and drastic lasting consequences for families.

Leo Morales, staff member of the Idaho Community Action Network, said he is testifying in opposition to **S1271**. The bill is shortsighted, it creates redundancy and it does nothing to address the complex issue of immigration.

Felipe Moran, a concerned citizen testified in opposition to **S1271**. Mr. Moran stated the bill in itself is anti Latino and it does nothing but attack the immigrant community. This bill will penalize and imprison those who are trying to make a better life for themselves and their families.

Maria Mabbutt, who represents the Idaho Hispanic Caucus, stated on behalf of the Caucus they are opposed to **S1271**. Enforcement only policies are expensive and ineffective. **Ms. Mabbutt** said the development of immigration policy affects the economy. If undocumented workers are removed from the workforce, the effects would ripple through many industries and the ultimate job loss would be even higher.

Hannah Sauna, who represents the American Civil Liberties Union (ACLU), stated other states have implemented legislation similar to this. In Arizona after passing various immigration bills, violent crimes increase. This bill does not indicate a fiscal impact, she believes there would be an increase in litigation. Immigration is a Federal issue and piece meal legislation such as this at the State level is not effective. Legislation such as this will cost too much to implement and litigate with no real foreseeable benefit. The ACLU is opposed to **S1271.**

Brent Olmstead, state coordinator for the IBCIR, stated this legislation has been worked on since the last session. **Mr. Olmstead** said they were charged with coming up with some type of legislation that the business community could live with. That is the legislation that is before the Committee. The intent was not to cause a hardship to the Latino community, but to look at those who take advantage of them, such as the coyotes who smuggle, provide false identification and the employers who take advantage of them. That is the reason for the criminal sanction against employers. The IBCIR believes that immigration is a Federal issue and that it should be done at the Federal level. **Mr. Olmstead** said they do not object to the amendment to provide a safe harbor to those who use E-Verify. He would caution that if E-Verify does not catch false identification, it is a faulty system that does not work. That is his opinion and he has not had time to discuss this with the Coalition.

Senator Kelly asked **Mr. Olmstead** to address the issue in the definition that addresses independent contractors. **Mr. Olmstead** responded that he is not an attorney, and **Mr. Chou's** comments would probably be his response. **Senator Kelly** asked if the businesses that he represents use independent contractors? **Mr. Olmstead** answered there are a lot of different independent contractors that members of the Coalition use, such as on a dairy to a maintenance contract on an office building. **Senator**

Kelly asked if he thinks this exclusion in the definition would encourage that practice? **Mr. Olmstead** replied it possibly could.

Chairman McKenzie said the bill is before the Committee. **Senator McGee** has indicated that he does not have anything in addition to add to what was presented.

Senator Davis said there has been some excellent input and discussion here today. He appreciates the efforts of everyone. He would personally prefer having language in the bill that does not mandate the use of the E-Verify system that has been highlighted today. But for those employers who use it as a regular and active part of their business that they can continue to do that and having a safe harbor would be suitable to address some of the problems that the State has in this area.

MOTION: **Senator Davis** moved to send **S1271** to the **fourteenth order** for possible amendment. **Senator Fulcher** seconded the motion.

Senator Kelly said she will oppose the motion. There has been extensive testimony today that the provisions of this bill add to our code an additional chapter that we already have provisions in place that address these issues. In some cases the provisions added here are actually more lenient than the penalties that are in existing code. If it was the desire of the sponsor to increase the penalties, it would be simpler to increase the penalties on fraud and forgery statutes that are currently in place under State law. This bill is quite complicated and it would be nearly impossible to prosecute and it could expose the State to potential constitutional challenges. The other issue is that there is comprehensive Federal law on the books that addresses these issues. Finally, she really questions the fiscal note and fourteen years imprisonment does in fact have a fiscal impact to the State.

Senator Davis said he struggles with the argument that there is a duplication and that we don't need to do anything because we have statutes to do it. Either we have the authority to do it and the burden associated with or we don't. Where he joins **Senator Kelly** is however, that as we look at the constitutionality, it may be rock solid. He has been assured by the author that they will look at these important constitutional questions and he is taking him at his word. Sending the bill to the amending order will put the Minority Leader in a position to provide proposed amendments that would improve the bill in the fashion that she feels is appropriate.

Vice Chairman Pearce asked if **Senator Davis** would yield to a question. The Attorney General is concerned about the preemption of Federal immigration law. He asked **Senator Davis** if that his concern. **Senator Davis** said he is going by the law review that **Dr.** Kobach provided. In his argument he identifies eight areas where Federal law says that we are not preempted. He is not a scholar on this, but he frames the question in a fashion that we do have authority as a State, and that we are not preempted. What he doesn't know is if the language in this bill goes outside of any of those eight areas. **Vice Chairman Pearce** said if we are

concerned with the constitutionality should we hold this before it is placed on the fourteenth order. **Senator Davis** said he is not the person likely to propose the amendment. The sponsor will look at that and once we get some additional legal guidance, then the floor can make the determination whether the bill should be further amended to address those concerns, or alternatively whether it should remain in the fourteenth order or be advanced. Taking the bill to the amending order to address any constitutional concerns, if there even are any, would be an appropriate approach.

Chairman McKenzie requested a roll call vote on the motion to send **S1271** to the fourteenth order for possible amendment.

Vice Chairman Pearce - Pass
Senator Darrington - - Aye
Senator Geddes - Aye
Senator Davis - Aye
Senator Stegner - Absent
Senator Fulcher - Aye
Senator Stennett - Absent
Senator Kelly - Nay
Chairman McKenzie - Aye
Vice Chairman Pearce - Aye

The motion **carried.**

RS19794C1 **Senator Kelly** presented **RS19794C1** and stated that this is a Proclamation to honor a senator who was here in the statehouse for many years. The hope is that it will be printed and sent to the tenth order. **Senator Kelly** said that **Senator Wetherell** is ninety-one years old and lives here in Boise and we can honor her with this Proclamation.

Senator Darrington said that he served with **Senator Wetherell** for many years and he knows her very well.

MOTION: **Senator Darrington** moved to print **RS19794C1**. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote.**

ADJOURN: There was no other business before the Committee. **Chairman McKenzie** adjourned the meeting at 10:10 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	March 15, 2010
TIME:	8:00 a.m.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett, and Kelly
MEMBERS ABSENT/ EXCUSED:	None
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
CONVENE:	**Chairman McKenzie** called the meeting to order at 8:03 a.m.
GUBERNATORIAL APPOINTMENT:	**Chairman McKenzie** stated the confirmation vote on **Lydia Justice-Edwards** to the Idaho Lottery Commission is before the Committee.
MOTION:	**Vice Chairman Pearce** moved to send the appointment of **Lydia Justice-Edwards** to the Idaho Lottery Commission be sent to the floor with the recommendation that it **be confirmed** by the Senate. **Senator Geddes** seconded the motion. The motion carried by **voice vote.**
H588	**Representative Bedke** presented **H588** to the Committee and stated this bill was brought to him by the Attorney General's Office. Idaho law requires that all offices be open between the hours of 8 a.m. and 5 p.m. to conduct their business, every day except for Saturday, Sunday and holidays. With the furlough policy that was implemented and what is contemplated for the future, not all savings are realized. Even though the employees are furloughed, by law the office has to remain open. **Senator Davis** said what is the definition and use of the word officer on line 9, and is it located in Title 59. **Representative Bedke** replied that he doesn't know the answer to that question. It is old language and that is the answer he received. **Senator Kelly** asked **Representative Bedke** what office does this apply to? **Representative Bedke** said it applies to all offices. The law that is on the books says that the officer must be at his office and keep it open from 8 to 5, every day, except for Saturday, Sunday and holidays. It is in conflict with some of the furlough policies. **Senator Davis** said he had a meeting with the Attorney General and he indicated that it is a problem for him to enforce a furlough policy. He

asked **Representative Bedke** if the language comes from the Attorney General's Office? **Representative Bedke** said indirectly by way of Legislative Services. Title 59 may need to be rewritten, but it is not the intent of this legislation, and officer seems to be archaic language from his perspective. **Senator Davis** said Title 59, Chapter 9 picks up just about every board, commission and the like. Since it is undefined as it relates to this, he doubts that we are doing any significant harm.

MOTION: **Senator Davis** moved to send **H588** to the floor with the recommendation that it **do pass**. **Senator Geddes** seconded the motion. The motion carried by **voice vote.**

H522 **Representative Gibbs** presented **H522** and stated in 1999 there was a pursuit that started in Rich County Utah, which is adjacent to Burley. It continued into Wyoming and then back into Idaho where there was a traffic accident. As a result of that accident, Rich County and the other parties were sued for $10 million. All the other parties have been dismissed from the lawsuit with the exception of Rich County Utah. Rich County is still in litigation, so they have declined to be good neighbors in that area. About two thirds of Bear Lake is in Idaho and one third is in Utah. The closest hospital in that area is Bear Lake Hospital in Montpelier. If a Utah ambulance picks up a patient and they want to go to Montpelier, they wait at the state line until an Idaho ambulance comes and they make the transfer. **Representative Gibbs** said he has been working on this since 2008 to resolve this conflict. **H522** is the result of that and a new chapter was added, Title 6, Chapter 28, the liability for out of state emergency responders. Section 4 of the bill declares it to be an emergency. The reason for that is because they don't know when the next accident may happen. As soon as the Governor signs this it will be in full effect. He did not want to make this a Bear Lake issue or an issue between Rich County and Idaho, so it is written to include any out of state responder that borders Idaho.

Senator Stennett asked if this happens frequently in that area? **Representative Gibbs** replied the transportation issue continually happens. There is a development on the border in Garden City, and the only way in for police protection is for them to enter in Idaho, then go west and south to Utah. In 2008 there was an airplane accident with two fatalities. In another incident a family was camping and a woman backed into a tent. There weren't any fatalities, but there were injuries that took the entire emergency responders from Idaho and Utah. **Senator Stennett** said her father was involved in an accident on the Montana and Idaho border. Her mother was sent to the wrong hospital because no one could figure out who went where. Her concern is that there could be an over response, she asked if there is something in this bill to avoid that? **Representative Gibbs** replied he hadn't thought of that scenario. He does know that the ski resort in Driggs, Idaho is entirely in Wyoming. All the responders and medical attention comes out of Driggs. When they do have problems, Wyoming does respond. It is not unique to these types of issues. This is an instance where Rich County doesn't, due to the lawsuit.

Vice Chairman Pearce said on page 2, line 24 it talks about a pursuit, who will be responsible? **Representative Gibbs** said he knows that the Utah Highway Patrol and Idaho State Police have a signed memorandum and working agreement. He doesn't know who will have jurisdiction once someone is captured. **Vice Chairman Pearce** said what if there is a pursuit and the end result is an accident caused by Utah. Who will be liable? **Representative Gibbs** said what this is trying to do is extend the same liability protection to nonresident responders that Idaho residents have. The Attorney General said it is implied in our law and the court ruled that responders have the same protection that resident responders have. As a result of the lawsuit, this will give nonresident responders the same protections that our resident emergency responders have.

Senator Davis said most of these problems have been resolved with compacts by the counties of bordering states. Because of that lawsuit people have been reluctant to enter into an agreement with Rich County. This will help with what is potentially a life saving issue. On an unrelated matter, he said Idaho didn't pay its $50,000 last year. He doesn't know what that money is for. He asked **Representative Gibbs** how does that relate to this legislation? **Representative Gibbs** said the Bear Lake Regional Commission is funded by Idaho and Utah and for years Idaho has paid to fund that Commission. Two years ago Idaho did not fund the Commission and this year he and **Senator Geddes** and **Representative Loertscher** have been working with DEQ, because it falls under their budget. It is very unlikely that it will be funded this year with general funds. Utah will not fund it if Idaho doesn't. He has a letter of support from the Commission. They have been instrumental in trying to resolve this issue. **Senator Davis** asked if the relationship for the funding of the Commission and this legislation are related? **Representative Gibbs** said he doesn't see that the two issues are related.

Senator Kelly said rather than amend this section of code, a new chapter is being added to deal with this specific issue. Her concern is that the existing language is specific from a legal standpoint. **Representative Gibbs** replied that Utah ran similar legislation to try to resolve this issue. They drafted legislation that they wanted Idaho to adopt. Rather than trying to come up with the same protections in Idaho that Utah has, he merely wanted to say that nonresidents have the same protection as residents. **Senator Kelly** said she understands that he has been working with the Utah Attorney General's Office and looking at Utah law in order to accommodate this life safety issue. She asked if he has consulted with other states as well? **Representative Gibbs** responded that he hasn't. He did speak with the people in Driggs, they have not had any issues and he has not examined the Washington, Oregon or Montana borders.

Senator Darrington asked if Rich County and Bear Lake have an enforcement boat? **Representative Gibbs** said he doesn't know, but they both have dive teams and currently the best marina is about one mile south of the Idaho border on the Garden City side. **Senator Darrington** asked if enforcement from either county is on the whole lake? **Representative Gibbs** said the one thing he does know is that a fishing license from either state is good anywhere on the lake. **Senator**

Darrington said the key point is that the best medical facility is in Montpelier. **Representative Gibb** replied that the closest medical center is located there.

TESTIMONY: **Russ Hendricks**, who represents the members of the Idaho Farm Bureau, stated that the Bureau supports **H522**. A number of its members live and recreate in rural areas throughout the State. This is a topic of concern and it was brought froward to the policy development process.

MOTION: **Senator Geddes** moved to send **H522** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion.

Senator Kelly said she will support the motion but she is concerned about unintended consequences. She would have preferred a less dramatic way of addressing this issue.

Senator Geddes said there have been instances that he can remember. A major grocery store caught fire in Preston a few years ago. Preston and Franklin counties have a small volunteer fire department. Without the assistance of Utah's fire departments, there is a good chance that the entire main street of Preston would have ultimately burned. So there are unintended consequences but most of them fall in the favor of Idaho. Two summers ago Idaho had wild fires and without the assistance of Wyoming and Utah it is likely there would have been more damage and destruction.

There was no other discussion on the motion. The motion carried by **voice vote.**

H521 **Senator Heinrich** presented **H521** to the Committee. **Senator Heinrich** said this was a collaborative effort between the county clerks, Realtors and the title industry. It addresses the necessary corrections to *Idaho Code 31-3205.* The recording fee for the first page will be increased from $3 to $10. Any additional pages remain the same cost at $3. **H521** establishes a uniform rate of five cents per page for any electronic copies. Currently these rates range between one cent to one dollar. There is a uniform definition of what an electronic copy is.

TESTIMONY: **Duane Smith**, county clerk for Minidoka, stated that he would like to demonstrate some of the benefits that will be achieved by passing **H521**. In 1983, they didn't have computers in the courthouse, but they did have two micro-film storage machines. In preparation for the hearing in the House, he contacted all county clerks. Within a few hours nineteen responded and he learned that only one of them had actually converted all their micro-film records to electronic storage. The remaining counties are in various stages of dealing with that. He expected to hear that from the small counties, but Canyon County indicated that they have about two million records on micro-film and micro-fiche, Nez Perce is close to one million, and one county indicated there is a problem with deterioration of the records. **Mr. Smith** said increasing the recording fees will allow the counties to improve accessibility of the records as well as preserve them in a more sustainable environment. It is also important to redact certain information from documents. With an electronic format it will be much easier to do that. **H521** is the first step in helping the county recorders to

deal with accessibility and storage, including the redaction problems that lie ahead.

Senator Stennett said she understands that the fees have not been increased for a long time and that the clerks can't recover the costs of doing business. She asked **Mr. Smith** if the fee increase will it help the counties to convert the micro-film documents to electronic? **Mr. Smith** replied it will vary county to county depending on the volume of records that they deal with. The counties that don't, will have a longer period of time in making the transition. **Senator Stennett** asked what kind of process is it? **Mr. Smith** said they have not started that process, but a few years ago it was estimated to be around $70,000 to convert their records to cds. Some counties are trying to do this internally by purchasing specialized equipment and having their personnel scan the documents to electronic storage.

Senator Darrington said as the records are transferred to electronic storage, what kind of back up system do you have, and is it in a separate location. **Mr. Smith** replied the last ten years they have scanned their records and they have backup storage off site.

Betty Dresser, the Payette County clerk, stated that last year the Legislature requested the title companies to get together with the county clerks and to work on what is needed. **Ms. Dresser** said that is where this bill came from. There hasn't been a change in recording fees since 1987. The increase is only for the first page, so it is only an increase of $7 per document. Once the documents are scanned they will have to be indexed, which requires additional time and effort. The clerks need assistance on the financial side to purchase equipment to do what is needed.

