

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Friday, March 14, 2014

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Senators Davis, Fulcher, Hill, Winder, Lodge, Siddoway, Stennett and Werk

**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.

**CONVENED:** **Chairman McKenzie** called the Senate State Affairs Committee (Committee) to order at 8:01 a.m. with a quorum present.

**RS 23146** Relating to Eminent Domain to Clarify the Circumstances Under Which a Public Entity May Use its Eminent Domain Authority; presented by Ken Harward, Executive Director, Association of Idaho Cities.

**Chairman McKenzie** declared a conflict related to **RS 23146** due to his involvement in litigation with the cities and stated his position that it is appropriate for the cities to advance their concerns by having a print hearing. **Chairman McKenzie** introduced Ken Harward from the Association of Idaho Cities.

**Mr. Harward** explained that this RS concerns limitations and clarifications of the use of eminent domain authority.

**MOTION:** **Senator Hill** moved to send **RS 23146** to print. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

**H 524 CONTINUED** Relating to Beer to Provide that it shall be Unlawful for a Brewer to have any Financial Interest in the Business of a Licensed Dealer or Wholesaler of Beer; presented by Jeremy Pisca.

**Chairman McKenzie** announced that discussions would continue and began with those signed up to testify.

**Mitch Watkins** of Watkins Distributing located in Twin Falls, Idaho Falls, Hayden and Lewiston. **Mr. Watkins** voiced his opposition to this bill. Since 2008, Anheuser Busch (AB) has had two wholesaler transactions in Idaho. In each of these transactions, AB has approved the purchase between Watkins Distributing and the seller, showing no interest in purchasing the business themselves. These are not the actions of a supplier trying to take over the middle tier. There is an attack on the middle tier and state based alcohol regulation in this country but it isn't coming from the suppliers, it comes from large, multinational retail companies who resists state authority. AB supports the three-tier system and the current state based regulatory system. If AB wholesalers have no problem with their supplier or any issue with the current Idaho law, why are they being asked to consider this legislation. The current system works well.

**John Grizzaffi** is a partner in Stein Distributing Company (Stein). They distribute AB and other products covering an area from Glens Ferry to White Bird and they are a member of the Idaho Beer and Wine Distributors Association (Association). They oppose **H 524**. **Mr. Grizzaffi** stated that he does not believe there is a problem that requires legislative action; the current system works well. The beer industry, like others, has been consolidating. Over the last 18 years there have been many distributorships that have consolidated and there are only 3 left. AB has never tried to buy one of those distributorships in Idaho. A distributorship in Boise was owned by Coors and they enjoyed no special privileges or competitive edge in the marketplace. This is one of the rare instances that Stein disagrees with the Association. They did not have an opportunity to review the proposed legislation. It is not clear who this bill will protect.

**Senator Lodge** asked three questions:

- 1) How Stein would be hurt if this bill passes?
- 2) Has AB purchased distributorships in other neighboring states?
- 3) Is AB an American Company anymore?

**Mr. Grizzaffi** said they have no intention of selling their business. There is no reason that AB has any interest in buying a distributorship in Idaho. However, they want to preserve that right. They have recently purchased branches in Oregon. They are not an American company, but neither is Miller Coors.

**Dan Scovel**, President, Hayden Beverage Company (Hayden). Hayden is a second generation, Idaho based business that employs about 300 people with locations in Boise, McCall, Lewiston, Jerome, Post Falls, Ketchum, Chubbuck and Idaho Falls. Their distributorship is not dominated by a major brewery. This bill is about closing a loophole which does not damage the current relationship between any brewer or distributor since it remains the same as it is today but it does provide for a viable option for transition if it is ever needed. The bill supports the brewery distributor but it also maintains the integrity of the three-tier system. The compromise that was reached to let a brewery own or have a financial interest in a distributor for five years is more than adequate. He is not aware of a distributorship that has been for sale on the open market that had difficulty selling; it has been quite the opposite. The three-tier system works. He asked for support of the bill.

**Sheila Francis** representing Idaho Brewers United, supports this bill because it limits the undue influence of the large brewers in the marketplace. Even a minority interest is a bad idea. Craft beer accounts for about seven percent of the beer sold in the State. The largest Idaho brewer produces 12,000 barrels. Idaho Brewers United supports the independence of wholesalers and believes an independent wholesaler is contractually and economically free to allocate their efforts among the brands so each brand gets the attention it deserves on its own merits. A minority interest in a business can have a large bargaining impact. AB has lost market share, but it is because consumers' taste preferences have changed and they are going to local businesses and smaller breweries. **Ms. Francis** asked for support of **H 524**.

**Senator Davis** asked why the bill had a cap of 30,000 barrels when the largest brewer is 12,000. **Ms. Francis** responded that 30,000 is an adequate number to allow for self-distribution. Small producers, who may be forced to go directly into a distributor's portfolio to get to the marketplace, have no value to the distributor when their competitors are well established names out in the marketplace. It is in the best interest of the distributor to pick up a brewery that has been able to self distribute and get products to the market prior to entering distribution.

