

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Monday, January 16, 2012
TIME: 8:00 A.M.
PLACE: Room WW55
MEMBERS PRESENT: Chairman McKenzie, Vice Chairman Fulcher, Senators Davis, Hill, McGee, Winder, Lodge, and Stennett
ABSENT/ EXCUSED: Senators Malepeai

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.

Chairman McKenzie called the meeting to order at 8:00 a.m. with a quorum present and welcomed the Committee Members to the first meeting of the 2012 session. He introduced **Rebekah Grad**, the Committee page, stating that she is the first page to be attending college full time while serving in the Senate. **Rebekah** provided a few remarks about herself and about serving in this capacity

Chairman McKenzie passed the gavel to **Vice Chairman Fulcher** to conduct the review of the pending rules.

03-0101-1101

Fee Rule from the State Athletic Commission to adjust fees and provide for additional revenue. **Roger Hales**, Administrative Attorney, explained the reasons for the fee adjustments. The Athletic Commission is funded in two ways: 1) 5% of the gate and 2) the generation of fees through licenses issued to buyers, promoters, and others involved in the industry. The Bureau of Occupational Licenses (IBOL) has a single account, supports about 28 professions, and currently the other boards are funding the Athletic Commission which shows a negative (\$168,000). The fee increases for that particular industry is an effort to make the Athletic Commission self supporting. These fee increases are designed to generate about \$43,000 per year. The Athletic Commission expenses have stabilized at about \$70,000 which is approximately \$35,000 less than is raised in revenue every year.

Vice Chairman Fulcher stated that the overall target is \$43,880. Can you provide the rationale behind the individual fees? **Mr. Hales** responded that the number of individuals being licensed is considered to determine the increase in revenue. It is difficult to raise the combatant fees which increases from \$30 to \$150 but most licensees are fighters. Larger fee increases are recommended for noncombatant licensees.

Vice Chairman Fulcher called for questions from the committee.

Chairman McKenzie said his concern was, with the huge across the board percentage increases the combatants. The large fee to participate will prevent people from participating. It might be wise to reduce the increase for them in one year and apportion the increases to those noncombatant licensees who can use it as a line item cost. **Mr. Hales** responded that there are benefits that the fighters receive from this regulated program. Promoters are forced to provide health insurance policies for the fighters during the event and physicals prior to licensing. Doctors and ambulances are available on site during an event to provide a safe environment in which to fight.

Senator McGee observed that there has been a proliferation of the Mixed Martial Arts (MMA) events in the Treasure Valley. Therefore, it should generate more income due to number of events. **Mr. Hales** said that the financial burden imposed by the MMA is due to the regulation of the MMA sports. There were 21 events in 2009; 30 in 2010; and 19 in 2011; and an increase from 3 in 2008.

Senator Stennett referred to the amount expenses exceeded revenue over the past three years. Have expenses been determined for this year and have the fees been set accordingly? **Mr. Hales** stated that expenses are expected to come in around \$75,000-\$80,000 this fiscal year ending in June and have been the same for the past two years. Beyond the fee increase, the Athletic Commission is looking at other ways to minimize business expenses. However, there are some things that can't be controlled i.e., investigations and violations of rules/regulations. **Senator Stennett** pointed out that the fee increases will not cover all the expenses. How is that to be addressed and can the number of events be reduced to control expenses? **Mr. Hales** responded that there is the possibility of: ending the regulation of the sport; outlawing these types of events; or, looking at other funding mechanisms. When the Athletic Commission was created it received general fund money. Now it is a dedicated fund agency that has to rely on its own revenue. If an application for an event is submitted by a promoter, the Athletic Commission is obligated to process it.

Senator Davis asked if 2008 was the year the Athletic Commission was moved to the current bureau; and, how many years will it take to erase the negative balance? **Mr. Hales** said that JFAC moved it in 2006 and speculated that it would take a number of years depending on the number of events, regulating activity, and other types of solutions initiated. **Senator Davis** summed up the dilemma: the Athletic Commission is in trouble because the Legislature stipulated that it should be self supporting but that hasn't worked out. Other than the fee increase, solutions have not been found that can be brought to the Legislature with confidence. The Committee should either approve this fee rule and alleviate some of the problem or don't "tie our hands and tell us to be a self supporting commission." **Mr. Hales** responded "elegantly stated."