Vice Chairman Pearce asked **Ms. Dresser** how much is supplemented with property taxes? **Ms. Dresser** said she doesn't know and for every county it will be different. The maintenance on equipment is very expensive and that is why the taxpayer is supplementing the recordings.

Seth Grigg, who represents the Idaho Association of Counties (IAC), said he wants to thank the clerks and title companies who worked closely in coming to an agreement. **Mr. Grigg** stated he found that in the smaller counties they are taking in much less than their operating expenses. As an example, Benewah is running a deficit of $4,500 per year, Custer is $25,000, Clearwater is $8,500 and Blaine County is $56,000. It varies from county to county but it impacts the smaller ones more. On the handout that **Senator Heinrich** provided it indicates where Idaho stacks up against the nation with regard to recording fees. Idaho has the lowest rate in the country and the average cost is $20. With the increase, Idaho will still be at the very bottom when you compare it nationally.

Senator Davis asked if there is anyone here to testify in opposition to the bill. **Chairman McKenzie** said not based on the sign in sheet.

MOTION: **Senator Davis** moved to send **H521** to the floor with a recommendation

that it **do pass. Senator Stegner** seconded the motion.

Senator Davis said as an attorney who regularly causes things to be recorded, these fees will have no impact on the recording. Where it does have significant impact is in the covenants, and they are nearly illegible. This bill is necessary for the preservation of records and it is a daunting problem.

The motion carried by **voice vote.**

S1401

Tim Mason, Administrator of the Department of Public Works (DPW), presented **S1401** to the Committee. **S1401** deals with pre-qualification of contractors for construction projects. **Mr. Mason** said some construction projects require specialized labor and this will ensure that contractors are able to do the work that is requested. Four or five years ago he brought a bill which allowed them to do construction management at risk for the Capitol renovation, which sunset with that project. **S1401** enhances the previous pre-qualification legislation. It will provide one more opportunity to have a means by which the DPW can carefully select a construction delivery method on a project.

Mr. Mason stated when pre-qualification is deemed to be in the best interest of the State, by the department and the respective state agency has been added. Where it refers to past performance, **Senator Davis** asked at the print hearing, what is the difference between prior experience and past performance with the State. Prior experience with the State would recognize projects done by the contractor in support of the State with DPW as the contracting entity. There are projects that the DPW may seek qualifications from a contractor who has not yet had any prior work with the State. The past performance that they would demonstrate would be through other projects such as the Federal or private sector. The third part of the bill refers to adding "other good faith factors" to assess the ability of the bidder with the contract requirements. **Mr. Mason** said the good faith factor is not different from what DPW does now. It is in the best interest of DPW to have a number of construction delivery methods available to them.

Senator Darrington asked **Mr. Mason** if some of the reasons a contractor does not perform well on a job is because the bid is too low, they are spread too thin, or they do work that is out of their league? **Mr. Mason** responded that is true, we have difficulties with contractors about 5% of the time for the reasons he mentioned. For the most part, they are successful with the contracting community.

Senator Stegner said the language that rejects a contractor for past performance, reliability or safety record is setting a standard for a black list, that doesn't have the ability for the contractor to readdress that status. It is a subjective classification that is being created and what protection is there for that contractor to appeal a decision. It appears this standard would allow agencies to favor their friends and black list some for no particular reason. He asked **Mr. Mason** to address that. **Mr. Mason** replied he believes that is an over-exaggeration of what would happen.

This will allow the DPW to make a decision regarding a contractor that is not qualified for a contract. It would have to be based on some sort of factual information and this is no different from the way they select an engineer or design builders, they are qualification based selections. The DPW is diligent in how they apply criteria and he is comfortable that they are not setting up some sort of black list for their actions.

Senator Kelly asked **Mr. Mason** if a contractor can appeal a decision for not being on the publication list? **Mr. Mason** replied they do envision that a contractor could appeal their designation as not being qualified for the bid. **Senator Kelly** asked where will that due process right be codified? **Mr. Mason** said he isn't sure if he can answer that. In every contract that is put in place, the contractor has the ability to appeal. If they aren't happy with the designation they could seek a remedy with the court. **Senator Kelly** said if they aren't a bidder, they wouldn't have standing to appeal. This is a contractor who didn't make the list to bid in the first place. **Mr. Mason** said the appeal would be on the designation prior to the bid and whether they are qualified. **Senator Kelly** said how do they know what their right to appeal is. **Mr. Mason** said he doesn't know the answer to that question.

Senator Davis asked **Mr. Mason** if the language past performance means the contractor's overall performance history for all his work? **Mr. Mason** responded it is the past performance as it relates to the type of work DPW is seeking a contractor for. Prior experience would include the same thing as past performance, the contractor would need to demonstrate that they have that experience. **Senator Davis** asked if past performance would include quality, workmanship and timeliness? **Mr. Mason** said it could, but what they are interested in is the performance related to the work they do. **Senator Davis** said he could buy off on that if it said past performance that demonstrates the ability to do this type of work, but that isn't what it says. It is inconsistent with the argument that **Mr. Mason** just made. **Senator Davis** said the biggest problem he has is on line 38. It is the other good faith factors and that provision is too loose for him. Rather than saying good faith factors, why not put them in the bill. Other than the financial component he sees the factors listed for a pre-qualification. **Mr. Mason** responded other factors refers to finding a contractor that can demonstrate that they have experience in that particular area. Past performance may not get to the root of what they need to get to. **Senator Davis** said he can imagine that there might be a time when something is required that is unique, but this applies to all contracts. DPW is asking the Legislature for the authority to define what those good faith factors are, when in reality most of the projects can be based on a pre-qualification standard that are very objective. When **Senator Stegner** talked about the black list, for him it is the good guys list who bid and do good projects. This type of subjective standard could potentially be a barrier to other businesses or industries. **Mr. Mason** responded the pre-qualification statute would allow the ability to define what pre-qualification is. It will recognize and include criteria that is relevant, he doesn't have the answer to the what ifs. This is really no different from the way they do the pre-qualification selection now.

Kevin Satterlee, general counsel for Boise State, stated he has an answer to **Senator Kelly's** question regarding someone who is not on a pre-qualification list. **Mr. Satterlee** stated under current statute, it would be the final agency's decision in the Administrative Procedures Act, which means at that point it would be appealable through the Act.

Senator Kelly said existing code states if licensed contractors "meet" the pre-qualification standards, shall be notified. It doesn't say anything about those who do not, so how will they be notified. **Mr. Satterlee** responded that they have not been through this process before. As he understands it, the contractors who make the list are notified and the ones who do not can appeal it. **Senator Kelly** asked if it is based on the notice that they didn't receive? **Mr. Satterlee** said that is correct. **Mr. Mason** replied DPW hasn't done this either, but if they received ten proposals and eight were deemed qualified, they would notify the eight. He would also notify the two that they were not qualified.

Senator Davis said if the contractor is deemed not to be qualified, will the entire project be put on hold while they appeal that decision through the Administrative Procedures Act. Then if they are unhappy with that they can appeal with the District court and the Supreme court, is that what **Mr. Satterlee** is telling the committee. **Mr. Satterlee** replied potentially, but hopefully not. One bidder who was not successful under the usual low bid process, did file an appeal and took it to the district and supreme court. The bidder was unsuccessful in getting the court to stay the construction at Boise State. Unfortunately, it is potentially possible that an unsuccessful contractor for pre-qualification could potentially stay a project. **Senator Davis** said in order to do that, they would have to ask the court to adjoin the project and they would be required to post a bond. He asked if that were a likely set of circumstances, and what would be the typical bond standard they would need to post to obtain the injunction? **Mr. Satterlee** responded the answer to his first question is yes, and he doesn't know the answer to the second. **Senator Davis** asked **Mr. Satterlee** to explain the difference between experience and performance. **Mr. Satterlee** said in his mind, the concept of prior experience with the State is that the pre-qualification would take into account any projects that the particular contractor had done with the State, regardless of whether they were similar or identical to all prior experience working for the State was at issue. The term past experience as it relates to quality, workmanship and timeliness is meant to be more specific to what the contractor has done with anyone else that related to how they performed on quality, workmanship and timeliness.

Senator Davis asked **Mr. Satterlee** to define what the other good faith factors are. **Mr. Satterlee** replied he has two thoughts on that. He knows that the phrase was taken from Utah's Public Works statute. When he read that, his first thought was that it is for a small animal facility. If Boise State were to build one because of Federal regulations he could see that Boise State would write criteria with other good faith factors, requesting very specific details in how they would comply with that.

Torry McAlvain, a contractor, testified in support of **S1401** and he stated

when a contractor is licensed in the State of Idaho, it is based on financial and past experience. Anyone can come to Idaho with a decent financial statement, past experience and get a license and bid a job. This takes away from other contractors, it is a problem, that is what he sees and that is why he is here in support of this. As a private contractor, 75% of their business is pre-qualified and it is a requirement that is becoming every day business. He has learned when he doesn't get a project, how to overcome that and to bid on the next one. As to the black list that was raised, how do you get around that. For example when working with Walmart if you make one little error you are told you are on their black list. It is up to the contractor to turn that around, and he views that if there is a problem it is up to the individual to sit with the agency and work out the problem. The process of pre-qualification is not new. His firm built the wings at the Capitol and they did go through the process. **Mr. McAlvain** said it takes a lot of money for his company to bid on jobs, and the last thing the State should do is select a contractor on a low bid basis without first being pre-qualified.

Senator Stegner said there is a difference between Walmart and the State. Walmart can make any decision they want and they have to be responsible to their shareholders. The State of Idaho is responsible to the taxpayers who put up the money for construction projects. The taxpayers have vested in the State some responsibility for protecting the tax dollars that are raised and spent on their behalf. If there is a black list developed by any particular agency for subjective reasons that aren't easily defined it will cost the taxpayers additional money. At some point someone has to be responsible and the State is held to a different standard than the decision makers for Walmart. He asked **Mr. McAlvain** if he can see the difference. **Mr. McAlvain** said that he agrees with that, his comment was based on the black list. He is a taxpayer and he fully understands that.

Senator Davis said he agrees that there needs to be pre-qualification. He doesn't have a problem adding the past performance language even though he doesn't fully understand the difference between experience and performance. **Senator Davis** said as a contractor that is involved in the process, when the phrase other good faith factors is used, he asked **Mr. McAlvain** if he knows what that means. **Mr. McAlvain** replied that he does not. **Senator Davis** asked him if he wants to give the State the authority the right to impose that. **Mr. McAlvain** said he agrees with him that it needs to be clear. **Senator Davis** said in the pre-qualification for Federal projects does he know if they use that phrase. **Mr. McAlvain** replied that he has seen that language in pre-qualification projects with the Federal government, but he cannot define that.

Senator Stennett said she is not clear how this will improve the process. She asked **Mr. McAlvain** if this will improve the process? **Mr. McAlvain** said going forward this will set an example that quality projects will have a quality team. It will not be required for all projects. The State is building more complicated projects and it requires qualified contracting teams to build them.

Senator Darrington asked when a firm is not pre-qualified if they

understand why. **Mr. McAlvain** said normally when the contractor is not selected they can get a straight answer for the reasons. **Senator Darrington** said he believes very few contractors would challenge this if it applies equally to all. **Mr. McAlvain** said his philosophy is not to fight the system. He tries to figure out a way to overcome why he wasn't selected.

Senator Darrington said that he believes this is needed. If we are going to get top dollar for the taxpayers and the agencies, it will never be as successful as the integrity of the people, the agencies and DPW. That is the check and the balance. Some agencies would prefer the word "or", but it is his opinion that we need "and." There have been a few projects that are underperforming, which is costly for everyone involved. This will help to eliminate that and protect the taxpayer money.

MOTION: **Vice Chairman Pearce** moved to send **S1401** to the floor with a **do pass** recommendation. **Senator Darrington** seconded the motion.

Senator Kelly said she has a few more questions for **Mr. Mason**. She asked him to explain why there is an emergency clause. **Mr. Mason** replied simply to make this available as soon as it can be. **Senator Kelly** said there are rules in place that were adopted in 2007 for the DPW that apply to the pre-qualification process. Those were the rules that were used in the Capitol restoration and they have sunset. She asked if his intent is to adopt those rules for this pre-qualification process? **Mr. Mason** responded when he referred to the Capitol and the sunset clause, it was a change to the statute which allowed them to use a construction manager at risk. That is different than pre-qualification because they were able to use a construction manager at risk, they didn't use the pre-qualification statute. The Capitol was done under a design build process. This statute refines the low bid process and it will narrow the pool for those who submit a bid. The construction manager on the Capitol was Jacobsen Hunt and their contract was with DPW. They selected their sub contractors. When **Mr. McAlvain** was selected for the design build project for the wings, that contract was between DPW and a design build team. In this, pre-qualification has not been used in this form and it will narrow the pool when bids are submitted. **Senator Kelly** said the rules that are in place for pre-qualification for the Capitol were not used. Is it his intent to adopt rules to implement the appeal process to give potential bidders notice of what the expectations are? **Mr. Mason** replied they have not discussed rules. As **Mr. Satterlee** has said there is a process by which a contractor can appeal a decision. The things that were done for the Capitol was because it was a unique and daunting task that has sunset. The pre-qualification is in place and all they have done is enhance it.

Senator Geddes asked **Mr. Mason** to explain the policy of DPW with respect to evaluations or advice he may give someone who is looking for a contractor. Does he give a reference for past performance or other good faith factors to agencies? **Mr. Mason** replied he doesn't believe that would happen and it depends on what they are being hired for. Ninety percent of the projects are low bid. When an agency is ready to do a project, they come to DPW who assigns a project manager. They sit down

and meet and discuss the construction delivery method that they believe should be used. Contractors are not discussed because they don't know who will bid on it. **Senator Geddes** said in the pre-qualification process, does he find that the contractors are forthright in providing information to assist him in judging past performance and good faith factors. **Mr. Mason** said during the process they contact those clients who had previously hired them and ask for their input regarding their work product.

Senator Davis commented that he believes if someone has had a bad experience with a contractor, they are reluctant to pass that information on for fear of being sued. He is not troubled with the past performance experience, for him it is the good faith subjective standard. It seems to him, that we are trying to take a unique building and have that unique construction project have language to apply across the board. He would suggest that there should be a pre-qualification of the project for the good faith factors, then there would be a level playing field for everyone. For him that would be a better fit, so he is not going to support the motion.

Chairman McKenzie requested a roll call vote on the motion to send **S1401** to the floor with a **do pass** recommendation.

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

The motion **failed.**

ADJOURN: **Chairman McKenzie** said that is all the business before the Committee. He adjourned the meeting at 10:12 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	March 17, 2010
TIME:	8:00 a.m.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett, and Kelly
MEMBERS ABSENT/ EXCUSED:	None
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
CONVENE:	**Chairman McKenzie** called the meeting to order at 8:02 a.m.
RS19687C1 RS 19826	**Chairman McKenzie** said he has a letter from the Chairman of the Education Committee by unanimous requests to print **RS19687C1** and **RS19826** and return them to their committee for hearing.
MOTION:	**Senator Darrington** made the motion to print **RS19687C1** and **RS19826**. **Senator Kelly** seconded the motion. The motion carried by **voice vote.**
HCR 46	**Senator Fulcher** presented **HCR46** to the Committee and stated this Resolution recognizes the strong ties between Taiwan and Idaho, and encourages Taiwan's meaningful participation in international trade, international aviation and global issues. In 2008, Taiwan was a recipient of about $347 million dollars of exports of products from Taiwan. The figure from 2009 it was $652 million, which is a very significant increase. Currently, Taiwan is the second largest export destination for Idaho products. Some of those products include paper, cosmetics, processed potatoes, peas, leather goods and a whole host of other products. This makes Taiwan very important when it comes to trade with Idaho.
MOTION:	**Senator Davis** made the motion to send **HCR 46** to the floor with a **do pass** recommendation. **Senator Geddes** seconded the motion. **Senator Davis** stated the Pro Tem has requested that **HCR 46** to go to the 10th order of business today and if it could be expedited to reflect the request. The motion carried by **voice vote**.
S1408	**Tim Hurst**, Chief Deputy for the Secretary of State (SOS), explained this legislation makes necessary changes to the State election laws required by the Federal Military and Overseas Voting Efficiency Act (MOVE) which was signed into law and goes into effect for the 2010 general election. The law will make it easier for military and overseas voters to request and

vote by absentee ballot.

Senator Davis questioned if there was a difference between early voting and in-person absentee voting? **Mr. Hurst** replied in a lot of states there is a difference. People in Idaho vote absentee ballot, but it is in-person, and it goes through the same process as though they mailed it in.

