

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Wednesday, March 18, 2015

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

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Lodge, Senators Davis, Hill, Winder, Siddoway, Lakey, Stennett and Buckner-Webb

**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 8:02 a.m. He welcomed Vice Chairman Lodge back to the Committee.

**RS 23845** **Relating to Hemp Extract, which Defines Hemp Extract and Allows the Use and Possession of Such Substance for Children with Intractable Epilepsy.**

**Senator Winder** stated that this legislation is complimentary to prior legislation introduced to the Committee earlier this year. **RS 23845** would provide help to parents and families with children experiencing intractable epilepsy seizures.

**MOTION:** **Senator Lakey** moved to print **RS 23845**. **Senator Davis** seconded the motion. The motion carried by a **voice vote**.

**H 185** **Relating to Electrical Corporations where Electricity is Purchased to Charge Batteries of Electric Motor Vehicles.**

**Rich Hahn** of Idaho Power Company, stated **H 185** addresses electric motor vehicle battery charging. He explained that there is an increased interest in Idaho for electric vehicles; most owners recharge them at their homes. However, readily available public charging stations are in the best interest of the public. A barrier exists when reselling electricity from a public utility to a charging station. The public charging station owner would then be subject to the Idaho Public Utilities Commission (PUC) just like Idaho Power or other utility companies. A change in Idaho Code would provide an exemption for this service and that is what **H 185** does in the new Subsection 2.

**MOTION:** **Senator Lakey** moved to send **H 185** to the floor with a **do pass** recommendation. **Senator Winder** seconded the motion. The motion carried by **voice vote**

**S 1137** **Relating to Electric Utilities to Modify the Electric Utility Law in Regard to the Merger, Sale, Lease, Assignment or Transfer of Property.**

**Senator Vick** explained that **S 1137** raises the standard for the acquisition or merger of an electric utility. The current standard is that the transaction is consistent with the public interest and the proposed standard is the transaction will better serve the public utilities customers. The change in **S 1137** will set a standard of net benefits instead of the current standard of no harm. **Senator Vick** listed other states with similar legislation and cited the legislation language: 1) There is an exception to the standard of net benefits which would occur if the sale of property were to a single customer, and 2) The sale wouldn't increase the cost to other rate paying customers.

**Senator Stennett** voiced her concern over the language "will better serve the public utility customers" and questioned what is meant by "better serve". **Senator Vick** indicated that the primary concerns stated in a PUC hearing were in the areas of rates and liability, and one of those areas must be proven to "better serve" the utility customer. **Senator Stennett** asked for a clarification on when the public utility company can sell property as long as it doesn't impact rates. **Senator Vick** explained that the example given to him was if a substation was located on a customer's property and that customer would be the only user of that substation, then that customer could opt to buy the substation as long as it doesn't affect other ratepayers.

**Senator Hill** asked Senator Vick to provide a practical example that would facilitate the need for **S 1137**. **Senator Vick** explained that in any future acquisitions or mergers, the standard should be raised so that customers of the utility would benefit. The desire of the utility company is to benefit its stockholders, and the current standard is that no harm shall be inflicted on the utility customer in an acquisition or merger. He explained further that the new standard would be that both the utility company and customers would benefit from a merger or acquisition with the utility company. **Senator Hill** further questioned the purpose of **S 1137**. **Senator Vick** stated that the utility companies do not exist in a free market environment, and because they are regulated by the PUC, the customers should also benefit from an acquisition.

**Senator Siddoway** questioned the language in Subsection 5 and contemplated the scenario of a sale that would benefit the customers of a utility. He further questioned the two conflicting provisions about causing harm to the customer. **Senator Vick** explained that the provisions in Subsection 5 protect the customer's rates and that any new facility would be under the jurisdiction of the PUC. **S 1137** allows the utility to sell a substation to a customer who solely uses the substation. **Senator Siddoway** asked whether a change in the language could reflect the word "substation". **Senator Vick** indicated that the sale could also include some electric lines associated with the customer's electricity delivery.

**Senator Siddoway** asked for further explanation as to how rates of existing customers would be maintained or reduced by a sale. **Senator Vick** said the PUC is not concerned with why a customer would desire to purchase, the focus is to protect other customer's rates. If the rates could not be protected, the PUC could not allow the transaction. **Senator Siddoway** further questioned the language in Subsection 3(a). **Senator Vick** clarified that the PUC protects the rates of the remaining customers excluding the customer involved in the sale.

**TESTIMONY:**

**Lynn Young**, AARP Idaho, spoke in support of **S 1137**. She explained utilities are crucial to a person's health and that older people have an added dimension for these services. **Ms. Young** indicated that many older people expend a significant portion of household income on utilities. **Ms. Young** stated **S 1137** would give all consumers, including older Idahoans, protection in the event that a merger or acquisition were to occur.