Senator Hill asked how can bills be paid when there is a negative balance. **Mr. Hales** explained that the IBOL has a single fund and the revenue from all the boards they support goes into that fund. They help support each other. The IBOL plans to bring an overall \$50,000 fee decrease to the Legislature this year. However, if this fee increase is not approved, that decrease may have to be revisited. **Senator Hill** asked if 5% of the gate as a funding source is set statutorily; and, was that increase percentage considered as a resource in lieu of or in conjunction with a fee increase. Who would pay that? **Mr. Hales** said that an increase in the 5% gate could be brought forward this year. It would be the promoter who pays the gate percentage.

Vice Chairman Fulcher asked what has happened since the IBOL took over this commission: what has happened with staff, administration, and expenses during that window of time? **Mr. Hales** stated that there have been a proliferation of MMA events. Until 2008-2009, these were not regulated and that was thought to be a potential public concern. Regulating the MMA is costly. These events take place throughout the state and if a deputy commissioner isn't close by, IBOL has to send an investigator to be present at each event. Expenses were at \$100,000 in 2009 moving down to \$73,000 in 2010 and stayed in that range. The Athletic Commission has an appointed commissioner. Deputy commissioners serve without remuneration and a stable IBOL staff supports that operation.

Senator Lodge inquired if these fights are profitable. **Mr. Hales** stated "for the promoter." **Senator Lodge** asked if the Athletic Commission as a whole has been included in determining the fee increases and what would it take to change the gate percentage? **Mr. Hales** reported that the fee increases have received support. They have been posted on the website, there have been comments, and the Athletic Commissioners have been supportive. The pay-per-view aspect is another option. It would take a law change to adjust the gate percentage.

Chairman McKenzie noted that the biggest increase burdens the participants when they make the least amount of income. He requested some statistics like the number of participants who are amateurs, what the gates are, and more information about a tax on pay-per-view. **Mr. Hales** answered that there are roughly 250 combatants. Those numbers will be provided to the Committee.

NOTE:

Senator Winder thanked Mr. Hales for his efforts toward making this self supporting. Even though these are significant increases, those participating in a potentially physical, violent, and damaging sport should bear the brunt of that expense.

Senator McGee asked if there has been any negative input against the rule. **Mr. Hales** was not aware of any opposition although he hasn't attended any of the meetings. He deferred to **Tom Katsilometes**, Athletic Commissioner.

Mr. Katsilometes stated that the Athletic Commission has been in existence since the early 1970s under the Department of Administration and moved to IBOL in 2006. At that time, MMA was added due to an effort to ban it from the state. At that time, before regulations existed, one of the participants was killed. Since that time, with regulation, there have been no serious injuries. The nature of the sport requires more investigations which requires more time and energy from the IBOL. The promoters will not like the increased fee; expenses have plateaued out; and, the promoters are making good money. Maybe the promoters should pay more fees than the fighters.

Bryan R. Carter, citizen, City of Meridian, testified in support of the increase in fees.

MOTION:

Senator Winder moved, seconded by **Senator Hill**, to adopt the pending fee rule **03-0101-1101**.

Vice Chairman Fulcher called for further discussion.

Chairman McKenzie said that he could not support the motion due to his concern about the 500% increase in fees for those least able to pay. Increased revenue could come from those making a profit. This sport will continue to grow unless deterred by putting a high burden on the participants.

VOTE:

The motion carried by **voice vote**.

Vice Chairman Fulcher called Jeffrey Anderson to present the rule.

15-1001-1101

Rules of the Idaho State Liquor Division to update/modernize the administrative rules.

Jeffrey Anderson, Director, Idaho State Liquor Division (ISLD), introduced Tim Davis, Deputy Attorney General. With the exception of a name change, the administrative rules have not been updated since 1997. This pending rule is a housekeeping measure that makes changes to clarify ambiguous language, eliminate unnecessary terms, and eliminate or modernize obsolete terms/language relating to day-to-day business operations.

Vice Chairman Fulcher referred to *Product Line* on page 5 and asked what other items would be offered? **Mr. Anderson** said that others would be table wines manufactured in Idaho, high proof wines, and related items such as mixes.