Senator Kelly stated there was no emergency clause in the legislation and questioned if it would go into effect on July 1, 2010? **Mr. Hurst** responded that is correct, due to Federal law it would take effect for the general election and not the primary election. **Senator Kelly** questioned if there were a lot of individuals voting absentee? **Mr. Hurst** replied it depends, and usually there are quite a few on the last day an individual can vote absentee. **Senator Kelly** stated by changing the last day to vote absentee seems like a voter suppression action. **Mr. Hurst** stated in his experience and in visiting with the county clerks, many of the people that go in on Monday have already been in town all weekend and probably would be able to go to the polls on Tuesday. He stated because of that reasoning, he did not feel that this legislation created voter suppression, and that was not their intent.

MOTION: **Senator Davis** moved to send **S 1408** to the floor with a **do pass** recommendation. **Vice Chairman Pearce** seconded the motion. **Senator Davis** stated he applauded the Secretary of the State for encouraging voter turnout and minimizing voter fraud. The motion carried by **voice vote**. **Senator Kelly** voted "nay."

H 603 **Bob Fick**, Department of Labor (DOL), explained this legislation merges the Idaho Human Rights Commission with the DOL effective July 1, 2010. Commission members are appointed by the **Governor.** The Commission administrator is appointed by the Director of the DOL with the advice and consent of the Commission. Employees of the Commission will be employees of the DOL, which will provide administrative support for the Commission and the staff.

In the first year, the general fund appropriation to the Commission will be reduced by $144,000. That reduction increases to $228,000 in the second year, $432,000 in the third year and $576,000 in the fourth year and thus be eliminated. The DOL will absorb these reductions through a combination of efficiencies and spending reduction, money from the Special Administration Fund and the Penalty and Interest Fund.

Senator Kelly asked if the transition from the Commission over to the DOL would change the employees' status? **Mr. Fick** replied their status as employees will be unchanged.

MOTION: **Senator Davis** made the motion to send **H603** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

H496 **Representative Moyle** presented H496 to the Committee and stated this legislation provides that each elector shall show photo identification before receiving a ballot at the polls or sign an affidavit in lieu of personal identification. This does not include absentee balloting or when

registering to vote. This is only applicable on the day of the election or if an individual votes early.

Senator Darrington stated there are quite a few rural areas in this State where every election judge knows everyone that shows up. Why are we requiring them to show identification? **Representative Moyle** replied that is why they brought the clerks in to make sure they were okay with this legislation. In a rural district with less than one hundred people, they probably vote by mail anyway, however, there are many large districts where they do not know everyone that comes in to vote. **Senator Darrington** stated they are categorizing everyone into one group and believes there will be a lot of pushback from constituents. **Representative Moyle** responded he has not had any sort of pushback when this was going through the House. All this does is make sure that people are who they say they are when voting.

Senator Stennett asked how much notice were they going to give to individuals so that they can be prepared when they go in to vote. This could create a big problem for people if they are unaware and unprepared when they go to the polls, they may not come back to vote if they have to leave to retrieve photo identification. **Representative Moyle** stated that is one of the reasons why the legislation does not have an emergency clause in it because it will not take effect until July, so it will not effect the primary. This will give them time to get this information out to the public. Most people will be driving so they will have the proper identification, and if not, those individuals will have the opportunity to sign an affidavit, and those will be available so it will not be an issue.

Vice Chairman Pearce asked how do you go out and find an individual that has misrepresented themselves in order to give them the felony as described in section 3 of the legislation? **Representative Moyle** replied this is more of a safeguard and they are told up-front that this is a serious crime. However, it would be difficult to find someone that did misrepresent themself. **Vice Chairman Pearce** questioned if section 3 would really make a difference beyond being a “feel good” section? **Representative Moyle** stated he believed it would make a difference and currently an individual does not have to show photo I.D., only a utility bill in order to vote. So this is a step in the right direction.

Senator Stennett asked why did they decide to implement this during an election date rather than during the registration process? **Representative Moyle** responded this is part of a multi-step process of the direction they would like to go. Eventually he hopes that it will be during the registration process. **Senator Stennett** stated she believed that it would be an easier first step if it was during the registration process, rather than right before they are going in to vote. **Representative Moyle** answered that he agreed with **Senator Stennett**, however, it is a multi-step process and there will be more legislation next year on this topic.

Vice Chairman Pearce stated he felt as though the burden is always placed on the honest people, while the individuals that are dishonest continue on with the same behavior. **Representative Moyle** replied

currently in the voting book, an individual will have to provide a utility bill or something to register along with a photo i.d. in order to register to vote.

Senator Kelly asked how many cases of voter fraud have been tried in Idaho? **Representative Moyle** stated he believed there was one case in **Senator Stennett's** district, but would defer that question to **Mr. Hurst**. Individuals in Idaho are concerned about voter fraud so this legislation is a step in the right direction.

Mr. Hurst stated they have money in the budget to get this information out to the voters so that they will be prepared. In discussing this with the clerks, they understand that it is a big issue to make sure the poll workers are aware of this change and how to deal with the change. Currently when individuals register to vote, their identification is identified either by their driver's license or social security number. As soon as they sign the registration card it is entered into the registration system and it is immediately checked with the Idaho transportation file to see if there is a match with the driver's license number. If they do not have a driver's license, then it goes to the Social Security Administration and immediately notifies them if it is a legitimate number. The biggest issue is allegations of voter fraud, however, every single person accused of voter fraud are entitled to vote. Allegations of fraud are taken very seriously and are thoroughly investigated. There have been a few cases of fraud and those cases are currently being prosecuted.

Senator Stennett stated in listening how the current process operates, it sounds like it works very well for the State and a thorough process that helps in eliminating voter fraud. So is it necessary for a possible future change for future fraudulence, that they do not see happening in the State right now? **Mr. Hurst** replied they do believe this is necessary and there have been more problems around the country with voter fraud, this will help deter that behavior.

Senator Davis asked if the affidavit referenced to in section 3 would be the SOS who will promulgate this form and make sure that it has reached the polls and has the proper notary? **Mr. Hurst** responded currently they have an affidavit that does not include the notary. If someone comes in to vote and they have been challenged by another voter, they have an openly challenged person that lays out the information and they have to sign it, and they anticipate this will be the same thing.

Senator Kelly asked if the Attorney General had reviewed this legislation? **Mr. Hurst** stated he was unaware if it had been reviewed by the Attorney General, and the most important thing is that the name and photo identification match with the individual. **Senator Kelly** stated from a constitutional standpoint if they are requiring individuals that are voting in-person to provide photo i.d., but not absentee voters, does that raise an issue? **Mr. Hurst** replied it raised an issue in Indiana, but he was unaware of the outcome.

TESTIMONY: **Russ Hendricks**, who represents the Farm Bureau, spoke in support of **H 496.** He stated the members viewed voting as a sacred rite and responsibility. Since it is difficult to function in this society without a photo i.d. they believe it will not be a burden, but uphold the integrity of the

process.

MOTION: **Vice Chairman Pearce** made the motion to send **H 496** to the floor with a **do pass** recommendation. **Senator Geddes** seconded the motion.

Senator Darrington stated individuals need photo i.d. at airports, to cash checks, even areas in this building. This will be a hassle for some individuals for the first couple of years, but this is the age we live in.

Senator Stegner stated he has been puzzled by the voting process for some time as there has been no real way to identify who individuals say they are, especially in larger districts.

Senator Kelly stated that she opposes the motion because it will create undue burden on individuals and possibly deter them from voting. Also from what she heard today, the existing system does work. The motion carried by **voice vote**. **Senator Kelly** voted "nay."

HCR49 **Representative Luker presented HCR49** and stated that this Resolution would reject a subsection of a pending rule of the office of the **Governor**, Military Division, Bureau of Homeland Security relating to the Hazardous Substance Response Rules as not being consistent with legislative intent. The effect of this resolution, if adopted by both the House and Senate would be to prevent the amended language in the subsection from going into effect.

Senator Darrington asked which Committee in the Senate acted on these rules? **Chairman McKenzie** responded it was this Committee.

Representative Luker said this particular section deals with the spillers liability for hazardous waste. The problem was that the department inserted liable parties that are not in statute, specifically owners and occupants of the property whether or not they were responsible for the spill. The Bureau agreed that they had exceeded the intent. Another part of the section allowed counties to collect from the responsible party for the spill. This will not hamper their ability to do what they need to do as the statutory provision is very explicit.

Senator Davis asked if he was representing that the Bureau is requesting this rule rejection? **Representative Luker** responded yes, they said to take it out. **Senator Davis** asked if he has a letter from them asking us to reject that rule. **Representative Luker** said no, it happened in their committee meeting and the minutes will reflect that. **Senator Davis** asked if someone is here from the Bureau to speak to that. **Representative Luker** replied he does not believe someone from the Bureau is here.

Dennis Stevenson, Administrative Rules Coordinator, said he was at that meeting and he is not sure if that was the request of the agency. However, he does agree that there was an issue with the language as written in the rule.

Senator Davis said as he understands, we are rejecting a part of the rule, subsection 5, a through e, is that correct. **Representative Luker** replied that is correct. He asked if it is his understanding that they do not have a problem rejecting them and it will not hamper their ability to do what they need to do. **Senator Davis** asked how did they defend imposing these costs to the owners or occupants of the property? **Representative Luker** said they did not defend it, but requested additional time to look at it.

MOTION: **Senator Davis** requested unanimous consent **to hold HCR49** until the Bureau can represent to the Committee that they are in agreement with rejecting those rules.

H 555 **Norman Semanko**, Executive Director of the Idaho Water Users Association, explained this legislation clarifies that the time periods in the Idaho Administrative Procedures Act (APA), for seeking reconsideration or judicial review of an agency action begin to run when the order is served upon the parties to an agency proceeding. The need for this legislation became clear in 2009 after the Idaho Supreme Court decision in *Erickson v. Idaho Board of Registration Professional Engineers and Professional Land Surveyors*. In that case, the court held that the period for seeking judicial review begins when an order was "issued", as provided in the APA, rather than when the order was "served" on the parties, as provided in the Idaho Rules of Administrative Procedure. The court held that issuance under the APA does not mean or require service upon the parties. This could result in the time for seeking review beginning to run without the parties' knowledge. This legislation ensures that parties receive notice when the time for seeking review of the agency order begins. The amount of time given is 28 days.

Senator Davis asked if they wanted to amend the legislation in order to place an emergency clause in it and would **Mr. Semanko** speak to any possible retro-active effects. **Mr. Semanko** stated the legislation does not include any emergency clause or a retro-active provision, nor did they discuss this since it did not directly impact any of their members. They just wanted to see it corrected in going forward so that their members are not effected. Senator Davis asked if he would prefer the bill go to the floor with a do pass recommendation? **Mr. Semanko** said yes, unless there is an amendment being proposed by someone.

Carl Withroe, an attorney, stated that he is here in support of **H555** and the two amendments suggested that are the emergency clause, and a clause capturing pending cases amendment. This is important because it captures and corrects the errors.

Senator Davis asked in the event there is an emergency clause and a retro-active provision put in the bill that they would be allowed, is it his opinion to advance the merits of the litigation they were involved in? **Mr. Withroe** stated that was correct. **Senator Davis** asked if currently there has been administrative ruling to the disadvantage of his clients? **Mr. Withroe** stated that was correct. **Senator Davis** stated if even the committee chose not to send this bill to amendment, that does not necessarily preclude the client from arguing before the Idaho Supreme Court that *Erickson* should be narrowed to the facts of that case and not

necessarily apply to their clients case. **Mr. Withroe** stated that was correct. **Senator Davis** commented that he would feel comfortable amending the legislation to put in an emergency clause, but if one party or the other has acquired a series of legal rights based on the status of the law to go in and have retro-active application of a statute once there has been a judicial determination, right or wrong, it puts the legislature in the middle of picking sides. This makes it difficult to possible advantage one party over another in a judicial proceeding or others that may already have a court order at their disadvantage who might now have a basis on appeal. **Mr. Withroe** replied that he understood that it can change the rules of the game, their suggested amendment would not alter the merits. **Senator Davis** inquired if the raised question of amending this legislation on House side is similar to this proposal? **Mr. Withroe** stated he did not know if that occurred since it was **Bruce Smith** that has been championing these amendments.

Senator Davis asked what the common practice was at the appellate court level prior to the *Erickson* decision, what kind of reasonable reliance they had with a different interpretation of the code? **Mr. Withroe** stated the judicial court recognized in the case he is currently representing, the practice has been overwhelming out of the agencies to issue explanatory sheets which are required by the APA and orders of decision that state the time periods for appeal and those orders particularly, the order in this case, say appeal is due within 28 days of service of this order. The procedural rules throughout the administrative agency that committed some error.

Senator Davis stated so on the order there is a notice of service with a date and signature, and the law office took that day added 28 days to it and within that 28 day time period they would file a notice of appeal, is that correct? **Mr. Withroe** replied that was correct. If the service was not properly accomplished, then if the department reissues a certificate of service and indicate that the service date for purposes of an appeal was a new date, they then filed in 28 days of the second issuance. **Senator Davis** stated because it went back to the day of the order instead of the day of the service, the law firm's client was precluded from being able to appeal, is that correct? **Mr. Withroe** responded "yes," the *Erickson* case has been interpreted too narrowly to say that the date it is signed irrespective of service.

MOTION: **Vice Chairman Pearce** made the motion to send **H555** to the floor with **a do pass** recommendation. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

S1401 **Senator Darrington** presented S1401 and stated that *Idaho Code 67-5711C* currently allows state public works to award contracts to the lowest responsive and responsible bidder. To ensure a responsible bidder on certain projects, a "pre-qualification" process is sometimes used. Modeled after the Utah and Florida laws, this legislation is designed to augment those responsibility standards for bidders on state projects when the relevant agency so requests.

All responsibility standards used for pre-qualification must be set forth so

that all contractors know what the criteria will be. The additional standards set forth were taken from the standards currently in use in Utah and Florida. It is expected that the relevant agency responsible for the project will set up a review panel of experts to evaluate the compliance with the standards.

This **S1401** also gives the respective state entity the responsibility for the ultimate use of the project and the ability to require pre-qualification of bidders when deemed in the best interests of the state. The overall purpose is to enhance the quality of work performed throughout the State and ensure that the state is receiving the overall best value for its expenditures.

MOTION: **Senator Davis** moved to send **S1401** to the fourteenth order for possible amendment. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote**.

MINUTES: **Vice Chairman Pearce** moved to approve the minutes of February 24 as written. **Senator Geddes** seconded the motion and the motion carried by **voice vote**.

Senator Geddes moved to approve the minutes of February 19 as written. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

Senator Stennett moved to approve the minutes of February 26 as written. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT There being no further business **Chairman McKenzie** adjourned the meeting at 9:58 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	March 19, 2010
TIME:	8:00 a.m.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett, and Kelly
MEMBERS ABSENT/ EXCUSED:	None
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
CONVENE:	**Chairman McKenzie** called the meeting to order at 8:03 a.m.

RS19769
RS19770

George Bacon, Director of Idaho Department of Lands (IDL), introduced **RS19769** and **RS19770** to the Committee for printing. **Mr. Bacon** said the two RSs are Constitutional Amendment proposals. When Idaho became a state, it was granted 3.6 million acres of land to support various institutions and three million acres were dedicated to support public schools. Over the years, cash made from the management of the lands has been invested in low risk funds, which resulted in low returns. In 1998 endowment reform was enacted through Constitutional Amendments, to unify the management of the trust assets of the land and the money. IDL needs to continue to meet their mission to maximize revenues to the trust, and they recognize that more is needed to ensure that they are in line with modern business practices.

Kathy Opp, Deputy Director of IDL, addressed the Committee and stated they have been successful with the endowment fund management. Management of the lands are self sustaining without any general fund tax support. In the last five years, the net income totals over $50 million a year annually and over a quarter of a billion dollars has been distributed to primary and secondary education. **Ms. Opp** said that the IDL has advanced many projects in the last several years to maximize the return on its investments. As they have done that, they have recognized that certain aspects of the Constitution limit their ability to interact in the current business community. The two Amendments will add flexibility to the disposition and development ability to extend it from public auction only, to any means that is afforded a prudent investor. The second item will delete the acre limitations, which is a 320 acre limitation in Article VIII, Section 8, and 160 acres in Article IX, Section 10 for university endowment. These are for the purchase of State endowment lands by a company or corporation. Larger tracks of land are often required for

community development and typically transactions in the private sector exceed these size limitations, which precludes their participation. IDL estimates the potential loss of revenue is between ten to thirty percent on those types of transactions.

