

MINUTES  
**HOUSE AGRICULTURAL AFFAIRS COMMITTEE**

**DATE:** Tuesday, March 06, 2018

**TIME:** 1:30 p.m. or UPON ADJOURNMENT

**PLACE:** Room EW42

**MEMBERS:** Chairman Boyle, Vice Chairman Dayley, Representatives Bell, Miller, VanOrden, Burtenshaw, Kerby, Troy, Stevenson, Amador, Armstrong, Hanks, Zito, Erpelding, Toone

**ABSENT/  
EXCUSED:** None

**GUESTS:** The sign-in sheet will be retained with the minutes in the committee secretary's office until the end of the session. Following session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.

**Chairman Boyle** called the meeting to order at 1:35 p.m.

**MOTION:** **Rep. Toone** made a motion to approve the minutes of the February 22, and 26, 2018 meetings. **Motion carried by voice vote.**

**Karianne Fallow**, CEO of United Dairywomen, stated the vision of United Dairywomen is to create a world where farmers and the dairy industry proper, together build healthy communities around the globe. She said there are about 580,000 milk cows with roughly 490 dairies in Idaho. She stated when she became CEO in 2013, there were 642 dairies in operation. She explained the number of cows has not decreased but the dairies have consolidated. She said they produce 15 billion gallons of milk making Idaho number one per capita in production in the nation. Ms. Fallow explained the Health and Wellness team goal to position the dairy industry to be an influential driver in health and nutrition related to initiatives in the State of Idaho to ensure and encourage dairy in the diet by focusing on school nutrition. She explained the school channel is very important because it increases demand which in turn ensures the farmers have long term prosperity. She explained the United Dairywomen have joined with Dairy West, a new USDA compliant, non-profit qualified program, representing dairy farms and communities through out the west. Dairy West maintains partnership agreements with dairy commissions in western states who choose to join, providing a vehicle for western states to work together for more consistency and to reduce duplication. Their milk flows across state borders everyday. She said the western states share global and domestic consumers and markets. She stated their farmers success is dependent on their regional processors. If they can help the processors be better at innovating new products going to market, they all win. She said raising regional demand has the potential to increase milk checks and western farmers deserve more influence on the national level. She said they will not lose the great advantage Dairywomen of Idaho has provided to the communities but sometimes they will see that represented as Dairywomen of Idaho and other times as Dairy West.

**Chairman Boyle** turned the gavel over to **Vice Chairman Dayley**.

**H 658:**

**Rep. Boyle** said the new version, **H 658** was re-written because of the many concerns expressed by people who were confused as to what the current code states right now including some law enforcement officers. She explained one of the reasons for the re-write was to consolidate and simplify the language to make it easier to read and understand. She pointed out in the current code it is a felony for a first time conviction if there is property damage of \$1,000 or more as well as a Fish and Game felony for a third violation. She said that is something the new bill will change if the committee decides to approve it.

**Mr. Gary Allen**, Attorney, Idaho Property Rights Coalition, said the current law has a lot of problems and is confusing and inconsistent on a number of levels. He stated under current law there is no 660 foot marking requirement. He said the orange marking and painting is an alternative but in current law a no trespassing sign by it's self is sufficient to create liability for trespassing. Mr. Allen described several circumstances already in code which are considered trespassing, including going onto fenced property, unharvested cultivated crops or driving a motor vehicle through cultivated crops. Mr. Allen said Fish and Game code reads that someone with a hunting dog on land or on cultivated land properly posted with a no trespassing sign is considered to be trespassing with no other requirement. He stated exclusions to the trespass law go further than any other state law they could find. These exclusions state that anyone who has an existing right to enter a property is excluded from the trespass law, and he cited several examples. Mr. Allen addressed the penalties, clarifying the difference between a simple trespass without significant damage to property to a trespass with more than \$1,000 in damages. He spoke concerning juveniles who trespass, stating they will fall under the same juvenile law as with any other crime.

In response to a committee question in regards to drones or crop dusters flying over private property, **Mr. Allen** said this is already addressed in current Idaho law.

Responding to a committee question, **Mr. Allen** explained current laws constitutionally suspect are outlining certain types of damage without making it a law of general applicability and several of these laws have no intent requirement.