**Senator Hill** followed up on the 30,000 question; are there operations around the 30,000 number? **Ms. Francis** answered not currently, but there is rapid growth in the craft beer market.

**David Morrison**, representing Craig Stein Beverage and is a minority owner and principle operation manager, supports **H 524**. They do business in 31 counties across southern Idaho. They are in the beer, wine and carbonated soft drink business. They employ about 200 people. **Mr. Morrison** stated his concern about the deterioration of the three-tier system as it applies to the distribution of beer and wine. This unique system was created by the 21st Amendment, and it allows states to regulate the rules and laws regarding the distribution of alcohol. The key to the system is the creation of the three-tier system: the supplier producer, the wholesaler distributor and the retailer. It is important to preserve, maintain and protect this system. There has been collaboration among most of the interested parties and they have arrived at an agreement in terms of language that they could all live with. **Mr. Morrison** expanded on the reasons that they are in support of this bill, some of which have already been explained in previous testimony. A wide coalition supports this bill, and only one entity has opposed the bill. **Mr. Morrison** compared the two-tier system used in the carbonated drink business with the three-tier system used with beer and wine. He said that the three-tier system is orderly and the two tier system is the "wild west" and doesn't work well and wouldn't work at all with beer and wine. **Mr. Morrison** asks for support of **H 524**.

**Senator Davis** supports this bill but observed that there has been testimony that this is a consensus bill with one outlier. It is hard to justify that a deal has been reached when there is one company that was not invited to participate. The focus should be on the merits of the bill and not the process. **Mr. Morrison** said that they are here as an industry association. When the process started, all members were in agreement although there were some differences of where this should go, but the majority of the Association voted to continue to move forward. There are times when it is impossible to have everyone agree.

**Andrew Baldonado**, Vice President of Government Affairs for Anheuser-Busch (AB), opposes **H 524**. AB has a long history in Idaho. They employ about 100 people in Idaho Falls and Bonners Ferry. They have about \$250 million invested in the State: and they have purchased about \$85 million in Idaho grown barley over the past 5 years. They have been a good corporate citizen. This is not about protecting the three-tier system, it is about tipping the balance of the free market system. Things are going well in Idaho. Nothing is stopping products from getting to the market. It is said the bill will close a loophole; no loophole exists. In 1970, the Legislature changed the law to allow the Coors company to come in and buy the distributorship in Boise. It is false that AB is seeking to take over the second tier in Idaho as their actions have spoken very clearly. The two transactions they participated in were not purchases. They do own beer distributorships in other states and have done so for over 100 years. They don't like the bill and asked to have it tabled although they would accept an amendment giving them the opportunity to have a minority interest in a business.

**Senator Davis** stated that the Legislature is trying to make the best decision given the fact that they do not live in the industry on a day-to-day basis. If the purpose is to provide a bridge, then why does AB feel a strong need to retain a minority interest instead of amortizing out over a period of time? **Mr. Baldonado** replied that flexibility was the answer. They all have equity agreement contracts with the wholesalers. Flexibility is to provide as many options as possible to protect their brands. Their retailers are exclusive to AB brands.

**Jeremy Pisca** expanded on the things that they all agree on; the three-tier system, that all tiers remain independent of one another, the system works well and currently, there are no brewery owned branches in Idaho. This bill codifies the situational status quo. The Association strongly believes there is a need for this legislation; it is not new territory. There are 34 other states that have a ban on branch ownership. Over the last five years Louisiana, Nebraska, Wisconsin, Wyoming and Ohio have passed similar bills. The cap of 30,000 barrels was set in 1994 in other portions of Idaho Code. There have been discussions and compromises to arrive at the five year limit to accommodate brewer interests. The Association cannot accommodate a minority ownership interest and that is the only counteroffer that has been made. Mr. Pisca stated he was not authorized to accept that offer. They felt the policy of the three-tier system and branch ban would be deteriorated if there were contracts in perpetuity. If there is a financial portion of the bill that needed to be fixed, he assured the Committee he would get it fixed during the interim.

**Senator Davis** said he didn't think that AB intended to grant a franchise without the ability of the brewer to terminate it in the event of a breach. Instead, in the absence of a default, they would have a continuing franchise. **Senator Davis** agrees that there is nothing in the bill to interfere with Article IX and the ability to foreclose. The question is, after a foreclosure does AB have the right to operate? That question is not clear.

**MOTION:** **Senator Hill** moved to send **H 524** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion.

**Senator Fulcher** acknowledged the arguments on both sides. Given the gravity of the ramifications of both ways, he can't award one party or the other on the existing language regarding the time period. It would make the Senator more comfortable if they could work on this bill in the Amending Order.

**SUBSTITUTE MOTION:** **Senator Fulcher** made a substitute motion to send **H 524** to the 14th Order for possible amendment. The substitute motion died for lack of a second.

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

**HCR 38** A House Concurrent Resolution to Commemorate the 60th Anniversary of the Addition of "under God" to the United States Pledge of Allegiance; presented by Representative Holtzclaw.