Senator Davis asked **Ms. Opp** to speak to the preservation of the endowment lands and does the IDL have confidence that this will not do any damage to what has been a significant benefit to the State? **Ms. Opp** responded as part of the endowment reform, a Land Bank was established, so when they sell lands they have a period of five years to reinvest in lands. That is a valuable tool for them to maintain the land base. The board has articulated in the asset management plan, that the preservation of the land base is important to the trust.

Senator Kelly said it is late in the session to be considering a Constitutional Amendment. She asked **Ms. Opp** to explain that. **Ms. Opp** replied although the proposal is late in this session, the concept of the proposed Amendment is not new. It was examined by **Governor Kempthorne's** ad hoc committee in 2001. In early 2009, the IDL commissioned the volunteer citizen's committee who worked on this. What is principally the driver, is that they see a need for additional support from the trust revenues. In these tough economic times, the IDL felt if there was a way to expand this flexibility and enhance the revenues faster, that now is the time to bring it forward. **Senator Kelly** said the current IDL has been in place for almost four years. If the Amendments do enhance the revenues from the lands, than they do have an obligation to maximize the return on them. It seems a little contrary to that trust obligation that we are now seeing these Amendments. **Ms. Opp** responded because of the continued economic slide, they cannot fully maximize and deal with the responsibilities without added flexibility.

Vice Chairman Pearce asked **Ms. Opp** how many acres are in the State endowment now? **Ms. Opp** replied there are about 2.6 million acres that remain. The acres that were sold, were sold early on in statehood prior to 1940.

Senator Fulcher asked **Ms. Opp** who is qualified to appraise State lands? **Ms. Opp** said only a licensed appraiser is required to issue an appraisal report.

Senator Darrington asked if there is a certain category of land that the State is trying to invest in? **Ms. Opp** responded in the IDL's asset management plan, one of the things that was recognized, is that the current revenue stream is heavily weighted toward timber. Any prudent investor wants diversity in the portfolio, so they are targeting developed commercial property. They have seven properties in the Treasure Valley, but it is a small portion. It is fairly stable for the IDL, they have had good success in keeping tenants with a very stable revenue stream.

Senator Stennett said with the real estate economy being what it is today, does she believe they have an advantage using it towards that means. **Ms. Opp** replied what they are seeing is that only a few

beneficiaries have investments in commercial property. They see that there is much less fluctuation in the amount of money they can provide for distribution. There are significant swings with only timber versus those who have commercial assets. **Senator Stennett** asked if the IDL is a landlord? **Ms. Opp** said they are, they have commercial property with tenants in state agencies and private businesses. The IDL contracts out for the property management of them.

Vice Chairman Pearce asked if the language in **RS19770**, page 2, line 4 has been there for all our 120 year history? **Ms. Opp** said the limitation on the number sections that can be sold every year has not changed. No more is consistent, it is just the way the sentence was restructured. **Vice Chairman Pearce** asked if she thinks this will be a red flag, and how will the public perceive it? **Ms. Opp** responded it is a structure change in the sentence and perhaps how the ballot is crafted it will indicate that.

MOTION: **Vice Chairman Pearce** moved to print **RS19769** and **RS19770**. **Senator Geddes** seconded the motion.

Senator Kelly said she assumes it is the sponsors intent to accelerate the schedule. If we hear this on Monday, it doesn't provide much time to do the due diligence to understand it.

The motion carried by **voice vote.**

HCR63 **Representative Hart** presented **HCR63** to the Committee and stated this Resolution will honor **Kristin Armstrong**, the gold medal winner in the Summer Olympics, who won the women's time trial event. She lives in Boise, and she is a graduate of the University of Idaho.

MOTION: **Vice Chairman Pearce** moved to send **HCR63** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

HCR37 **HCR37** is a Resolution to acknowledge and congratulate the University of Idaho's football team. **Senator Davis** said he is graduate of the University of Idaho and a proud alumni of their football program.

MOTION: **Senator Davis** moved **HCR37** to the floor with a **do pass** recommendation and **Senator Stegner** seconded the motion. The motion carried by **voice vote.**

H664 **Ron Crane**, State Treasurer, addressed the Committee regarding **H664. Treasurer Crane** said **H664** will clarify the language of the Treasurer's authority as it relates to internal borrowing. The cash flow to the Treasurer's Office does not come in evenly throughout the year. In June of each year, he issues external tax anticipation notes and sells them on the open market. The proceeds from the sale in the open market are used for the cash flow. This doesn't necessarily cover all the cash flow deficits. When the general fund is in the negative, funds are deposited to keep it in the black. **Treasurer Crane** stated last month the legislative auditor called to their attention that the Treasurer does not have the authority to do internal borrowing, even though it has been done since the

beginning of statehood. **H664** will clarify the authority necessary for the Treasurer to do the necessary internal borrowing. Without the passage of this bill, the Treasurer will have a significant problem as it relates to the issuance of the tax anticipation.

Senator Davis said if the Treasurer isn't able to do this, would he have to go back to the market with additional notes to make enough cash flow. By doing that, will it cost the State more money, and if so does he have an amount? **Treasurer Crane** responded that is correct. He does have statutory authority to issue external tax anticipated notes. It is an expensive process. When he issues the notes, he must estimate what the deficit will be on November 15, the lowest point of the fiscal year. By IRS regulation, he must be within ninety percent of that estimate, or the interest on arbitrage will be lost on the tax anticipated notes. **Senator Davis** asked when the Treasurer borrows internally, does he pay interest on the borrowed funds? **Treasurer Crane** replied only if the fund is an interest bearing fund. **Senator Davis** said in the event that the Treasurer does not have this authority, what would that estimated amount have been for last year. **Treasurer Crane** said he would estimate that amount to be $200 hundred million on the external market. **Senator Davis** said assuming a portion of that would have interest owing, would it be an additional cost to the State of Idaho. **Treasurer Crane** responded yes, the interest would probably be less than one half percent. The issue is that it is a timely process to put it together and it would be virtually impossible to do it several times a year.

MOTION: **Senator Davis** moved to send **H664** to the floor with the recommendation that it **do pass**. **Senator Kelly** seconded the motion. The motion carried by **voice vote.**

HCR36 **HCR36** is a Resolution to recognize and commend the Boise State University football team. **Senator Fulcher** said that he is a two time graduate of Boise State University, and a former teacher there.

MOTION: **Senator Fulcher** moved **HCR36** to the floor with a recommendation that it **do pass**. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote.**

HCR55 **Representative Block** presented **HCR55**. The purpose of this Resolution is to request that the Department of Health and Welfare undertake a study and review the possibility, that a random drug testing program could be implemented for those who receive benefits from the Department. It is important for the Legislature to know what services are provided to adults who continue to abuse controlled substances, the cost to the taxpayer and what can be done to address the problem. Some states have done this and realized that there are cost savings. Studies show that drug testing works in the prevention of illegal drug use and aids in recovery. Random drug testing is used successfully by many employers and is the leverage that helps drug courts to be successful. Testing facilitates accountability for personal responsibility. With the abuse of cocaine, heroine and methamphetamine is a huge burden to society. It impacts the State budget, the healthcare system and the justice system.

Senator Davis asked **Representative Block** if the individual fails a drug test, can they be excluded from receiving benefits? **Representative Block** said this is one of the reasons for the study. **Senator Davis** said then the purpose is not to realize potential savings to the State, but to have the Department look for allowances that exist as a matter of law for use to implement this type of program. **Representative Block** responded that is correct.

Senator Darrington said as he understands, the individual with dependant children cannot be denied benefits. **Representative Block** said this would not affect children and other states are looking at this same issue.

Senator Kelly said the language on lines 20 through 22 indicate that after ninety days the individual cannot participate, is that allowed? **Representative Block** replied the purpose of the Resolution is for a study, so there are no set directives other than that. **Senator Kelly** asked if this is only asking the Department to do a study for the cost of implementing a drug testing program for adults who receive benefits and if it could be self funded? How would the Department go about this? Representative Block responded the Department has indicated that this could be done with the personnel that they have and it will not require additional funding.

Senator Stennett asked who would do the testing and is there some sort of parameter that they will study? **Representative Block** replied there aren't any parameters. The Department has experience and knowledge with regard to what can be done. **Senator Stennett** asked how will they go through with a comprehensive plan without the necessary funding, how successful will it be? **Representative Block** answered if there isn't funding available they will address that when it happens. **Senator Stennett** said is it possible a study would be undertaken only to learn that there aren't funds available to do it. **Representative Block** said they don't know what funding is available, the program will be of value if it prevents some of the substance and addiction abuse that we have now.

Senator Darrington said that he finds value in this and the reason he does is that he believes that it isn't a big deal for the Department to come to some determination.

MOTION: **Senator Darrington** moved to send **HCR55** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion.

Senator Kelly said that she sees absolutely no value in this. How can you equate this with a private employer who does drug testing. The Health and Welfare system is designed to help those who are in need. That system provides substance abuse treatment to people who need it. Random drug testing for people who are receiving public assistance as a condition for receiving it, will require them to seek public assistance in a very different form. If they are indeed using illegal substances, now we will have a criminal problem.

Senator Davis said what he believes the intent of the Resolution is to provide a way to encourage individuals to gain greater control over their lives. It doesn't talk in terms of a cutoff for immediate failure. The intent is to transition individuals off a reliance on illegal substances and during that time period to continue to receive assistance.

Vice Chairman Pearce commented there are some who take advantage of public assistance and have no desire to work or do anything different. He believes we should do what we can to help them be more self reliant and not to dependent on the State.

The motion carried by **voice vote. Senator Kelly** requested she be recorded as voting nay.

HCR47

Senator Stegner presented the Resolution to the Committee and stated that **HCR47** will congratulate the city of Lewiston, Idaho and to the Lewis-Clark Valley in Washington. It has been selected as the most secure place for living in the United States in a recent survey by the Farmers Insurance Group who do an annual survey across the United States to rank cities on their status. They consider crime statistics, extreme weather, natural disaster risks, house appreciation, foreclosures, air quality, terrorism threats, environmental hazards, life expectancy and job loss. Lewiston was selected as the best city for a population under 150,000. **Senator Stegner** said this is an honor for the city of Lewiston and its neighboring sister city.

Paul Jackson, who represents Farmers Insurance, stated that Farmers doesn't do the study, but they are a sponsor of it. Secure.com puts this tegether and they do all sorts of studies on all sorts of geographical locations across the country. Jackson said it is an honor to be here and to honor one of our own cities in the State of Idaho.

Senator Darrington commented that as long as he has been associated with the criminal justice system, he has noticed that Region 2 has a lower per capita of juvenile and adult offenders. That region in the state does not have an interstate highway.

MOTION:

Senator Darrington made the motion to send HCR47 to the floor with a do pass recommendation. Senator Stegner seconded the motion.

Senator Stegner commented that Lewiston does wish it had an interstate connection. It was also noted in the survey that a big plus for the area is their inland waterway system, which helps to offset the lack of an interstate highway.

The motion carried by **voice vote**.

HCR49

Chairman McKenzie stated there was a request from the committee to get some comment from the Military Division because **HCR49** would reject a rule that was proposed. **Bob Wells** is here to answer questions if necessary. A letter from **Colonel Shawver** has been provided to the committee indicating that the Bureau of Homeland Security does not object to this.

Senator Kelly asked Mr. Wells if **HCR49** is passed is it their intent to promulgate rules. **Mr. Wells** replied the Bureau's intent is not to promulgate any rules until they have studied and worked with the House to address the problem. **Senator Kelly** asked what will be the law with regard to this issue? **Mr. Wells** responded the rules that will be passed deal with the Bureau's billing process for hazardous material, and there are provisions within the code to deal with the other issues. There is one small section that is being rejected. **Senator Kelly** asked if it will affect their ability to recover costs. **Mr. Wells** said possibly, but they aren't sure.

Senator Darrington said when the rules were before this Committee that issue never came up or identified as being a problem. What happened in the meantime? **Mr. Wells** replied the House has suggested that those rules are dealt with in Idaho code. The Bureau would like to have that section in rules, but they will deal with it next year.

Senator Davis said as he recalls, the House believes that the rule exceeded the statutory authority that included liability to owners. The underlying statute says the cost cannot be imposed on them. **Mr. Wells** said it is their understanding from **Representative Luker**, that Idaho Code was sufficient to cover what they had proposed. **Senator Davis** said if they do have the authority to recover under Idaho Code, doesn't it address the question the Minority Leader had on cost recovery, and if it is in code, why do they need it in Administrative Rules? **Mr. Wells** said he agrees. **Senator Davis** said we already approved the rules, why should we reject them now. If the rule is beyond the promulgating authority, then he isn't sure that we shouldn't. He asked **Mr. Wells** if they looked at whether they should be promulgating rules? **Mr. Wells** said that is ongoing.

Senator Kelly said as she looks at the statute it is not as detailed as the rules. The rule that is being rejected expands statutory authority to the Bureau. Should the Military Division try to recover costs from the potential responsible parties, they would not have authority to do that. The public should have notice of what would be included in cost recovery and provide a way for the Military Division to recover the costs. **Mr. Wells** said he believes that she is correct. They worked diligently with **Senator Davis** to add those features. When they drafted the rules, they believed they were addressing the concerns of this Committee in helping Idaho citizens to understand what is recoverable and what isn't.

Chairman McKenzie asked if it is the opinion of the Bureau that the statute gives authority to cost recovery against property owners and occupants? **Mr. Wells** replied it was their intent with that section, that they were giving notice to those persons who are potential spillers what is cost recoverable and what isn't.

Vice Chairman Pearce said he believed what he heard the other day is that the Bureau agreed that there is a problem and that is why it is being rejected. **Mr. Wells** said the letter they provided states that they are in

agreement with the House and they will stand down. They need the rule and they aren't going to throw it out just because of one section.

Senator Kelly said statute provides a defense if an incident was caused by a third party. There may be property owners who are responsible. The rule shouldn't create a larger liability than what exists in statute.

Senator Davis said what he believes happened is when the rule was written it included not only the owner of the substance, but the owner of the property. This probably needs to be rejected in his opinion. The liability exists under code, and he isn't sure if the rule is necessary.

Senator Kelly said a temporary rule could be promulgated to fix it or they could just ignore that language and not enforce the statute of recovery costs from property owners. They don't have authority to do that anyway under the statute. This rule is useful for potential liable parties to know what the rules are.

MOTION: **Senator Davis** moved to send **HCR49** to the floor with a **do pass** recommendation. **Vice Chairman Pearce** seconded the motion.

Senator Darrington said he is not going to support the motion. If there is a problem they will return next year to correct it.

The **Chairman** requested the Secretary to take a roll call vote on the motion.

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

The motion **carried**.

RS19874 **Senator Davis** presented **RS19874** which deals with gubernatorial appointments. **Senator Davis** said when an individual is appointed to a commission in the middle of the year, the Senate doesn't receive the letter of appointment until the first of the year. Without the letter of appointment they cannot act on it. Statute states when in session, it should be submitted forthwith which is an undefined term. When the Senate is not in session, it states the appointment is effective from that date. If the Senate adjourns without confirming the appointment, the appointment is void which suggests it is void at that moment. The language has been cleaned up so the appointment will become vacant upon the date of adjournment. The other change is for those who are appointed and not subject to confirmation.

Senator Kelly asked if this would apply to all the board appointments? **Senator Davis** replied on line 18 it states appointments that are pursuant to this section suggests that it is limited to this code section. **Senator Kelly** asked what would prohibit the **Governor** from appointing that person if it hasn't been confirmed by the Senate? **Senator Davis** answered the only thing that would stop the **Governor** is the erosion of the relationship between the Legislature and the trust of the people. He believes that any Governor would not jeopardize that relationship. **Senator Kelly** said as she reads the language on page 2, she doesn't see that it applies to all boards. It appears that director positions expire when the governor's term expires. She asked if those positions are carried over. **Senator Davis** replied that he has confidence that those positions will be carried over. **Senator Kelly** stated there may be a circumstance where we have a new Governor at any time. She knows for a fact that the Board of Regents and the State Board of Education include the Superintendent and that it is Constitutional as well.

MOTION: **Senator Stegner** moved to print **RS19874** and send it to the floor with a **do pass** recommendation. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote.**

MOTION: **Senator Stegner** moved to approve the minutes of March 1. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

ADJOURN: **Chairman McKenzie** adjourned the meeting at 9:33 a.m.

Senator Curt McKenzie Chairman	Deborah Riddle Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	March 22, 2010
TIME:	8:00 a.m.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett, and Kelly
MEMBERS ABSENT/ EXCUSED:	None
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

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

GUBERNATORIAL APPOINTMENT: **Andrea Wassner** addressed the Committee regarding her reappointment to the Idaho Commission on Human Rights. **Ms. Wassner** said that she first was appointed in 2004 by **Governor Kempthorne**. She reviews cases to determine whether or not there is cause.