**Jim Lowe**, representing Food Producers of Idaho, spoke in support of **S 1137** and indicated that this legislation protects both small farmers as well as larger agribusiness.

**Elizabeth Criner** on behalf of Far West Agribusiness Association, Northwest Food Processors Association and the J. R. Simplot Company, spoke in support of **S 1137**. **Ms. Criner** explained that the research on this matter and the resulting conclusion was that Idaho Code reflects a positive public interest test. She compared the language in Idaho Code with surrounding states; Idaho Code language is vague. **Ms. Criner** explained that the legislation was brought up at this time to prevent any future problems.

**Senator Hill** questioned the practical application of this legislation and asked Ms. Criner to give the Committee an example of something bad that occurred in other states where this language was not in their code. **Ms. Criner** deferred to others with more knowledge of examples. She mentioned a transaction in Nevada with an ultimate rate increase to utility customers. **Senator Hill** asked for clarification on the difference between "holding the rate payer harmless" and "the rate payer receiving a benefit". **Ms. Criner** indicated another person will testify in more detail on that question.

**James Smith**, representing Monsanto and Mayor of Soda Springs, spoke in support of **S 1137**. He stated he has worked for Monsanto for 27 years. **Mr. Smith** listed his involvement in 3 different acquisitions and mergers and explained the impact upon Monsanto. He discussed the importance of electricity to Monsanto operations. **Mr. Smith** talked about the coordination with the PUC for reliable, affordable electrical rates and indicated that existing statutes and standards in Idaho Code limit the ability of the PUC to protect the consumer. **Mr. Smith** stated that since utility companies do not exist in a market driven economy, competition and other customer protections do not exist. Consumers are protected in a utility monopoly by regulations. He indicated that the present time is the time to institute improvements to Idaho Code because currently, there are no pending mergers or acquisitions.

**Mr. Smith** explained the current standard in Idaho Code and how **S 1137**, with a new standard, will provide a threshold that will better serve the public utility customer. He explained how the City of Soda Springs operates a small power plant that purchases power from Rocky Mountain Power and how many citizens struggle to meet the utility company rates. **Mr. Smith** said that the fiduciary responsibility of power company employees is to make a profit and that the proposed legislation would better serve the public interest.

**Neil Colwell** spoke on behalf of Avista Corporation, a gas and electric utility company headquartered in Spokane, and stated his opposition to **S 1137**. He questioned the need for the legislation and recounted the attempts to meet with Monsanto and Food Producers to discuss their concerns. **Mr. Colwell** stated concern with the meaning of the phrase "better serve the public utility customers" and indicated the public interest standard is considered a unit piece. **Mr. Colwell** explained how a PUC hearing considers views from all interested parties and he reviewed Section 5 of the legislation. He reviewed prior mergers and sales which involved Avista.

**Randy Budge**, attorney for Monsanto, spoke in favor of **S 1137** and stated it was good public policy for the ratepayers to receive a benefit in the case of a merger or a sale. He further stated that **S 1137** is consistent with and would codify the standard that the PUC has applied in recent cases. **Mr. Budge** reviewed his history in Idaho with electrical mergers. He recounted specific benefits to rate-payers in past mergers as well as reviewed a specific merger with Scottish Power where the language "consistent with the public interest" came to the forefront. **Mr. Budge** said that the section in question in the Public Utility Act was enacted in 1951 and has not been amended. The standard of "consistent with the public interest" is unclear and undefined and the language to be added to "better serve the public utility customers and in the public interest" applies the standard already used by the PUC. He added that it is good policy for rate-payers to benefit from a merger because the utility business is a monopoly with a guaranteed rate of return.

**Senator Davis** stated his understanding that "consistent with" is an undefined term and questioned whether "better served" is a defined term. **Mr. Budge** answered that "better served" is not a defined term. **Senator Davis** further questioned whether "public opinion" is not the same as "public interest" and whether the bill modified "public interest". **Mr. Budge** said he believed the legislation made minor modifications and reviewed those modifications. **Senator Davis** questioned whether "public opinion" would be more relevant under the current legislation. **Mr. Budge** answered that it would be a matter of discretion within the PUC and that public opinion is one of many factors that would be considered.

**Senator Davis** questioned whether "green standards" should be something the PUC should consider. **Mr. Budge** stated that the PUC has broad discretion to consider all factors and listed benefits to the consumer: lower prices, more stable prices and better quality of service. **Senator Davis** asked why the legislation does not specifically state that a merger cannot take place unless lower prices, more stable prices and a better quality of service are guaranteed. **Mr. Budge** answered that there are statutes in many other states that set specific standards and criteria required for a merger to occur. **S 1137** guarantees the standard even though members of the PUC may change. **Senator Davis** asked if the PUC supported **S 1137**. **Mr. Budge** stated he could not answer that.