**Representative Holzclaw** said that **HCR 38** commemorates the 60th anniversary of the 1954 decision made by President Eisenhower to add "under God" to the Pledge of Allegiance. **Representative Holzclaw** read a part of the Gettysburg Address given by Abraham Lincoln on November 19, 1863; "that ... this nation, under God, shall have a new birth of freedom ...". These words inspired U.S. Senator Ferguson to author a Joint Resolution which passed unanimously and was signed by President Eisenhower. By passing **HCR 38**, it may encourage Idaho citizens to investigate that time in American history.

**Senator Hill** asked what motivated Representative Holzclaw to bring this bill forward. **Representative Holzclaw** said that an individual from Tennessee requested him to present a bill to the Legislature commemorating the addition of "under God" to the Pledge of Allegiance. There are 43 states that have passed bills to this effect this year; her goal was to get all 50 states.

**MOTION:** **Senator Hill** moved to send **HCR 38** to the floor with a **do pass** recommendation. **Senator Winder** seconded the motion. The motion carried by **voice vote**. Senator Winder will sponsor **HCR 38** on the floor.

**PASSED THE  
GAVEL:**

Chairman McKenzie passed the gavel to de facto Vice Chairman Lodge. **Vice Chairman Lodge** said that **HCR 47** is before the Committee and called on Chairman McKenzie to present both **HCR 47** and **HCR 48**.

**HCR 47**

A House Concurrent Resolution Relating to the Rejection of Rules of the Department of Administration (Department) Governing the Use of the State Capitol Exterior.

**HCR 48**

A House Concurrent Resolution Relating to the Rejection of Rules of the Department of Administration Governing the Use of the State Property in the Capitol Mall and Other State Facilities.

**Chairman McKenzie** noted that **HCR 47** relates to the Committee action, which action was also taken in the House, on the rules from the Department of Administration for the use of the State Capitol exterior (**HCR 48** relates to the use of the exterior of state property in the Capitol Mall and other state facilities). Certain of those rules were rejected. The language reflects the language from the Minutes of the Committee meetings as well as what took place in the House. From **Chairman McKenzie's** perspective, when the Department was asked to draft the rules, they didn't have much time to accomplish that goal. Working under those time constraints, they did the best they could. The Committee felt the rules were a little overly restrictive on the people's ability to come to the Capitol and express their voice through protest or otherwise. That is reflected in **HCR 47** as well as **HCR 48**.

**Senator Davis** asked if the rule rejection in **HCR 47** mirrored what the Committee did or are there differences between the House approach and the Senate Committee's approach. **Chairman McKenzie** stated that this mirrors what the Senate Committee did. **HCR 47** does reflect the motion made in this Committee and the vote on that motion.

**Senator Werk** referred to both **HCR 47** and **HCR 48** and inquired if both were a direct reflection of the actions taken by this Committee. **Chairman McKenzie** acquiesced.

**MOTION:**

**Senator Werk** moved to send **HCR 47** and **HCR 48** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

**S 1336**

Relating to Legislative Standing to Add a New Section to Provide a Process for Intervention in Lawsuits Challenging a Law or Constitutional Provision; presented by Chairman McKenzie.

**Chairman McKenzie** stated that there have been discussions on this issue with the National Conference of State Legislatures (NCSL), the Attorney General's office and others across the country who have worked with language on this issue. There are a few states who have passed this kind of legislation; Virginia, North Carolina and one other state. The principle is important because there have been instances where Attorney Generals have chosen not to enforce the laws of the state. The Legislatures of those states have taken different positions in order to have representation for the Legislature itself. The specific language in **S 1336** is detailed and was written based on case law that was designed to ensure that the legislative body was actually acting on behalf of the body itself and would be recognized as such rather than the will of specific individuals in the Legislature. Other states have done this in a more concise manner, and there are other ways of invoking the will of the Legislature; this method is through the Pro Tempore and the Speaker.

**Senator Davis** read from line 29, sub part (b), and asked what the "or provision" means. **Chairman McKenzie** answered that it refers to the way we pass legislation by section. **Senator Davis** referred to line 15-16 (a) and looked at "constitutional provision" and suggested some thought be put into some of the language. The scope of legislative standing could be expanded in case the need for the prosecution to defend a constitutional principle should occur. Additionally, page 2, line 7, refers to vacancies in the offices of the Pro Tempore or the Speaker. There is a provision for an immediate succession in the event of a death or resignation in the interim, and this might be a guide to hitting the target.

**Chairman McKenzie** requested that **S 1336** be sent to the Amending Order to work on amendments, acknowledging that it may not go forward this year.

**MOTION:**

**Senator Siddoway** moved to send **S 1336** to the 14th Order for possible amendment. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

**PASSED THE GAVEL:**

Vice Chairman Lodge passed the gavel back to Chairman McKenzie.

**MINUTES:**

**Senator Hill** moved to approve the Minutes of March 3, 2014. **Senator Davis** seconded the motion. The motion carried by **voice vote**.

**Senator Fulcher** moved to approve the Minutes of February 5, 2014. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:**

**Chairman McKenzie** announced that there would be a meeting on Monday. There being no further business, **Chairman McKenzie** adjourned the meeting at 9:18 a.m.

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Senator McKenzie  
Chair

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Twyla Melton  
Secretary