

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Friday, February 12, 2016

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

**PLACE:** Room WW55

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

**ABSENT/ EXCUSED:** Vice Chairman Lodge

**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 24470** RELATING TO THE IDAHO STATE INDEPENDENT LIVING COUNCIL to revise a reference to a federal law instead of the Code of Federal Regulations.

**Senator Hagedorn**, District 14, stated that **RS 24470** streamlines and corrects some language that is in code relating to the Idaho State Independent Living Council (Council). Since the Rehabilitation Act of 1973 (Act), each reallocation of funds are reallocated under a different name and a new Code of Federal Regulations (CFR) is created. Instead of referencing those CFRs in Idaho Code, this legislation will reference the Act, and the CFRs can be referenced in rule as needed. **RS 24470** also cleans up language about which State agency or unit the Council can contract with to use as a pass-through for those funds.

**Senator Hill** asked Senator Hagedorn if someone brought this legislation to him or was it the result of his own research. **Senator Hagedorn** said that the Council brought this to him based on information from the Governor's office. This issue was overlooked in some of their previous legislation. This RS was reviewed by the Governor's office and approved.

**MOTION:** **Senator Buckner-Webb** moved to send **RS 24470** to print. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

**RS 24316** RELATING TO WINERIES to allow persons under the age of twenty-one to enter or be on the premises of a winery.

**Roger Batt**, representing the Idaho Grape Growers and Wine Producers Commission, asks that Title 23, Chapter 9, § 23-944 be placed into the Idaho County Option and Kitchen Table Wine Act, § 23-1334 of Idaho Code. Enforcement authorities are having difficulty finding the language in code. This is just a clarification and Alcohol and Beverage Control has approved it (see attachments 1a and 1b).

**Senator Hill** referred to the addition of subsection (c) where it says "It shall not be unlawful for, nor . . . be construed to restrict, any person under the age of twenty-one (21) years from entering or being upon the premises"; that means they cannot be restricted for any reason. **Mr. Batt** answered that if someone comes into a winery intoxicated, the winery will call the State Police and rectify the situation. **Senator Hill** reiterated, does this language prohibit them from calling the police if there is a statute that states they cannot be kept off the premises? **Mr. Batt** said he didn't think so.

**Chairman McKenzie** asked Mr. Batt to respond to the question about authority at restaurants, baseball parks or other entities. Their authority to restrict for other reasons applies, but clarification would be helpful for the Committee. **Mr. Batt** agreed to research the issue.

**MOTION:** **Senator Winder** moved to send **RS 24316** to print. **Senator Buckner-Webb** seconded the motion. The motion carried by **voice vote**.

**RS 24463** RELATING TO REGULATORY TAKINGS to provide that an owner of private property may submit a written request for an analysis of the taking.

**Senator Lakey**, District 12, stated that **RS 24463** brings clarification to Idaho Code § 67-8003. On page 1, the word "real" property is replaced with "private" property. Private property is defined in this chapter, but real property is not. In the case of takings, both real or private property could be involved. Private property covers both while real property may not.

The new subsection (5) addresses a regulatory taking analysis, which, in Senator Lakey's estimation, has been another potential shield for a private property owner. If they have a question, they have the option to request a regulatory taking analysis. If they decide not to pursue it, they can still pursue other legal remedies.

**Senator Davis** asked Senator Lakey if he was aware of any currently pending litigation that this RS would affect. **Senator Lakey** said he was not aware of any.

**MOTION:** **Senator Winder** moved to send **RS 24463** to print. **Senator Hill** seconded the motion.

**Senator Siddoway** asked if personal property like boats, cars, fishing poles and the like could be affected by this bill. **Senator Lakey** answered that the regulatory takings analysis is mainly for land-use types of decisions. There are other provisions in the code that reference when a regulatory takings analysis is applicable; this code also references the Attorney General's Code Manual. **Senator Lakey** did not see these changes impacting personal property. He had not heard of this being used in confiscating property in case of criminal activity.

The motion carried by **voice vote**.

**SJR 101** PROPOSING AN AMENDMENT TO SECTION 10, ARTICLE IV OF THE CONSTITUTION OF THE STATE OF IDAHO relating to vetoes by the Governor following the adjournment of the Legislature.

**Senator Vick**, District 2, explained that this is a one-sentence amendment to the Idaho Constitution that gives the Legislature the ability to override a Governor's veto after the session has ended. This amendment allows the Legislature to call a special session but only for the purpose of overriding a governor's veto. This keeps the Legislature in the process from beginning to end. The process does not end when they adjourn *sine die*; there are many bills that pass in the last few days of the session that a Governor has to review after the Legislature has gone home. Much of that legislation is some of the most important of the session. Most states recognize that this is an important function. Research by the National Conference of State Legislatures (NCSL) shows that Idaho is one of only six states that does not have this ability. This is a needed tool to have the appropriate balance of power. **Senator Vick** read the RS in its entirety.