Those speaking **in support** of **H 658** were: **Fred Birnbaum**, Idaho Freedom Foundation; **David Claiborne**, ISATVA; **Neil Colwell**, Avista Corp; stating Idaho has available every type of outdoor experience within public lands, the current law is not a deterrent to trespassers, and recognizing the importance of supporting private property owners by giving more responsibility to the sportsman and hunters.

**Michael Gibson**, Trout Unlimited, said sportsman were not consulted or asked their opinion on this legislation. He said his organization does not support removing a long standing and recognized way of marking private property. He stated they would support an increase in fines if the land owners had equal responsibility to mark their property.

**Russ Hendricks**, Idaho Farm Bureau, stated in the committee packet today is a list of the Idaho Property Rights Coalition which includes almost every agricultural group he is aware of in the state who all stand in support of this bill as well as many other land owners and organizations. He said his members are willing to write permission slips in order to have some certainty, not only for the land owner but also for the person who is there for recreation. He said those who have been involved in the redrafting of this bill have sat down with the groups discussed here and listened to their concerns stating that is why this bill specifically points out posting for the fence lines between public and private lands.

Those speaking in opposition to H 658 were; **Kahle Becker**, self; **Kent Roberts**, self; **Mike Stone**, Ada County Resident; stating there was not enough collaboration among interested parties. They are concerned with the new posting requirements not being sufficient to advert innocent trespassing and concerned with conflicting law.

**Vice Chairman Dayley** called a recess of the committee at 3:01 p.m.

**Vice Chairman Dayley** reconvened the meeting at 4:43 p.m.

**Russ Hendricks** was called upon to answer a committee question concerning the current Idaho posting requirements being stricter than the surrounding states. He stated Oregon, for an example, has one of the least prescriptive requirements for marking private property.

**Brian Brooks**, Idaho Wildlife Federation, stated such a broad bill deserved a wide collaboration. He said they did meet to share their concerns but never heard back about the input they gave. He said many hunters and sportsman are also land owners and want to help solve the problem. He explained one of the problems with this bill is the one-way fee shifting provision, awarding the plaintiff land owner investigative fees and damages if the defendant is found guilty of civil trespass, but if the defendant should be found not guilty he or she is not awarded attorney fees from the plaintiff. They are stuck with the cost of defending themselves.

**Sharon Keifer**, Deputy, Idaho Fish and Game, said she has not had an opportunity to discuss this bill with the Fish and Game Commission so they offer no position. She stated the emphases under the new bill does seem to give the land owners more responsibility in proper posting so a reasonable person would know where property lines are and would not trespass. She said the land owner posting would directly influence officers in credibly determining if a trespass had occurred and were able to sufficiently present evidence to a prosecutor. She stated they would change their message from "Ask First" to "Get Written Permission First".

**Michael Kane**, representing the Sheriff's Association, stated there were some good things in the bill because of collaboration. He said they had good discussion and clarified several issues but at the end of the day, decided to agree to disagree on some concerns from the Sheriffs Association. He said primarily they have concerns with not posting in certain areas and certain fence lines. He said bigger issue is over criminalizing someone for just entering the property, whereas the law as currently written states if you enter and do something or damage something it is a criminal offense.

**Benn Brocksome**, Idaho Sportsmen Alliance, said he apologized for some of the demeanor happening today in committee. He stated it appears there is clear unity among the Ag industry but a division in the sportsman industry as passions got the better of some today. He reminded the committee there has been generations of good relationships between the Ag industry and the sportsman, His organization still has concerns and would have liked more time to come to a compromise. He said they have worked to build bridges with the landowners and are committed to working on this bill going forward if given the opportunity. He said they are not opposed to the increase in fines.

**Forrest Goodrum**, Fish and Game League of Ada County, a conservation organization, stated they're concerned with what is considered fair warning and what is punishment. He said in Idaho the general rule is if attorney fees are to be awarded, they are awarded to the prevailing party in almost all incidences. He said this bill makes an exception to the rule and he suggested the general rule should be followed. He said it appears civil trespass happens if someone goes on to private property even though it is not properly posted, creating an unintended consequence that needs to be fixed in the new bill. He spoke to the concept of fair warning saying it is important to give a person the opportunity to do the right thing.