Chairman McKenzie referred to *the removal of the specifications for defining state stores and contract stores on page 7*: Why were those specifications included in this rule? **Mr. Anderson** stated that those two specifications represent past policy. Last year an Office of Performance Evaluation Audit recommendation was to examine whether or not state stores could be converted to contract stores. One element was to locate state stores in larger communities because that is where they could become most profitable. Defining what a large community is and what profitability is are examined all the time. In this instance, criteria and policies are being developed to assign state stores and determine whether or not it should be a contractor.

Senator Lodge referred to *Delisting...The decision to retain or delist a product rests solely with the Director* on page 5, are there other people helping the Director to make that decision? **Mr. Anderson** explained that the authority to list or delist a product has always rested with the Director. There is a group of people that review ideas of products or potential listing or delisting and make recommendations to the Director. There is not a body that oversees this activity.

Senator Lodge asked if Idaho wines were being removed from Idaho liquor stores. **Mr. Anderson** responded that they will continue to carry Idaho table wines. When that practice began, the number of wineries was limited and now approaches 50 or more. The dispensary does not have a temperature controlled warehouse and some of the varieties do not keep very well in the summertime. For this reason, a review is being made of the types of wine that are carried throughout the state network with the focus on those the public use the most. Then the product will not have to be destroyed due to spoilage.

Senator Davis referred to *Delisting* on page 5, why is there an affirmative duty in the definition section? Those items might be structurally pulled out of the definition section and put elsewhere. Referring to page 7 regarding city size, there was a concern that by striking smaller city and larger city language, the effect would be that current contract distributors in smaller cities could be adversely impacted by giving the Director complete discretion to disallow any contract distributor and put in state run/owned/operated stores without being sensitive to those contract stores who have made a large investment. **Mr. Anderson** stated that the ISLD is a dedicated fund agency that requires the enterprise to operate as efficiently as possible. The contractor agreements are annual agreements that are renewed each year. A large investment is not required by the contractor since the product is shipped to them on consignment. The agency does not have an interest in expanding the number of state owned stores in communities where they are not profitable.

Vice Chairman Fulcher asked if there was further testimony.

Jan Sylvester, citizen, Meridian, questioned several sections of the rules: "circular definitions"; the change from table wine to just wines and the differences—it is not clear what they are selling in the stores; and, there is a reference to the Tax and Trade Bureau of the Internal Revenue Service. There were also questions regarding suppliers and supplier permits. **Mr. Anderson** explained that wines, as defined in statute, are table wines and higher proof or dessert wines. Higher proof wines must be sold by a liquor store and table wines are restricted to those manufactured in Idaho. Reference is made to distributing stations as contract stores, not state owned stores.

Senator Hill commented that back in 2002, the Department of Alcohol, Tobacco, and Firearms, which is being struck, was in two sections. One was the Department of Justice which remained the Bureau of Alcohol, Tobacco, and Firearms (explosives were added). The Tax and Trade Bureau of the Internal Revenue Service remained under the Internal Revenue Service. This change coincides with the 2002 change.

Vice Chairman Fulcher stated that pending rule **15-1001-1101** was before the Committee.

MOTION: **Chairman McKenzie** moved, seconded by **Senator Davis**, to adopt rule **15-1001-1101**.

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

34-0402-1101

Rules Regarding Corporate Name Availability to clarify business entity name requirements and to reflect the alternatives made possible by certain advancements in technology. **Jeff Harvey**, UCC Supervisor, Office of the Secretary of State, introduced Jim Hurst, Chief Deputy, Secretary of State. **Mr. Harvey** stated that over the years, language has changed from a deceptively similar corporate name to distinguishable on the records of the Secretary of State when determining a valid business entity name. The data base requires business names to be entered in a particular way and there is the statutory obligation to meet various criteria for business entity names. These rules are designed around those two considerations to determine if a business entity name being registered is distinguishable on the records.

Senator Davis provided a brief history beginning with the 1999 change. The historic standard of "deceptively similar" resulted in the rejection of similar names although the business' may have been miles apart. The 1999 change softened that standard to allow people some latitude in naming their companies. With that statutory change, why is this administrative rule necessary or is the rule being modified to catch up with the statute? **Mr. Harvey** replied "we're catching up." These rules have not been amended since 1993.