Senator Kelly asked **Ms. Wassner** if her position differs from the others on the Commission? **Ms. Wassner** replied no, they all do the same on the Commission. When a position became vacant they did the review and interviewing. With budget costs being cut they have discussed ways to figure out how to reduce costs. They all make the same decisions when it comes to reviewing cases. **Senator Kelly** asked **Ms. Wassner** to comment on the Commission's move to the Department of Labor**. Ms. Wassner** said it is awesome, it works well and it is a good fit. They are confident that it will be a good working relationship.

Senator Darrington asked **Ms. Wassner** how many members serve on the Commission? **Ms. Wassner** responded she believes there are about eleven members.

Chairman McKenzie thanked **Ms. Wassner** and advised her the Committee would vote on her reappointment at the next meeting.

RS19836
RS19837

Paige Parker, Legislative Services Office, presented the RS dealing with the fee rules to the Committee. **Mr. Parker** stated under statute, fees requested by the agencies will not go into effect unless approved by the Legislature. The proposed fee rules have been submitted to the relevant committees and four were rejected. **RS19837** implements the actions of the Committee with regard to the pending fee rules.

Senator Kelly asked if all the actions have been taken on the rules in this RS? **Mr. Parker** replied all the Committees have completed the rule dockets and submitted their letters to the Pro Tem or the Speaker. **Senator Kelly** asked if the rule rejection will be effective with the Resolution. **Mr. Parker** said it is the implementing document that reflects the will of the Senate and the House. If it is not passed, the fee rules will not go into effect.

Senator Darrington said this is something we have to do every year. It is not an option, can **Mr. Parker** assure the Committee that it is accurate? **Mr. Parker** said that it is.

MOTION: **Senator Davis** moved to print **RS19837** and **Senator Darrington** seconded the motion.

Senator Kelly asked if this RS will go direct to the floor? **Chairman McKenzie** said it will. Senator Kelly requested it be recorded that she voted nay.

Mr. Parker said **RS19836** deals with the temporary rules and it is an annual process. This year like most years, none of the temporary rules have been rejected. Temporary rules do not last past the end of the legislative session unless they are approved by the Legislature.

MOTION: **Senator Darrington** moved to print **RS19836. Senator Stegner** seconded the motion. The motion carried by **voice vote.**

H620 **Representative Smith** presented **H620** to the Committee. Title 67, Chapter 41 is the section of code that creates the Idaho State Historical Society (ISHS) in its reference to vertebrate paleontology. That section was enacted prior to the creation of the Idaho Museum and Natural History (IMNH), when it seemed appropriate to place paleontology within the scope of the (ISHS). The care, study and interpretation of paleontology is outside the program of the ISHS. Any excavation on or near a vertebrate paleontology site should be created and regulated under a qualified professional with appropriate training. In 1977, the IMNH became the official State repository of our natural history resources. **Representative Smith** said **H620** will make changes to code, to clarify and assign the responsibility to certify and permit excavations near a paleontology site from the ISHS to the IMNH.

Vice Chairman Pearce asked if this will apply to Federal and State lands? **Representative Smith** replied it pertains only to paleontology sites on State lands. **Vice Chairman Pearce** asked her to explain the process. **Representative Smith** said there hasn't been any permitting since 1994, she would like to defer that question to the Director.

Dr. E.S. Lohse, Acting Director for IMNH, responded the permitting process is parallel to what is done for archeology. The idea here is simply to provide oversight in terms of normal work. In terms of the permitting process, it is basically an overview process and it would consolidate the agencies ability.

Vice Chairman Pearce said on line 35 it states "public lands," he believes that means forest service and Bureau of Land Management (BLM), shouldn't it say State lands. **Representative Smith** said she believes that Federal lands have other rules. On line 33 it states permission will need to be obtained from IMNH before any excavation, page 2 addresses the permits for excavation. Public lands mean State lands and it is in code with the ISHS, that is not being changed. **Vice Chairman Pearce** said he still believes that public lands means forest and BLM.

Janet Gallimore, Director for the ISHS, stated this legislation is the State Antiquities Act. BLM, Forest Service and Federal agencies control the permitting and regulatory functions on Federal lands, so this is for State lands only. **Vice Chairman Pearce** said why are we putting in code public land, when we mean State land. **Ms. Gallimore** said that would be a fine amendment. This was first written in 1964 and this is not changing anything about this code except for the transfer of the paleontology work to IMNH.

Senator Davis said on page 3 if a scout group were to walk through any area that is public lands, they find an arrowhead and pick it up, are they guilty of a misdemeanor? **Ms. Gallimore** answered the way that this has been handled in the past, if someone finds something on State lands and they don't report it, ISHS doesn't know. This past summer in Hell's Canyon a hiker stumbled across some rocks and found a Nez Perce basket that contained some needles. He contacted the local authority and was told to contact the ISHS, which he did. A team of BLM, Forest Service and Nez Perce tribal members excavated that piece and it is now going to be transferred to the museum in Spalding. If someone finds an arrowhead and they put it in their pocket, it may happen from time to time. They do encourage the public to report if they find something significant. **Senator Davis** said the language is existing language, however the relationship between the two is what he wants her to address. **Ms. Gallimore** replied the penalty section is existing language, they would have to judge how relevant it is. This will help avoid disfigurement, and it is probably a case by case basis and the nature of the activity. **Senator Davis** said section 4, says the penalty provisions apply to 33-3013 through 33-3015. The misdemeanor applies to the failure to obtain the permit, not the example of the scout that he provided earlier. **Ms. Gallimore** said the reason for this bill is that there is a lot of activity going on relative to the field, there is a possibility on State lands that there could be a finding on archeology and paleontology sites. They want to be prepared to ensure that the best experts are ready to address that if it should happen. **Senator Davis** said on line 10, page 3 states that no person shall remove from the State of Idaho, it doesn't say remove from public land. He asked if it should read from the State of Idaho, and why is it structured that way? **Ms. Gallimore** said that is existing language from 1964, the Attorney General reviewed this, but she will certainly look into that and what the intent is.

Senator Geddes said it seems logical to him to have the experts to make

the determination what is significant or not. This seems counter intuitive to him, because it is uncommon to think that someone would request a permit. He asked if it would be simpler to have an agreement between the Department of Lands (IDL) and the IMNH to evaluate a site. He is more familiar with mining activities, and when something unusual is found, that the call would go to the IDL. In this case it would be difficult to assume that people would call the ISHS first. He asked if the Director could explain how the current process works.

George Bacon, Director for IDL, stated they have been talking with the Idaho State University regarding this bill. He believes a few amendments to it might make it more clear. If a permit was issued by ISHS they don't have a problem with that. The people who obtain the permit should also contact IDL and be permitted as well, because the IDL has some jurisdiction. IDL does a lot of bidding activity, but as they read the code they would have already violated State law. They would prefer that it say known sites, rather than just sites. IDL is comfortable supporting **H620** as long as the changes are made at some point. **Senator Geddes** said it is illegal to pick up an artifact. He asked what about fossil collecting, is it prohibited? **Mr. Bacon** stated he doesn't know of any prohibition from the IDL, it would have been handled through the ISHS in the past. **Senator Geddes** said in the event a farmer or rancher is installing a fence or water line, would they have to get a permit from the ISHS? **Mr. Bacon** replied if a lessee found something on State land and contacted them, they would call the appropriate agency to look at it before anymore activity occurred.

Ms. Gallimore commented that private land is the discretion of that owner unless it is human remains. There are no State laws that dictate any regulatory function with them. The ISHS will work with them if they are contacted, but they do not have jurisdiction.

Senator Davis said in 33-3104 a permit is required before any excavation. He doesn't see a definition for excavation, it may have a more narrow meaning than just a hole and a shovel. He wonders if the language with regard to "not remove from the State of Idaho," is because it will be easier to recover. **Ms. Gallimore** said she believes it is written that way because it is an existing practice. As this was written in 1964, it was academic in nature and permits have been primarily from the universities.

Vice Chairman Pearce asked **Mr. Bacon** if the definition for public lands is correct, or are they state lands? **Mr. Bacon** responded he believes that it goes back to the Constitution where the trust lands that they manage are referred to as public lands. He doesn't know that it is incorrect to portray them as public lands.

Senator Kelly said the language that is being added gives the ISHS rule making authority. **Kent Kunz**, Director of Public Relations for the Idaho State University (ISU), said that IMNH is on their campus and part of ISU. The rule making authority that is given on page 2 of the bill is the same that is given to the ISHS on page 3. They tried to change as little as possible in this legislation, so that the three new sections reflect almost a

mirror image of the same existing language in code. Rule making authority currently exists with the ISHS for vertebrate paleontology. If this is adopted then the IMNH will have to adopt rules, they will have to be approved by the State Board of Education, and ratified by the Legislature. **Senator Kelly** asked if the IMNH have any existing rules. From a fiscal standpoint there would be costs associated with it. **Mr. Kunz** replied the State Board of Education has people who are qualified to develop rules and the IMNH would work closely with them in that process. **Senator Kelly** asked what will happen if this doesn't pass this session? **Mr. Kunz** said the existing code in Title 67 of the Antiquity Act would continue to exist within the ISHS.

Senator Geddes asked **Mr. Kunz** why this only deals with vertebrate paleontology and not include those with a backbone? **Mr. Kunz** replied because it is the old language that exists in code. They tried to be as narrow as possible in the drafting of this legislation, it is only removing the responsibility from one section of code.

MOTION: **Senator Geddes** said this isn't urgent or pressing, it would be more prudent for us to fix the legislation and put it in place when it has been corrected. He moved **to hold H620** in Committee. **Vice Chairman Pearce** seconded the motion.

Senator Davis said he is not unduly troubled by some of the language, but if there is an opportunity to improve this he will support the motion.

The motion carried by **voice vote to hold H620** in Committee.

H617 **Representative Sayler** presented **H617** and stated this legislation will help to utilize specialty rescue teams in the State, and the overall intent is to help with the State's Disaster Preparedness Response Plan. When a major disaster occurs, there is often a need for specialized resources to respond and help manage the situation. Many times, local departments are not fully equipped to deal with those types of situations. There are Federal teams that are properly equipped and trained for such disasters, but often those teams are not available as quickly as may be needed. **Representative Sayler** said in fact, our closest team is in Utah and they were called to Haiti. If the Federal Emergency Management Agency (FEMA) had declared a disaster while they were gone, there would have been an additional delay until another team could be brought in. When a disaster occurs in the State and it does not rise to the level of a Federal declared disaster, the State would have to rely on State resources such as local entities, they would have to call on out-of-state resources or even contract with private entities. All of this will delay response time and added cost. **H617** would create State level response teams that would be available for such situations. They will fill a gap between local capabilities and Federal resources and provide immediate response until a Federal team can arrive. Our State Disaster Preparedness Act calls for prompt and effective response in coordinating these activities when a disaster occurs. There is no fiscal impact on the general fund and the money would come from the State Disaster Emergency Account created in Title 46, Chapter 10. This account can only be used to pay for expenses that

occur when the State has declared an emergency. The equipment and training for these teams would continue to be provided through Federal grant money or by local entities. Should a team be called it could save the State money, as the Bureau of Homeland Security would have to provide for cost recovery.

Representative Sayler stated there are three teams defined in section 2, which are the Idaho Technical Rescue Teams (ITRT). They are the main focus of this legislation, as they are trained in the removal of trapped victims in emergency situations. The State currently has three teams, one in Coeur d'Alene, Boise, and Idaho Falls and Pocatello, who have been trained and equipped with Federal funds. Each team has up to fourteen members. This will enable them to be utilized around the State. Specialty rescue teams will offer additional technical rescue assistance for first responders that can be used in a variety of situations. The teams will be certified by the Bureau of Homeland Security to qualify for specific types of incidents.

Senator Davis said there is language for a type 3 incident management team, which implies they will handle a type 3 incident. Then it states they may initially manage larger, complex incidents. He asked what does that mean especially in relationship to the type 3 designation? **Representative Sayler** said he believes it refers to a type 3 incident so they can take over and manage it. **Senator Davis** asked what is greater, type 1, type 2 or 3. **Representative Sayler** replied type 3 is the highest level for an incident. Actually, **Representative Sayler** said he has just been informed that he had it backwards, type 1 is the highest level. **Senator Davis** said if they can initially manage a larger one, what does it mean if they are qualified to manage the lowest incident, but they may not be qualified to manage it. **Representative Sayler** said he would like to yield to that question.

Steve Rasulo, Battalion Chief of the Boise Fire Department, stated in reference to that question, incidents are classified as type 1 through 5. Type 5 would be a small day to day response like an auto accident, type 3 would be a multi event with personnel of one hundred responders and type 2 and 1 are much larger in scope. The intent here is that a type 3 team would be the highest trained that would exist in Idaho. They would be called in to assist and manage local jurisdictions with incidents until a larger more capable team arrives on the scene. Type 1 and 2 would be Federal teams like we see at a large scale fire in the summertime.

Senator Darrington said the legislative intent states upon a disaster declaration, obviously that would be from the **Governor.** Is there likely to be a disaster declaration on something like the Oregon Trail fire? **Chief Rasulo** replied it could be various kinds of disasters. An earthquake would be one where the **Governor** would declare a disaster, it doesn't have to be a specific type of disaster. **Senator Darrington** asked if there has to be a disaster declaration? **Chief Rasulo** said the legislation is to allow for the teams to be used anywhere within the State when there is a disaster declaration, then they would be given cost recovery from the State Disaster Account.

Senator Fulcher asked why do we need this in code, is it necessary for State code to authorize specialty rescue teams? **Chief Rasulo** replied there would be a more certain response by one of these teams if they are authorized in code to respond, knowing that they will have cost recovery. When a team is called out of their city to another jurisdiction and an incident occurs in their own jurisdiction, there could be a liability issue, so sometimes they are reluctant to respond. Having this in code with the liability exemption is a plus and it makes them more available around the State. With the credentials there is a certainty to the kind of capability that the team would have.

Senator Stennett asked what if there is a disaster that is on the border of the State, do they work cooperatively with like rescue teams and can they cross the border? **Representative Sayler** responded that they do have agreements with other states and it is part of the Disaster Agreement Act, which allows our resources to be used in other states with the appropriate cost recovery. These teams could be utilized outside the State.

Representative Sayler said there are provisions for rules in the legislation, authority for cost recovery, limitations on liability and it provides immunity for those who are responding.

MOTION: **Vice Chairman Pearce** moved to send **H617** to the floor with a **do pass** recommendation. **Senator Davis** seconded the motion. The motion carried by **voice vote.**

H433a **Representative King** presented **H433a** and stated currently a write in candidate must file as a certified candidate fourteen days before the election. This will simply change that to twenty eight days. In 2008, Idaho switched from a punch card to an optical scan ballot. Unlike the punch card, write in candidates are on the optical scan ballots. There are three things the county clerk must test in the software program, that the ballot is properly laid out, the tabulator will read the ballot and that the software will count the ballot. This is a very time consuming procedure for the larger counties. In the 2008, the primary in Ada county had 282 unique ballots due to the write in ballots. These ballots became 5,358 separate ballots all of which needed to be tested and quality assured. With the increased testing, the write in time is being requested for the write in candidates to give the county clerks more time. There is an emergency clause to allow it to be used for the upcoming primary.

Senator Stegner said it seems to him the impetus for a write in candidate is just before the election, such as a uncontested case and all of a sudden there is a large public angst against the running candidate. He asked **Representative King** if she has any concerns that this restricts that ability for that late candidate? **Representative King** responded they did discuss that, but she is not sure it will make a difference, it will just provide more time for the clerks.

Tim Hurst, Deputy Chief for the Secretary of State (SOS), stated moving this date still gives the candidate thirty two days from the date of closing to make a decision to run. Typically, those who file at the last minute do

not see much success. They tend not to be viable candidates anyway, so he is not concerned. **Senator Stegner** asked if the SOS supports the legislation? **Mr. Hurst** said yes they do.

MOTION: **Chairman McKenzie** said hearing no motion, **H433a dies** in Committee.

H575 **Representative Anderson** addressed the Committee regarding **H575** and stated this will eliminate the Public Utility Commission's (PUC) authority to regulate vessels, wharfs, docks and warehouses used in the transport of persons or property upon the waters of Idaho. In 1914, when PUC laws were first enacted they had that jurisdiction over those arenas. Since that time, there have been new jurisdictions created to deal with those types of uses, such as the U.S. Coast Guard. This is basically a clean up and the PUC requested it.