**Senator Vick** described the steps he has taken in preparing this bill, where the language was drawn from and the possible language content that could be used in structuring the amendment. There was a question about whether or not this was a violation of the separation of powers. An opinion from the Attorney General says that because it is a constitutional provision, it does not violate the separation of

powers. It would violate the separation of powers if it was accomplished through statute (see attachment 2).

**Chairman McKenzie** questioned the timing. Is there a time limit for leadership to request the Governor to call the Legislature back in session? It appears the request could be made at any time without limit. **Senator Vick** said the way the constitutional amendment is worded, that is correct; so it is important to include "as provided by law." It is **Senator Vick's** belief that provisions in the Idaho Constitution should be brief and that the details should be handled by law.

**Senator Hill** stated for the record that he is President Pro Tempore and this references his office directly.

**MOTION:**

**Senator Lakey** moved to send **SJR 101** to the floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

**Chairman McKenzie** introduced John Chatburn, who will provide an update on the Clean Power Plan (CPP), which the Environmental Protection Agency (EPA) is imposing on several states.

**PRESENTATION:** The Environmental Protection Agency's Clean Power Plan – Guidelines/Rules.

**John Chatburn**, Administrator of the Governor's Idaho Office of Energy Resources, explained that the presentation is an overview of the EPA's CPP. The United States Supreme Court granted a stay on the implementation of the CPP pending review by the District of Columbia Circuit Court of Appeals and ultimately, most likely, the United States Supreme Court. **Mr. Chatburn** outlined what the expectations were to expedite the process. **Chairman McKenzie** asked if the State intends to file an amicus brief? **Mr. Chatburn** answered that Idaho chose not to participate as an intervenor in the law-suit that challenged the EPA on the CPP.

**Mr. Chatburn** said that the EPA proposes to regulate carbon emissions from existing Electric Generating Units (EGUs) and explained what the criteria are, which Idaho facilities will be impacted and the amount of power imported from EGUs in neighboring states. He proceeded to give a history of the CPP. If the CPP is upheld, it is likely that at least the initial deadline will be extended. The initial submittal will probably be extended to 2017 or beyond. If the CPP is upheld, states that are granted an extension of their initial submittal will have to meet that date. **Mr. Chatburn** continued his explanation about State statutory rule changes, choice of mass-based or rate-based compliance pathways and trade credits. **Chairman McKenzie** asked if the compliance pathways were based on historic emissions from imported energy. **Mr. Chatburn** responded that the rates or allowances for the State of Idaho were based on the State's two EGUs, along with some allowances by EPA for future growth. **Chairman McKenzie** pointed out that some of the comments touched on how the emissions fluctuate based upon the water year; how much power we need to import depends on how much is produced with hydro. Did the EPA respond to that in their final decision by averaging it out over a number of years or did they arbitrarily pick a certain time frame? **Mr. Chatburn** said that most of their comments in the submittal on the draft regulation were acknowledged by EPA and they did smooth out the hydro process which made the final regulation more friendly for the Northwestern states of Washington, Oregon and Idaho.

**Mr. Chatburn** reviewed the steps Idaho has taken:

- Participate in discussions with other states, utilities and various stakeholders.
- Received an United States Department of Energy, State Energy Program

Competitive Grant.

- Worked with the Western Interstate Energy Board to explore compliance options and address the penetration of intermittent generation sources.
- Discussed compliance and trading scenarios with other states.

**Mr. Chatburn** closed by saying if the CPP is upheld, the Office of Energy Resources (OER) wants to be in a position where they are not starting at ground zero. OER will continue to monitor that CPP process, explore which compliance options will work the best for Idaho and keep abreast of the carbon regulation efforts in neighboring states.

**Senator Siddoway** asked if Idaho was receiving power from a neighboring state that was reducing its emissions, who would get the credit for that reduction?

**Mr. Chatburn** said that under the final guidelines published by the EPA, any reductions would accrue to the state where that CGU is located.

**Chairman McKenzie** thanked Mr. Chatburn for the energy primer update and stated his appreciation for this tool. Idaho has one of the lowest residential rates listed. That is an important economic advantage for the State.

**Senator Buckner-Webb** moved to approve the Minutes of February 1, 2016.

**Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

**MINUTES  
APPROVAL:**

**ADJOURNED:**

There being no further business, **Chairman McKenzie** adjourned the meeting at 8:38 a.m.

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Senator McKenzie  
Chair

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Twyla Melton  
Secretary