Senator Stennett asked if it is more difficult to police business names given the amount of technology. **Mr. Harvey** answered that technology has made it somewhat easier. These rules are really guidelines for those who want to register businesses to better understand the state system and how it operates so that they know the statutory obligations of creating a business name and how it will be compared to other business names. As more and more businesses are created and the ability to create a unique name is more difficult, technology makes the comparisons more efficient.

Vice Chairman Fulcher asked if there was anyone in the audience that would like to speak to this rule. Being none, **34-0402-1101** is before the Committee.

MOTION: **Senator McGee** moved, seconded by **Chairman McKenzie**, to adopt rule **34-0402-1101**.

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

34-0501-1101 **Rules Governing Farm Products Central Filing System** to add the county code and unit code tables to its rules. **Mr. Harvey** explained that legislation passed during the 2011 session removed the codes from this rule. Afterward, concerns were raised that there was a potential for legal problems in the future. This legislation puts those county codes and unit codes back into the rule. **Senator Davis** referred to the county code chart on page 41 noting that there were county codes for counties in the surrounding states, i.e., Oregon, Washington, Utah, etc. Is this because we have people farming on both sides of the border and this is one way lenders get those codes. Does every county bordering our state have a county code within the table shown in the rule? **Mr. Harvey** speculated that USDA requires that an accounting code be on record for every piece of collateral that is listed on a finance statement no matter where it resides. There would be a code because if a county is not in the table, it is given a code of 99.

Vice Chairman Fulcher asked for further comments or questions. Being none, **34-0501-1101** is before the Committee.

MOTION: **Senator Davis** moved, seconded by **Senator Lodge**, to adopt rule **34-0501-1101**.

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

38-0406-1101 **Rules Governing Prequalification of Contractors on Capitol Building** to repeal **IDAPA 38.04** in its entirety. **Dennis Stevenson**, Administrative Rules Coordinator, Department of Administration, explained that this rule was used during the capitol building project. The project has been completed and the rule is no longer necessary.

MOTION: **Senator Lodge** moved, seconded by **Senator Stennett**, to adopt rule **38-0406-1101**.

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

52-0103-1101 **Rules Governing Operations of The Idaho State Lottery** to discontinue an antiquated practice as a result of Instant Ticket Automation. **Mr. Anderson** stated that there is only one change; *Ticket Stamping* on page 52. Technology has allowed the lottery to do Instant Ticket Automation where tickets can be sold, redeemed and validated at every retailer. This rule is obsolete.

Vice Chairman Fulcher asked for any testimony on this rule.

MOTION: **Chairman McKenzie** moved, seconded by **Senator Stennett**, to adopt rule **52-0103-1101**.

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

Vice Chairman Fulcher recognized **Senator Winder's** request for indulgence. **Senator Winder** stated that he had seen an ad on television increasing the cost of a lottery ticket from \$1.00 to \$2.00 and that it would improve the chance of winning. How does that work? **Mr. Anderson** stated that the jackpot odds will be better because the number of balls have changed. There will be the same number of white balls and the number of red balls will be reduced from 39 to 37.

Vice Chairman Fulcher introduced Laura Steffler to explain the last rule.

54-0101-1101 **Rules Regarding Reports for Public Bond Issues** to repeal **IDAPA 54.0101** in its entirety. **Laura Steffler**, Chief Deputy, State Treasurer's Office, requested that this rule be repealed because there is now a national data base that collects the same debt information the Treasurer's Office has been collecting. Corresponding rules have already been repealed.

Vice Chairman Fulcher asked if there were questions from the Committee or if there was anyone else who would like to speak to this rule.

MOTION: **Senator McGee** moved, seconded by **Senator Stennet**, to adopt **54-0101-1101**.

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

Vice Chairman Fulcher announced that the rules on today's agenda are complete and returned the gavel to **Chairman McKenzie**.

ADJOURNMENT: **Chairman McKenzie** thanked the Committee for getting through all the rules and, being no further business, the meeting adjourned at 9:27 a.m.

Senator McKenzie
Chairman

Twyla Melton
Secretary