MOTION: **Senator Geddes** moved to send **H575** to the floor with a **do pass** recommendation. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote.**

H492 **Senator Geddes** said he will defer to **Representative Gibbs** from the House to present **H492.**

Representative Gibbs stated **H492** will change the statute to conform with the current rule. Currently a certified death certificate in the State of Idaho is $13. An additional $1 will be added to every certified copy to be collected by Vital Statistics, to be used for county coroner training. All newly appointed coroners will attend a coroner school within one year of taking office. What has brought this legislation forward is that there may be as many as six new coroners elected in this election cycle. Often times the county coroner is the first person on the scene who makes the determination as to the cause of death. The most important thing in this process is that there is accuracy. There are two county coroners here today that can speak to what they believe the need for training is.

Senator Darrington said it is not unusual for someone to request ten certified death certificates. He asked if $1 will be charged for each one? **Representative Gibbs** replied it will be an additional $1 for each copy. When someone requests ten or more there is obviously more assets involved in a death like that and it proves to be a small burden for the actual cause of death in some of those situations. **Senator Darrington** said he doesn't recall if he addressed the $14 fee for a record search. **Representative Gibbs** said that is not an increase. The fee today is $13 and it has not been changed in several years.

Senator Davis said he doesn't understand the consequence if the newly elected coroner chooses not to go to the schooling, or they fail to complete their continued education courses. These individuals are elected by the voters. What is the consequence if they fail to comply with these new standards? **Representative Gibbs** responded he doesn't remember. He would yield to the coroners to answer that. **Senator Davis** asked what if they are a witness in a criminal procedure, can the defense counsel suggest they are not qualified to offer testimony.

TESTIMONY: **Keith Schuller**, Payette County coroner, testified that his experience prior to being elected was that he was an Army medic, 12 years as a plumber, and 25 years as a 6th grade teacher. **Mr. Schuller** said after he was elected he attended a one week crash course to indoctrinate coroners. The course was an excellent intense course and it covered every conceivable event that he might incur. It prepared him for everything from notifying the next of kin, working with prosecutors and police to preserve evidence and to do what is necessary to bring a case to conclusion with presenting the autopsy results to families.

John Buck, Gem County coroner, stated that he is also a funeral director, which allows him to run for county coroner under Idaho statute. Anyone who is elected should have some qualifications and given the opportunity so they can better serve this position. **Mr. Buck** said the costs to the family is marginal compared to the benefit they will receive. As a funeral director, he sells 2 to 5 certificates to every family he meets with. Over 25% of coroners in the State are funeral directors so they understand how this will work. This will affect a small percentage of our population. There are approximately 10,500 certificates purchased every year. The Coroner's Association has been in business for about ten years, they do training twice a year, and about 25% do not participate. It is important for them to participate and to have continuing education opportunities. For ten years he was a deputy coroner and received no compensation, some make money on a per call basis, but most do not receive any education at all because they are from small counties. He believes if this passes, they can bring experts to different areas of the State to train them. The Association has raised some funds, and this will only help to solve the education needed for coroners. **Mr. Buck** said if this is in law, he believes it will happen.

Senator Davis asked **Mr. Buck** what if they don't, what is the legal effect if the coroner does not participate? **Mr. Buck** replied he does not believe it will happen. Wyoming has a statute and they will relieve their coroner if they don't have 40 hours of continued training every year. He doesn't believe that a remedy is needed at this time, if not, they may need to return and ask for that.

Kathy Garrett stated that she serves as the Co-Chair for the Idaho Suicide Prevention Council. The Council was established by the **Governor** in 2006 to oversee Idaho's suicide prevention activities and to report to him and the Legislature annually. Idaho is in the top ten percentile per capita for completed suicide and they have increased by 14% in 2008. **Ms. Garrett** said suicide is a lagging economic indicator and there is an increase in suicide related to our tough economic times. The National Center for Disease and Control estimates that suicide in the western region of the states are under reported by a third. The Council has recommended that Idaho create, distribute and educate the coroners on a uniform reporting system that is more sensitive and informative about the number and circumstances of completed suicide. **Ms. Garrett** said **H492** will help the Council and State to reduce the number of deaths by suicide in Idaho.

Carl Erickson, a civil attorney for Canyon County, stated that he has provided a letter to the Committee from the county prosecutor, **John Bujak,** who supports **H492**. Trained coroners are a vital part of the criminal justice system, in making decisions on charging and prosecuting cases.

Senator Davis asked **Mr. Erickson** to speak to the legal question regarding compliance. **Mr. Erickson** replied he understands the concern, one possibility is that it may affect insurance rates.

James Aydelotte, Bureau Chief of Vital Statistics, testified and said this legislation has two components. It will create requirements for the education of county coroners and to establish a mechanism to pay for it. **Mr. Aydelotte** said he is not here to dispute that, however, the mechanism they have chosen to pay for that education is not the most appropriate one. State law requires citizens to file certain events with the State, which include birth, death, marriage and divorce. They also issue certified copies of these events as needed to establish identity and citizenship and to claim benefits. For these services they charge $13 per copy and the money that is generated is for the operation of the Bureau. The Bureau receives no general funds. Last summer the Bureau was contacted by another group making inquiries to add a fee to birth certificates. They are concerned that adding this fee to death certificates will open doors for other groups to do the same thing. This fee adds a cost to the participants in the Vital Statistics system. This may be a burden to the families who are requesting the certificates when they are taking care of the estate of a recently deceased family member. Adopting this fee is essentially adding a 7% tax to the cost of each death certificate. Even though the coroner system is a county system, there is no certainty that any money generated in any county will stay in that county. The fiscal note indicates it will raise $50,000 annually. As written this legislation will generate $200,000 for each elected cycle. **Mr. Aydelotte** stated that is a lot of money for the education of newly elected coroners and continuing education. The Bureau will incur a one time set up cost and ongoing administrative costs. This language is not in the actual bill, and is the fiscal note enforceable? If not, they would be left to fund this with existing funds. Ongoing costs have been unaddressed and finally, is a State level funding mechanism appropriate for a county level issue. In Idaho the coroner system is a county system. This will turn the Bureau into a taxing entity to raise money for county employees.

Senator Davis asked if the Department of Health and Welfare and the Bureau are opposed to this legislation? **Mr. Aydelotte** answered yes they are. The overall goal of the legislation may be worthwhile, but there are more appropriate funding mechanisms.

Duayne Sims, Caribou County coroner, said he is a licensed funeral director and mortician. His experience with death certificates is when he meets with the family and there is only one reason that they order one. They need it to process their estate. When he came to Idaho he received a call from **Robert Geddes**, he didn't know him, and he explained that he had a bill coming before them regarding funeral directors and he wanted

to know what was best for the people. **Mr. Sims** said he does not sell death certificates, he orders them for families. One dollar may be a lot of money to some, but he doesn't believe that it is. A recent report from the Emory University School of Medicine states that coroner's offices are funded nationwide from $3.31 per capita to $9.19. In Idaho that is $.35 to $3.50 per capita. One county had a problem which cost them $9 million. Immediately after that suit was settled over 30 additional suits were filed in that county. Our coroners want to be proactive and prepared to do the best job that they can.

Senator Stennett asked **Mr. Sims** if this is implemented and some coroners do want to do it, what influence will the Association have to ensure that they do? **Mr. Sims** responded he doesn't know that there is, but the Sheriffs have to attend POST and it doesn't say they will be removed.

Senator Darrington commented that has been considered and they can't enforce that because they are elected officials. He asked **Mr. Sims** if there has been an incident in Idaho where due to the inability of the coroner to perform his duty, that a liability action was taken? **Mr. Sims** said not to his knowledge.

Senator Geddes said at one time he thought the coroner's position was one of the easiest positions to hold in the State of Idaho. It is more complex and he has had significant experience with **Mr. Sims**. In one incident two brothers drowned and he was called to go with him. He saw what a coroner does as the search and rescue team dragged the reservoir to recover the two bodies. Another time he received a call and he was asked to meet him at one of his neighbor's homes. He was there when the coroner explained there had been a tragic accident. It was then he started to understand the value of coroners and the personal side of being a coroner. There are only 3 counties with a full time coroner, the other coroners in Idaho work on an as needed basis, 24 hours a day, 7 days a week if necessary. **Senator Geddes** stated that a coroner sees things that hopefully we will never have to see. Training is a good thing for them, it helps them do their job as well as dealing with the things they have to see, as they are perhaps the first ones who deal with significant tragedy. Some of the training probably deals with the emotional side of being a coroner as well. He can't imagine that there are things that they don't see on a regular basis that they struggle with from that standpoint. The training is important for the coroners, and this legislation will go a long way to help our coroners in becoming the professionals they would all like to be. If a coroner doesn't think he needs the training and he chooses not to be trained in accordance with the provisions, he would suspect someone would challenge that coroner in a future election.

MOTION: **Senator Geddes** moved to send **H492** to the floor with a **do pass** recommendation. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote**.

SJR102
SJR103 **George Bacon**, Director for the IDL, stated the proposed Resolutions amend Idaho Constitution to allow for the management of State trust

lands by the Land Board Commissioners in a commercially reasonably manner. This will be more consistent with the trust mandates established at statehood. **Mr. Bacon** said the IDL and Commissioners manage 2.4 million acres of State trust lands, they work closely with the Endowment Fund Investment Board who invests the money and manage the financial assets of the trust. Both entities are governed by the State Board of Land Commissioners.

Kathy Opp, Deputy Director for IDL, stated not only are they governed by the Constitution but by the Prudent Investor Act, which governs all trusts in the State of Idaho. **Ms. Opp** said the criteria and goals of endowment management is to maximize financial return over time, represent proper financial stewardship, to maintain and improve revenue generating capacity of the land and most importantly, to provide a stable and perpetual distribution of income to trust beneficiaries. That is really the intent of **SJR102** and **SJR103.** The asset management plan was implemented in 2007, it quickly became apparent that there were certain aspects of the Constitution that were not in keeping with modern business methods. Several years ago the IDL worked to market a highly valuable piece of property for residential development. All the offers that were returned included some sort of profit sharing and some form of non simultaneous payment. Under current Constitutional language this model which is very common in modern business practices of today, is prohibited. **Ms. Opp** stated had they been able to participate the endowment would have received at least 30% profit above the value of the land at the time. The proceeds could have been reinvested and could have contributed to added portfolio diversity.

Al Marino, a commercial realtor, stated that he was part of the Advisory Committee to provide an impartial review of the specific language and the elements of the Idaho Constitution regarding the disposition of lands. **Mr. Marino** said the Committee identified the impediments that **Ms. Opp** referred to that they deal with and how some of those transactions are handled, while keeping in mind the mandates and Constitutional language for the endowment which is for the beneficiaries. They reviewed and analyzed the current structure and identified the impediments to maximize returns on investments that the IDL deals with for dispositions.

Robert Phillips, a commercial realtor, said as they went through this process they found three things to be impediments. With the current structure, there is a lack of diversification which puts the portfolio at risk and it makes the revenue flow uneven. Secondly, with the lack of flexibility they found that it caused missed opportunities and not getting the best value for the lands. **Mr. Phillips** stated the third thing was the size limitation put in place over 120 years ago, which was based on homesteading concepts.

Bryant Forrester, a residential realtor, said the restrictions on public auction and size are the two greatest impediments. Should the State wish to transfer endowment lands, these are two things that will help them gain the highest value.

Senator Darrington asked **Mr. Bacon** to certify that this is by unanimous request of the Land Board Commissioners? **Mr. Bacon** responded there is a letter that he provided, signed by all the Land Board members.

MOTION: **Vice Chairman Pearce** moved to send **SJR102** and **SJR103** to the floor with a **do pass** recommendations. **Senator Darrington** seconded the motion. The motion carried by **voice vote.**

MOTION: **Senator Darrington** moved to approve the minutes of March 5, as written. **Senator Stennett** seconded the motion. The motion carried by **voice vote.**

ADJOURN: There being no further business before the Committee, **Chairman McKenzie** adjourned the meeting at 10:08 a.m.

Senator Curt McKenzie Chairman	Deborah Riddle Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	March 24, 2010
TIME:	8:00 a.m.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett, and Kelly
MEMBERS ABSENT/ EXCUSED:	None
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
CONVENE:	**Chairman McKenzie** called the meeting to order at 8:03 a.m.
GUBERNATORIAL APPOINTMENT:	**Chairman McKenzie** said the confirmation vote on **Andrea Wassner** is before the Committee
MOTION:	**Senator Kelly** moved to send the appointment of **Andrea Wassner** to the Idaho Commission on Human Rights to floor of the Senate with the recommendation that it be confirmed. **Senator Geddes** seconded the motion. The motion carried by **voice vote.**
RECOGNITION:	**Chairman McKenzie** said before we get to today's business there is something we need to do. **Akira Keller**, our page for the second half of this session is always smiling and she is the one person he knows that wants the Legislature to stay in session. He asked **Akira** what her plans are for the future. **Akira** responded that she will work over the summer, go to college in the fall to study business and art, and possibly public relations and political science. The Committee presented **Akira** with a letter of appreciation for her work to the Committee.
H589	**Representative Harwood** presented **H589** to the Committee and stated this is the Freedom of Firearms Bill that is a State's rights issue. It will challenge the Federal government's right to regulate everything within the State under the guidance of regulating commerce. There are five states that have enacted similar legislation and twenty-seven states are engaged as well. **Representative Harwood** said the right to bear arms is a fundamental right, that was given to us and it can be held back by not having access to parts by the control of the Federal government supply line. What is happening is if supplies are not available through commerce, than for all practical purposes citizens would not have the right to own a gun. The states have the right to control commerce within

their own states. **H589** will challenge the Federal government on the Commerce Clause powers. **Representative Harwood** said there are thirty-one companies in the State that manufacture parts and ammunition for guns and a court challenge will help these companies with their business.

Representative Hart addressed the Committee and said the Firearms Freedom Act is part of the larger scheme of states around the country in trying to challenge the Commerce Clause. In 1995, in *United States v. Lopez*, the court ruled that the Commerce Clause can only be used by Congress to regulate human activity that is truly commercial at its core. This case was a gun control case that dealt with schools. **H589** states within the State of Idaho, guns that are manufactured in Idaho that will remain in Idaho are governed by the State and not the Federal government.

Senator Davis asked if he has a gun that is manufactured in another state, shipped from that state to Idaho and sold in Idaho, would this bill apply? **Representative Hart** replied no it would not. **Senator Davis** said with the language that is on page 3, line 20, subpart 4, would he like to sharpen his answer a bit. **Representative Hart** said he doesn't understand the point of his question. **Senator Davis** said that language states the firearm manufactured or sold in Idaho, shall have the words made in Idaho clearly stamped on it. That would apply to a gun from Florida, but sold in Idaho. Is he reading that correctly? **Representative Hart** responded his intent is that section 3 is part of Idaho code, and it would be a firearm that is first manufactured and then sold in Idaho. **Senator Davis** said the way the bill is written any gun sold in Idaho shall have the words stamped "made in Idaho" on it, even those that are not necessarily manufactured in Idaho. What he believes that he meant to say "and" rather than "or." **Representative Hart** responded that would make it more clear.

Representative Hart said in *District of Columbia v. Heller*, the Supreme Court ruled that we have the individual right to keep and bear arms. This is a good opportunity for Idaho to take this issue to court and more narrowly define the Commerce Clause of the United State's Constitution. There are at least three private legal organizations that are setting the stage to challenge this issue in different circuits and get this to the Supreme Court. They are the Goldwater Institute in Arizona, Chapman University Constitutional Study Group in California and the U.S. Bill of Rights Foundation in Washington D.C.

Senator Stennett said for clarity, the Statement of Purpose states you are trying to be exempt from Federal law or regulation. The fiscal note indicates there is no impact. She asked if the three institutions would pay for the legal expenses if this should go to court? **Representative Hart** said on legal argument that is true, but there might be a need to indemnify Idaho's citizens if it is pursued by the Federal government. A case in Montana is in court right now, and he is not anticipating that. If an Idaho citizen were take advantage of this, he would expect our Attorney General to defend that citizen. **Senator Stennett** said if a citizen wanted to go

forward with this the State would defend them, so the State would need funds or some sort of recourse to defend them. There would be a fiscal impact in that instance. **Representative Hart** replied at this point it is hypothetical. It is not their intent to try and set up a case.

Senator Darrington said the Lopez case was a landmark decision, is it his intent to have another Supreme Court test, not just on the issue of federalism, but also on the issue of the federalism of the Second Amendment. **Representative Hart** replied that would be their hope. **Senator Darrington** said in his opinion, those other precedents are not significant enough to prevail**. Representative Hart** said it is also their intention to focus on the Ninth and Tenth Amendment.