**Senator Siddoway** expressed concern with Subsection 5. **Mr. Budge** indicated that the act was written without separating a sale from a merger. However, any transaction the PUC approves must meet the standards as outlined. He explained the purpose for the exception was to provide an expedient method to sell property that did not involve a merger or when that asset is only used by one particular customer.

**Senator Hill** asked for assurance that Subsection 5 does not exempt Monsanto from requirements that apply to all others. **Mr. Budge** answered no, that all assets serve all customers in some way or another.

**Russell Westerberg** spoke on behalf of Rocky Mountain Power. He concurred with testimony by Mr. Budge concerning utility companies operating as a monopoly and needing to serve all customers and disagreed with Mr. Budge concerning utility companies having a guaranteed return on investments. **Mr. Westerberg** questioned the purpose of **S 1137** and recounted the history of past mergers involving Idaho businesses.

**Senator Davis** expressed additional concerns about Subsection 5 relating to exemptions for certain property purchases. **Mr. Westerberg** answered that his client, Rocky Mountain Power, has no knowledge of any anticipated property purchases. He pointed out that proponents of **S 1137** believe that the language proposed will somehow benefit a particular customer.

**Senator Davis** questioned the language in Section 1 and wondered if Rocky Mountain Power would be more comfortable if the terms in the legislation were defined. **Mr. Westerberg** stated anxiety would be eliminated if the PUC would testify that **S 1137** was needed. **Senator Davis** asked if Mr. Westerberg had invited the PUC to attend the hearing. **Mr. Westerberg** stated he had asked the PUC if they were going to testify and was informed that, because of pending proposals between a property owner and a customer, the PUC would not appear. **Mr. Westerberg** wished to know the problems in Title 61-328 that would be corrected by **S 1137**.

**Former Senator Robert Geddes**, representing the Farm Bureau Association and Monsanto, said the language in **S 1137** was adopted from neighboring states with similar language and clarified that utilities who serve customers in Idaho also serve customers in those neighboring states. He further stated that the executive director of the PUC was included in the early drafting of this legislation and no concerns were acknowledged. **Senator Geddes** indicated Subsection 5 was brought forward by another industrial entity, not Monsanto. He said the current code has been in existence since 1913 with very few changes. **S 1137** puts Idaho on the same basis as neighboring states.

**Senator Vick** concluded by stating that he had spoken to one of the PUC commissioners who had voiced that it was not appropriate for the PUC to have a position on **S 1137**.

**MOTION:** **Senator Hill** moved to send **S 1137** to the floor with no recommendation. **Senator Winder** seconded the motion.

**Senator Davis** indicated that if it was sent to the floor with no recommendation, the floor would not have the benefit of the testimony heard in Committee and indicated he would not support the motion.

**Chairman McKenzie** could not discern the voice vote, he called for a roll call vote. **Vice Chairman Lodge** and **Senators Hill** and **Winder** voted aye. **Chairman McKenzie** and **Senators Davis, Siddoway, Stennett** and **Buckner-Webb** voted nay. **Senator Lakey** was excused. The motion failed.

**H 167** **Relating to Labor to Require that Labor Negotiations be Conducted in Open Session. Executive Session will be Reserved to Consider Other Labor Related Subjects.**

**Representative Steve Harris** presented **H 167** and explained the purpose of the legislation is to require that all labor negotiations for public employees be conducted in open session.

**Senator Davis** questioned language in Section 2 of the legislation specifically the use of the terms "governing board" and "governing body". He said that in the statute relating to this legislation "governing board" is a defined term whereas "governing body" is not and questioned if "governing body" is defined elsewhere that would apply to **H 167**. **Representative Harris** stated the bill should read "governing board" and not "governing body".

**Representative Harris** continued to explain that Idaho has excellent and extensive open meeting laws and exceptions for closed meetings.

**MOTION** **Senator Davis** moved to send **H 167** to the 14th Order for possible amendment. **Vice Chairman Lodge** seconded the motion. **Chairman McKenzie** listed others in attendance at the meeting willing to testify on behalf of the legislation; they declined to testify. .

The motion carried by **voice vote**

**RS 23776** **Relating to Ground Water Districts to Increase the Dollar Amount of Certain Authorized Warrants Relating to Indebtedness of Ground Water Districts.**

**Senator Stennett** explained that **RS 23776** is a way for reconciling water call curtailments to ground water districts. It increases the dollar amount of \$1.00 or less to \$3.00 or less for each .02 cubic foot per second of ground water authorized to be diverted and used upon lands or facilities within the district.

**MOTION** **Senator Siddoway** moved to print **RS 23776**. **Senator Buckner-Webb** seconded the motion. The motion carried by a **voice vote**.

**Chairman McKenzie** announced that the Minutes of February 11th and February 18th would be taken up at a future meeting.

**ADJOURNED**

**Chairman McKenzie** adjourned the meeting at 10:01 a.m.

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Senator McKenzie  
Chair

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Twyla Melton, Secretary

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Marian Smith, Assistant Secretary