Senator Geddes said it seems to him the language on page 3, paragraph 6 indicates that there could be some money expended in the event there is a case to be brought. It also implies that the Attorney General would represent Idaho citizens, which is not normally his practice. He asked the sponsor to discuss that. **Representative Harwood** responded that he discussed this with the Governor, it is a State issue and they should not have to pay for a State issue. The Governor agreed with him. If it does happen he wanted to have some backing for the businesses that may come underneath this assault.

Senator Davis said the language states to protect any Idaho citizen in any legal matter. If the Federal government believes there is a violation of a Federal law, a criminal proceeding is brought against that individual, will the State have the duty at the taxpayers expense to provide defense for the interpretation of the Ninth and Second Amendment? **Representative Harwood** said this is correct, but they do not look for that to happen. The three institutes may come to that defense. **Senator Davis** said on page 3, or needs to be changed to and, would he have a problem with subpart 6 being amended to limit that to any civil legal proceedings and eliminate criminal defense? **Representative Harwood** said he is not sure it would be a criminal defense. **Representative Hart** commented in his observation of this area of law, they do tend to be criminal pursuits by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). He believes that it is likely this would be a criminal defense if the ATF decided to challenge it.

Senator Kelly said Federal law prevents an Idaho citizen from owning a gun if they have been convicted of a Federal crime, will that person be able to own a gun as long it said made in Idaho. **Representative Hart** said no, this only relates to a gun that is manufactured and sold in Idaho.

Senator Stegner said page 2, lines 28 and 29, the definition of generic parts is incorporated later on page 3. It states these items have not traveled in interstate commerce, when in fact they have. How can you declare that in this legislation when it is not true, and how does it make it legal? **Representative Hart** asked for clarification. **Senator Stegner** said in paragraph 2 it talks about additional parts, such as blanks, raw materials and steel. He doesn't find it logical to think that these parts didn't travel in interstate commerce. **Representative Hart** said the intent

was to say just because a screw may have traveled across the state line and it was incorporated into a firearm, it doesn't mean that the firearm did. **Senator Stegner** said that is exactly his point, that screw has crossed the interstate boundaries, it is interstate commerce and it is not up to the State of Idaho to determine that. **Representative Hart** replied if this goes to the amending order they will address that as well as the others that were suggested. **Representative Harwood** said just because a screw crosses State boundary lines that screw is not a firearm until it is assembled into one.

Senator Kelly said if a firearm that is manufactured in Idaho that remains in Idaho is not subject to Federal law, she asked if there is a Federal law prohibiting someone from flying in Idaho with a firearm? **Representative Hart** said no the airport is regulated by the Federal government and they would be prohibited from carrying a gun on an airplane.

MOTION: **Senator Davis** moved to send **H589** to the fourteenth order for possible amendment. **Senator Geddes** seconded the order. The motion carried by **voice vote.**

H652
H673 **Tim Hurst,** Chief Deputy for the Secretary of State (SOS) stated last year the election consolidation bill had changes that were not picked up. **Mr. Hurst** said this is a clean up of those sections. The first change deals with the transition in terms of office and sections 1, 4, 5, 13 and 15 deal with that transition from the even and odd year, making it the odd year. Section 16 deals with the implementation of the bill and the parts that affect school districts are effective January 1, 2010, which means there will be no school trustee elections this year and it will roll over to 2011. That is basically the bulk of the bill which is just the transition of the terms. The language on lines 39 through 41 is being removed regarding alternative election. Section 6 will make it clear that school districts will hold bond levy elections in March and August as well as May and November. In sections 7 and 8 the date wasn't moved from that section of code and in section 9 it removes recreation, water and sewer districts from election consolidation. The reason is in recreation, water and sewer districts the voter does not have to be a registered voter in the county only in the State. In section 10 it makes it clear that those who file a declaration of candidacy will file in the district that they live in. The county clerks would then mail out the absentee ballots, and conduct the rest of the election. The district county commissioners would then certify the results and issue a certificate of election. **Mr. Hurst** said **H673** will modify **H652.**

MOTION: **Senator Davis** moved to send **H652** and **H673** to the floor with a **do pass** recommendation. **Senator Geddes** seconded the motion. The motion carried by **voice vote**.

HCR44 **Representative Jarvis** presented HCR44 to the committee and stated **HCR44** is what could save America from bankruptcy. He said the reason is the path that we are on is unsustainable and the magnitude of the national public debt increases our ability to grow our economy decreases. On line 15, the Tenth Amendment gives us the right and the responsibility to urge Congress to pass laws and the bill has seven points to it.

Line 20 talks about a balanced Federal budget. With the current administrations budget, in the next 10 years it is forecast that the budget deficit will increase $8.5 trillion. Federal spending would need to be reduced by 54% in order to balance the Federal budget. On line 26, to pay off the Federal debt it will take $66 billion per month for fifty-five years. **Representative Jarvis** said currently there is $12.6 trillion and it begs the question, how much debt is too much. At what point are the economic consequences in terms of inflation and higher interest rates, slow growth or the collapse of dollars so severe that everyone recognizes the actions required.

Line 29 talks about government transparency and that all bills passed by Congress, should be limited to a single topic and that no bill should be voted on until published for general public review for at least five days. On line 36 it addresses the fact that English language should be the exclusive language for the affairs of government and the formal language of business. Congress should prevent foreign entities and foreign courts from having authority over the activities within the United States, that is on line 41. On page 2, line 4, references preventing unfunded mandates and prohibiting government from taking ownership of private sector enterprises. Line 20 states that references to God should be welcome in all public places, and line 25 urges other states to approve language for similar resolutions.

Senator Davis said he assumes there are similar resolutions in other states, but and in the 12 years he has been in the Senate he has never received a copy of a resolution from another state. He doesn't know what it means give a copy to another state. **Representative Jarvis** replied that he hasn't either, but a man in Florida, **William Fruth**, has written a book about the ten amendments for freedom. He believes it is his intention to share this with every Legislator in the United States.

Representative Jarvis said the Congressional Office is a non-partisan entity that works for the Federal government. In their long term budget outlook there is a section called the Economic Impact of Rising Federal Debt. If there is one thing the American people have learned, it is that we are at a critical time in our country. In short, with this situation going forward it is ever more precarious than it appears at first glance.

Senator Stennett said there is a lot of legislation directing anger towards the Federal government. She asked if he is prepared as a State and an individual not to take tax subsidies or tax breaks that the Federal government provides for us to have a certain lifestyle or earning power. If he is really serious about helping the State or individuals to balance the budget, he can't ask for services from the Federal government. How will we go about making those decisions about what we will and won't take from the Federal government, and at the same time argue about how they are spending our money. **Representative Jarvis** responded that is exactly why we need to do something now while we still have the choice. If not, we will be forced to only pay interest and we won't have the benefits that we currently have. We will outspend ourselves and be faced with the worst depression of all time. **Senator Stennett** said she is not

clear as to who the "we" is, is that us as the people of Idaho, and what is our responsibility in making this change? **Representative Jarvis** said we are all citizens of this country and we all have a responsibility to do the best we can in everything that we do. For every dollar that goes to paying the Federal deficit, that is one dollar taken out of our economy. Our economy output decreases, and with the projected increase in the Federal debt it comes to the point that the total income of our Federal government will all be going to interest. When that time comes, interest rates will increase which costs the taxpayer more money and our standard of living will decrease. This is a situation that everyone needs to be aware of to start reducing Federal spending, to pay off our debts and not saddle our children and grandchildren with this debt. **Senator Stennett** asked what specifically will help change that course? **Representative Jarvis** replied we have come one vote away from passing a Constitutional Amendment to have a balanced budget in America. If that can pass, the 54% reduction will be much easier to take now, than having a total reduction of all services from Federal government in the future. What we can do is urge our congressmen and senators to sponsor legislation to make the seven points in this Resolution the law of the land.

MOTION: **Vice Chairman Pearce** moved to send **HCR44** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion. The motion carried by **voice vote.**

H680 State Treasurer **Ron Crane** presented **H680** and stated that every state in the nation has unclaimed property programs including Idaho. **Treasurer Crane** said unclaimed property laws have been around since the 1940s and they were probably the original consumer protection laws. Last year, approximately $2 billion dollars were returned to rightful owners out of some two million accounts. It is estimated that there is $33 billion being safeguarded by state treasurers and other agencies around the nation that is unclaimed. Currently, Idaho's plan resides in the State Tax Commission and he was approached by the Commissioners to consider housing the unclaimed division with the Treasurer's Office. The National Association of Unclaimed Administrators is an affiliate of the National Association of State Treasurers. The mission of this division is to return lost or found money or property to the rightful owner and this is a better fit within the State Treasurer's Office. In section 6 of **H680**, it provides for the agreement for the exchange of information between the Tax Commission and the Treasurer's Office. The Tax Commission is privy to private and sensitive information related to persons, firms, corporations, partnerships, or associations. This section allows for the exchange of such confidential information that is necessary for the administration of the unclaimed property operations. There are 8 employees in that Division that will come under the umbrella of the Treasurer. Those employees are classified and the Treasurer's current employees are unclassified. A section was added to the bill for them to remain classified if they choose, when they resign or leave their position, then that position would be moved to an unclassified one. The regular appropriation for the unclaimed property division will move to the Treasurer's Office by the passage of a trailer bill. The transfer will take place on July 1, 2010 and

there is no fiscal impact.

Senator Geddes said he would think there is a fiscal impact because of the published notices regarding unclaimed property. He realizes the responsibility will just be shifted to the Treasurer's Office. He asked **Treasurer Crane** if he sees an opportunity to add additional efficiency and more success with dispersing that unclaimed property. **Treasurer Crane** replied that he does. The mission of the Treasurer's Office better coincides with this particular organization and he believes they can be more aggressive in their efforts to locate the people who are the rightful owners. It is estimated that there are $16.5 billion in unclaimed Savings Bonds in the U.S. That money doesn't belong to the Federal government, it belongs to the individuals. There is a bill before Congress to start a pilot program in the states to see if the individuals can be located.

MOTION: **Senator Stegner** made the motion to send **H680** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion. The motion carried by **voice vote.**

H674 **Mike Nugent**, from Legislative Services Office, stated this bill is for the continuance of the Administrative Rules, which is called the Drop Dead Bill. All administrative rules will be temporary unless they are extended by statute for one year. **H674** provides for the continuance of certain administrative rules in full force and effect until July 1, 2011.

MOTION: **Senator Darrington** moved to send **H674** to the floor with a **do pass** recommendation. **Senator Stegner** seconded the motion. The motion carried by **voice vote**.

H566 **Representative Trail** presented **H566** and stated last year **H161** went through the House and the Senate without a negative vote. The legislation was vetoed by the **Governor** when 35 bills were vetoed. This past summer he continued to work with the Director of the Department of Administration (DOA), the States Chief Security Officer, the DOA's Deputy Attorney General and the Idaho Controller. Recommendations from these individuals helped strengthen the bill before you.

Representative Trail said a local soil conservation district refused to share the personal data and information of their farmer cooperators and their own staff with the Idaho Soil Conservation Commission, that is the reason for this legislation. The data included Social Security, bank account numbers, tax and other personal data. The local districts did not trust the manner in which the Commission handled the data. Part of this was the fact that two of the Commission's loan officers were convicted of embezzlement and sent to prison The Commission then cut off district funding in some cases when the personal information would not be shared by the districts. In August 2008, the Commission regularly posted personal information from their minutes on the website. He contacted the Attorney General's Office and the website was shut down within 24 hours. Action has since been taken for the Commission to clean up its act, but it was clearly a disservice to the Commission in the protection of citizen personal information.

In testimony last year, **Terri Prost-Martin** from the DOA noted that there are over one million attacks per week on the statewide network. National protection of citizen data is becoming an even greater problem. Over the last several years it has been estimated that over 10 billion citizens from state and Federal systems had their personal data stolen. The legislation outlined in H566 relates to disclosure of personal information; amending *Idaho Code Section 28-51-105* to provide for application to city, county and State governmental agencies, and to provide for notice to affected Idaho residents by governmental agencies to the office of the Idaho Attorney General in the event of certain breaches of security. Representative Trail provided a letter from **Director Gwartney** of the DOA, dated August 7, 2009 outlining his recommended changes to this bill which have been incorporated.

Senator Davis asked **Representative Trail** if he has reviewed this with the **Governor** and has he expressed his willingness to receive it positively? **Representative Trail** responded that he has the word of **Director Gwartney** that it is not a problem.

MOTION: **Senator Davis** moved to send **H566** to the floor with a recommendation that it **do pass**. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote.**

H426 **Tana Cory**, from the Bureau of Occupational Licenses (IBOL) presented H426 to the Committee. Ms. Cory stated this bill will remove members of the State Board of Morticians from the Public Employee Retirement System of Idaho (PERSI) by changing the payment they receive from compensation to an honorarium under *Idaho Code 59–509.* The change basically means the Board will not be required to participate in PERSI which limits their participation in a personal IRA

MOTION: **Senator Stegner** moved to send **H426** to the floor with the recommendation that it be **referred to the Consent Calendar**. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

H614 **Representative Takasugi** presented **H614** and stated this will amend the Administrative Procedures Act with four changes as to the way the legislature reviews rules. **Representative Takasugi** said he provided a copy to the Committee with some proposed amendments. The amendments address three areas that are not in the bill. One is the issue of copyrighted or other proprietary materials, the second one deals with accuracy of the rule, and the third amendment would remove the unclear language.

Senator Davis asked if the copy with the red and black is a draft engrossed copy that he prepared? **Representative Takasugi** replied it is the opposite. The red and black are the proposed amendments. If those amendments are included in **H614** then it will read as the draft handout that he provided. **Senator Davis** said he doesn't believe that is accurate, maybe **Mike Nugent** can clarify this. **Mr. Nugent** said the handout with the red are the proposed amendments.

Representative Takasugi said he believes the changes will enhance

legislative oversight and it will provide a level of transparency to the citizens as well as the legislature. Additionally, the authority that we grant to agencies in rule making will not be abused.

Senator Kelly asked **Representative Takasugi** why doesn't this just say that the legislative review shall include those forms, rather than restating a requirement? **Representative Takasugi** responded that is a precise statement or a reduction of that part. **Senator Kelly** said she would suggest that we are already crossing into the executive branch.

Vice Chairman Pearce said he has been frustrated with the rule making process, does he think this will make a difference? **Representative Takasugi** replied that is why he brought forth this legislation and this will enhance the information that we receive. The administration asks for this information before the rules even come to us. **Vice Chairman Pearce** said what he understands is that they already gather this information. He asked if the **Governor** is on board with this, and has he approved it? **Representative Takasugi** said before he even generated this bill, he took it to the Governor's Office and they do not have a problem with it. Some agencies had some concerns and that is why he has provided the proposed amendments. **Vice Chairman Pearce** said the fact that this data has been gathered in the past and not shared makes him wonder. Would he like to address that? **Representative Takasugi** replied he believes that the germaine subcommittees can ask for extra information on the incorporated materials, he isn't sure if they could have asked for economic data, so this will include that.

Chairman McKenzie asked **Dennis Stevenson** if he would yield to a question from the Committee?

Senator Kelly asked **Mr. Stevenson** to talk about the incorporated by reference language, how it works, and will it affect the current process? **Mr. Stevenson** replied whenever materials are expensive to include in a rule, the agency indicates that it is incorporated by reference in the rule. Currently, it will not change that process it will add a link in the rule on the administrative website so you can go directly to the incorporated materials, that would prevent him from having to have a separate link on the web page to those incorporated materials. The information that **Vice Chairman Pearce** was talking about is included, they do not hide anything in regards to the economic impact. The germaine subcommittees do have the right to request information from the agency or a meeting to explain it. This is a transparency issue and the agencies are not concerned about it.

MOTION: **Senator Stegner** moved to send **H614** to the **fourteenth order** for possible amendment. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote.**

MINUTES APPROVAL: **Vice Chairman Pearce** moved to approve the minutes of March 12 and **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

Senator Kelly moved to approve the minutes of March 3. **Senator Stennett** seconded the motion. The motion carried by **voice vote.**

Senator Fulcher moved to approve the minutes of March 10 with the minor changes he suggested. **Senator Stennett** seconded the motion. The motion carried by **voice vote.**

MOTION: **Senator Stegner** stated before we adjourn for today, the Committee did not take any action on **H433a**. He asked if the bill is in committee and would a motion be appropriate? He moved to send **H433a** to the floor with **no recommendation**. **Senator Kelly** seconded the motion.

Senator Stegner commented that he has visited with **Mr. Hurst** on this issue and there are concerns from the larger counties in the State. If this will provide a cost savings to them they would like to pursue this. **Vice Chairman Pearce** asked why isn't the sponsor here in support of this. **Senator Stegner** said he has not discussed that with the sponsor.

The motion carried by **voice vote.**

ADJOURN: **Chairman McKenzie** said there is no other business before the Committee and he adjourned the meeting at 9:36 a.m. subject to the call of the **Chair.**

Senator Curt McKenzie Chairman	Deborah Riddle Secretary

MINUTES

SENATE STATE AFFAIRS COMMITTEE

DATE:	March 26, 2010
TIME:	8:30 a.m.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman McKenzie, Vice Chairman Pearce, Senators Darrington, Geddes, Davis, Stegner, Fulcher, Stennett, and Kelly
MEMBERS ABSENT/ EXCUSED:	None
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENE: **Chairman McKenzie** called the meeting to order at 8:33 a.m.

H631aa **Representative Luker** presented **H631aa** to the Committee. **H631aa** creates a new section in Chapter 3, Title 66, to bring our law in conformity with section 105 of the National Instant Check System Improvements Amendments Act of 2007. **Representative Luker** stated under Federal law when someone has a civil commitment, they lose their right to bear arms. Prior to this act there was no way to restore that right. Along with that, it is dovetailed into the Instant Check System where states provide information to the Federal government which provides Federal funding. Three things will be accomplished with **H631aa**: (1) it will set up that procedure to allow the restoration of rights; (2) codify that the information will be provided; and (3) to allow access to the Federal funding. The bill is supported by the Idaho Sports Shooters Association and the National Rifle Association (NRA).

Senator Davis said as he understands, in a civil commitment proceeding the Magistrate judge is deciding whether or not the individual is a danger to himself or to others. He asked if that is correct. **Representative Luker** responded it is, and the burden of proof in that setting is the "clear and convincing evidence." In a civil proceeding, it is akin to beyond a reasonable doubt in a criminal matter. Normally in a civil case of any type, the "preponderance of evidence" is used. **Senator Davis** asked **Representative Luker** to explain the process when the individual is released from the commitment order. **Representative Luker** replied the judge would clear the individual, the circumstance has been alleviated and they would be released. **Senator Davis** said once the individual is cleared from being a danger to themselves or others, this bill will allow them the right to own a gun. He asked what is the legal standard that will have to be demonstrated for a Magistrate judge to restore that right? **Representative Luker** said that burden would be the preponderance of

the evidence. The reason for that, is that we have a constitutional provision, Article 1, Section 11, which is the right to bear arms. The only restriction in terms of classification of individuals is a felony. **Senator Davis** asked if that is the restriction in the Constitution? **Representative Luke** said that is correct. **Senator Davis** said when you compare the language in Idaho's Constitution to the Second Amendment, it fails in comparison to the Constitutional right in Idaho for the right to keep and bear arms. He asked if that was a fair statement**. Representative Luker** said that it is.

Representative Luker said for those individuals that have been civilly committed, they have the right to bear arms under Idaho's Constitution. A law cannot be passed in the State that will restrict that right, otherwise it will violate our Constitution. Under the Federal law, there is authority under the Supremacy Clause to establish laws that trump our laws under certain circumstances within their jurisdiction. Before 2007, there wasn't a mechanism to be relieved of that impediment and it tied compliance with the access to Federal funds. Federal law doesn't outline the particular burden of proof, it just requires a procedure. Our Constitutional provision would take control at the point of least resistence in the Federal law. At the lowest common denominator, our State Constitution should control, that is the reason for preponderance of the evidence.

Senator Darrington asked where in the bill does it say what the standard is, and what is the significance of clear and convincing? **Representative Luker** said clear and convincing is not in this statute, it is in commitment statutes. This is setting out a standard of proof for the release from the restriction. **Senator Darrington** asked **Representative Luker** to explain why there is a lower standard for relief. **Representative Luker** replied both standards give the citizen the benefit of the doubt in preserving their rights. The commitment has a high standard because they are not permitted unless the court is sure that they should be. On the other hand, the preponderance of the evidence will give them the right to restore their rights based upon the State Constitution. In both instances, the rights of the citizen will have the benefit of the doubt.

Senator Kelly said the statute change in 2007, is that what is being amended, and has it been used to have their right to bear arms restored. **Representative Luker** said the 2007 amendments refers to the Federal law, it is not in Idaho law, and that is what this will do. **Senator Kelly** asked if he knew how many have been civilly committed? **Representative Luker** said he does not have that information. **Senator Kelly** said the fiscal note indicates that Idaho will qualify for Federal funding to update our system. She asked if the preponderance versus clear and convincing is at issue in terms of compliance with Federal law. **Representative Luker** responded that it is not required in Federal law, it only requires that we set up a system that allows the right to be restored within certain parameters. **Senator Kelly** asked if the changes require any expenditure? **Representative Luker** said no, we are actually doing what is required in terms of providing the information.

Senator Davis said commitment requires the clear and convincing

standard and that is not what is in **H631aa**. This bill talks about the restoration right to keep and bear arms. The standard that is proposed is that the petitioner would have to make their case on a preponderance of the evidence standard. When you look at Federal law and you weigh it against Idaho's Constitution, can Idaho impose a burden on the petitioner of clear and convincing evidence or must we accept a preponderance of the evidence standard. **Representative Luker** replied our Constitution requires us to use the least restrictive method. The method that would satisfy the minimum requirements for Federal law would then give effect to our State Constitution. **Senator Davis** said in the event this bill does not pass, does he believe that a petitioner could make a case under the language of Idaho's Constitution and this Federal law, that they have this remedy available to them anyway. **Representative Luker** said he believes that a case could be made that their constitutional rights were being violated by the State not having a method that complies with Federal law, to allow them the restoration of their rights. **Senator Davis** said in the absence of that denial, could it expose the State of Idaho to civil liability in the event we fail to provide the statutory remedy. **Representative Luker** said it is a possibility that someone could raise that issue.

Senator Kelly said if there is a high standard for commitment and a lower standard for their rights to be restored, what will prevent someone from being committed under the higher standard and then immediately turning around and trying to get out under the lower standard. **Representative Luker** said this process comes after they have been released, so then they can ask for their rights to be restored. **Senator Kelly** asked if the attorney from Health and Welfare can answer that question.

Robert Luce, said there was a competing House bill that the criminal justice committee worked on last summer. It differs significantly from this. The standard that the criminal justice committee came up with was clear and convincing. The front end process on commitment, is the clear and convincing standard and the back end standard to restore their rights was the same. The scenario that **Senator Kelly** proposed would not occur under that bill. Currently, Idaho does not report civil commitments, so at the present time their gun rights are not taken away.

Vice Chairman Pearce asked why isn't the State reporting? **Mr. Luce** replied there isn't statutory authority to do that, because it is confidential. Statutory authority is needed for this to occur, or we may be violating confidentiality, that is why we currently do not report. The two bills are identical in the sense that they give authority for the court to give the information to Idaho State Police (ISP) and then it is reported. Where they diverge is the restoration of rights, how that process will occur and what the standard of proof will be.

Senator Kelly said the sponsor indicated that the civil commitment order would be dissolved by the time someone filed an order under this language. She asked **Mr. Luce** to respond to that. **Mr. Luce** said that currently when someone is committed in Idaho under the clear and convincing standard, then legal custody is given to the Department who

then dispositions them to a State hospital. The commitment is for up to a maximum period of one year. If that commitment is not renewed, it goes away and it does not go back before a judge. **Senator Kelly** asked if the person would have the right to own a gun at that point? **Mr. Luce** said in Idaho a civil commitment is not a disqualification to own a gun. **Senator Kelly** asked what committee is he referring to that drafted the other bill? **Mr. Luce** responded it was in front of **Representative Clark's** committee and it was held. **Senator Kelly** said that wasn't her question, it was who prepared the bill. **Mr. Luce** said it was the criminal justice committee. **Senator Kelly** said she believes it is the criminal justice commission and it is made up of law enforcement, criminal justice and judiciary from all over the State.

Vice Chairman Pearce asked if we will receive Federal funds if we report our civil commitments to the Federal government, and would it take away their gun rights? **Representative Luker** said in a sense yes, there is some information that is provided. **Mr. Luce** is correct and he is more familiar with this process. This is an incentive from the Federal government to report this information. Before 2007, there wasn't a way to restore these rights. Under the law, Idahoans are subject to the law and they are not supposed to have firearms. Some citizens do not want to violate Federal law, so they do not own guns even though that information has not been provided. The State will provide the information, have access to funds and it will restore their rights. The real difference is the standard of proof on the restoration of rights. Our Constitution requires that we take the least restrictive method. **Vice Chairman Pearce** asked what will the funds be used for? **Representative Luker** replied the money isn't the main objective, it will set up a procedure where our citizens will be clear that they are not violating the law. Federal law prohibits them from possessing arms, the information has not been transferred to the Federal government and this will remove that cloud. **Vice Chairman Pearce** asked if the money will go to the court system? **Representative Luker** said he believes it will go through the Attorney General's Office.

MOTION: **Senator Fulcher** moved to send **H631aa** to the floor with a **do pass** recommendation. **Vice Chairman Pearce** seconded the motion. The motion carried by **voice vote.**

H692aa **Senator Geddes** said **H692a**a is required to make a change in the elected officials salaries for the next four years. As most are aware, it is required by the Constitution to occur prior to the time they are elected and continue as set throughout that election cycle. **Senator Geddes** provided a spreadsheet to the Committee with the proposed changes. In 2011 elected officials will have a 4% decrease, in 2012 it would be restored, in 2013 the format is changed for the Governor and each elected official would be given a percentage of his salary. **Senator Geddes** said we are not setting a salary for the elected officials who hold a seat at the present time.

Senator Stennett said as she understands there is a 4% decrease in 2011, and in 2012 there is a 4% increase. She asked what will it be in

2013 and 2014? **Senator Geddes** replied in 2013 the Governor's salary will go from $115,348 to $117,000, which is slightly over a 1% increase. In 2014 the Governor's salary will increase to $119,000. **Senator Stennett** asked if it is actually accruing from a higher base? **Senator Geddes** said that is correct. The news media has focused solely on the percentage, but when you take a relatively small number and multiply it by a small percentage, the product is still a relatively small number. In his opinion, the news media has somewhat misrepresented the ultimate outcome of the change.

TESTIMONY: **Jason Hancock,** Deputy Chief of Staff for the Department of Education, stated he is here on behalf of **Superintendent Luna**. He understands the raises are minimal and that they will make less money next year than they are currently making. The raises authorized in years three and four are only 1% to 2%. **Mr. Hancock** said he is conveying **Superintendent Luna's** opposition to this bill and to any bill that gives raises to Constitutional officers that fails to include the ability for the officer to reject it. It establishes a possibility that the scenario will be repeated that the funding for State employees has been cut, and a Constitutional officer such as **Superintendent Luna** is forced to take a pay increase. A Constitutional officer can give that raise to charity and **Superintendent Luna** has done that. However, there shouldn't be a burden on the general fund and on the taxpayer.

Senator Kelly asked **Brian Kane** if Constitutional officers pay taxes? **Brian Kane**, Attorney General, answered yes they do pay taxes. He believes what **Mr. Hancock** was referring to is that the **Superintendent** should have the ability to reject the pay raise without incurring a tax obligation. If it is donated to charity, they receive the tax deduction for it, but they are still taxed on it as income. **Senator Kelly** asked **Mr. Kane** what will happen if we do nothing? **Mr. Kane** said if the Legislature does nothing, it will remain the same for the next four years. It is important to note that this is governed by Article V, Section 27, Idaho's Constitution, which requires that all salaries be set prior to the next term. One of the key factors when considering whether Constitutional officers should have the ability to reject a raise, it becomes more complicated. The whole point of Article V, Section 27 is to remove compensation for executive officers in particular, from what he would classify as political gamesmanship or some sort of race to the bottom scenario. It is essential if portions of salary are being considered for rejection, that there is language to ensure that the salary goes with the office not the officer. The salary should be considered for the office not the person who is specifically holding the office. **Senator Kelly** said historically it looks like the Legislature initiated a COLA where it increased in increments and compounded every year. She asked if that was the first time that was done? **Mr. Kane** responded there has been a myriad of solutions proposed to this. This is the latest attempt to minimize the legislative guess work that goes into setting salaries into the future. At one point the prevailing thought was that a salary would be set for the entirety of the term and remain stable. However, that has evolved over time just like our State government.

Sue Reents, a former State senator, testified that this is not a good piece

of legislation. **Ms. Reents** said she doesn't believe there should be an automatic increase. She would propose something that is tied to the recovery of the economy. **Superintendent Luna's** proposal to reject the salary increase and have it revert to the general fund is not the same as donating it to charity. The deduction only provides partial relief for the income.

Senator Stegner stated that we have uniformally rejected the idea that Constitutional officers can just forego part of their salary. It turns into a contest as to who can be the purest. Rich Constitutional officers can afford to do that and take the political bow, which puts a tremendous amount of pressure on those who need the money to support their family. That concept has been considered and rejected because it is simply a race to the bottom to gain political favor by the grand gesture of rejecting their salary. After decades of this process, why would **Ms. Reents** suggest that we reverse that trend? **Ms. Reents** said she tends to agree, that it isn't a good idea for a Constitutional officer to reject a part of a base salary. She does believe that they should have the ability to not accept the increase. **Senator Stegner** replied that he finds no difference between rejection of an increase or rejection of any part. Additionally, we are not setting the salary for **Superintendent Luna**. We are setting the salary for the Constitutional officers that we do not know who will be in that position. The idea that they even have come to this Committee with a suggestion, is contrary to the Constitution's concept of setting the salary before the election. This will set salaries to be competitive to entice a qualified person to be in this position and to take personalties out of it. Having those Constitutional officers testify is only adding them back into the thought process, and it is contrary to what we are tying to achieve. **Ms. Reents** said she would not be testifying if we weren't in such economic trying times. In the final days of the session, the public does have a right to testify.

MOTION: **Senator Darrington** moved to send **H692aa** to the floor with a **do pass** recommendation. **Senator Fulcher** seconded the motion.

Senator Kelly stated that she is opposed to the motion. The analogy with other states is irrelevant, the automatic increase in pay is compounding and we should be setting a salary to remain the same for four years. Expecting a pay raise is not appropriate particularly in these economic times. Given the budget bills that have passed this proposal is wrong.

Senator Geddes commented if this bill fails, the salary of the **Governor** will continue for the next four years. In comparison, the salary of the **Governor** over the next four years with the amendment in the House, it is only a difference of **$694**. If the bill fails, we will save the taxpayers only $694 for the **Governor's** salary. That is inconsequential.

The motion **carried. Senators Kelly and Stennett** requested they be recorded as voting nay.

HCR64 **Representative Roberts** stated **HCR64** deals with the Tenth Amendment and the Interstate Commerce Clause of the United States Constitution.

For decades many of us have shared increased frustrations in dealing with the Federal government and its agencies. As Americans we are all expected to play by the rules and abide by the law of the Federal government, and likewise we should expect them to abide by the rules of the Constitution. The founding fathers of our nation created a delicate balance of power in the Federal and State governments and the people. **Representative Roberts** said **HCR64** addresses the Interstate Commerce Clause, Article 1, Section 8, to regulate commerce with foreign nations and among several states the Indian tribes. Since the late 1800's, commerce has used the clause to justify intrusion into intrastate activities subjecting the Federal regulations over everything manufactured or transferred, transported, farmed or produced, regardless of where the product is made or where the business takes place. The most effective democracy occurs at the local level where the people have first hand knowledge of the local problems and officials who are more responsive in dealing with them. **Representative Roberts** stated that **HCR64** addresses this issue and simply asks Congress to act forthwith and make changes to the Constitution. This is supported by the **Governor** and the Attorney General.

MOTION: **Vice Chairman Pearce** moved to send **HCR64** to the floor with a **do pass** recommendation. **Senator Fulcher** second the motion. The motion carried by **voice vote.**

RS19920 **David Hensley**, from the Governor's Office presented **RS19920** to the Committee. **Mr. Hensley** stated this Joint Memorial calls for a change to the U.S. Constitution to prevent Congress from passing laws, requiring citizens of the United States to participate in any health care insurance program or penalizing them for declining health care coverage.

Vice Chairman Pearce asked **Mr. Hensley** if he believes that Congress will pick up on this? **Mr. Hensley** responded there has never been a Constitutional invention to amend the Constitution as originally drafted. There have been over seven hundred requests. There are numerous amendments to the Constitution that Congress has taken up because the Constitution of states have asked for that. This approaches that in the latter form and they are hopeful that Congress will listen. The **Governor** is trying to lead Congress in hearing something that will address this.

MOTION: **Vice Chairman Pearce** moved to print **RS19920** and send it 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 subject to the call of the Chair at 9:38 a.m.

Senator Curt McKenzie
Chairman

Deborah Riddle
Secretary