**Braden Jensen**, Idaho Farm Bureau, explained he wanted to bring up an aspect of trespassing not yet addressed. He spoke of an onion farmer in Canyon County who is required to do Primus Audits on his crop in order to secure contracts. He said with the implementation of the Food and Safety Modernization Act in January of this year, the requirements are far more stringent for those who grow food in their fields. He said trespass is of great concern. He said no matter how many signs they have posted on canal roadways, people have the belief those roadways are a public right of way. He gave an example of two people riding horses down the canal roadway with three dogs who were running out into the fields. He said if the farmer had onions planted in the field at the time and the private independent field inspector happen to show up that particular day and saw the dogs in the onion field, he could have lost his contract costing him tens, if not hundreds of thousands of dollars.

**Gary Allen**, in closing remarks clarified in the civil section of the trespass law. The land owner brings the law suit and if they prevail they recover damages, whereas in a criminal suit involving law enforcement, the trespasser is prosecuted and they pay their fine to the government or go to jail. He stated Common Law is court made law established over centuries, just as the law of trespass has been developed by the courts for hundreds of years. Definitions such as entering and remaining have been adopted from common law and remain in the current statutes. He explained 660 foot markings are clearly not in current law, they are burdensome to landowners and do not deter trespassing. He stated the culture now is putting the burden on landowners rather than sportsman or recreationalist to know where they are. He said the over riding constitutional right is property rights. He said they worked with the AG office and the prosecutors office to address and resolve their issues. He reported landowners are in agreement the current law is not working and stand behind this bill.

**Rep. Boyle**, in closing, stated she was the writer and sponsor of the Constitutional Amendment for the right to hunt, fish and trap in Idaho because she felt it was important to have those rights enshrine in our Constitution so those rights were not taken away, but also included in the amendment, it states no one is to trespass on private lands. She said she agrees many people are not able to correctly read a map but explained if someone is a hunter, they are expected to follow Fish and Games' hunting regulations and they have no forgiveness if they are found hunting in a closed unit. She said hunters are expected to know where they are. She stated the permission slip is vital to protect both parties. The sportsman are guests on private lands and should show respect for the land owner. She stated the right to own property is in both the state and the US Constitution and she believes they needs to protect that right.

**ORIGINAL  
MOTION:**

**Rep. Miller** made a motion to send **H 658** to the floor with a **DO PASS** recommendation.

**SUBSTITUTE MOTION:**

**Rep. Armstrong** made a substitute motion to **HOLD H 658** in committee. He stated he did not disagree with the need to strengthen legislation on trespassing, but is concerned it was rushed to completion without collaboration from the sportsman and outdoorsman. He proposed the drafters keep working on it until it is perfect rather than push through something that will need to be fixed in a few years.

In support of the original motion, **Rep. Bell** stated they have to be careful not to let the perfect be an enemy of the good. She said this is not perfect but it is good. It will not go into effect until July, giving some time to see if something needs to be reworked by next session.

In support of the substitute motion, **Rep. Toone** stated she would like to see them hold the bill and go to the next level and make it even better by including more of the key players.

**VOTE ON SUBSTITUTE MOTION:**

**Vice Chairman Dayley** requested a roll call vote on the substitute motion to **HOLD H 658** in committee. **Motion failed by a vote of 3 AYE, 11 NAY and 1 Absent/Excused. Voting in favor of the motion: Reps. Armstrong, Erpelding, Toone. Voting in opposition to the motion: Reps. Dayley, Bell, Miller, VanOrden, Burtenshaw, Kerby, Troy, Stevenson, Hanks, Zito, Boyle. Rep. Amador was absent/excused.**

**VOTE ON ORIGINAL MOTION:**

**Vice Chairman Dayley** requested a voice vote on the original motion to send **H 658** to the floor with a **DO PASS** recommendation. **Motion carried by a vote of 11 AYE, 3 NAY, 1 Absent/ Excused. Voting in favor of the motion: Reps. Dayley, Bell, Miller, VanOrden, Burtenshaw, Kerby, Troy, Stevenson, Hanks, Zito, Boyle. Voting in opposition to the motion: Reps. Armstrong, Erpelding, Toone. Rep. Amador was absent/ excused. Rep. Boyle will sponsor the bill on the floor.**

**ADJOURN:**

There being no further business to come before the committee, the meeting was adjourned at 6:34 p.m.

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Representative Dayley  
Vice Chair

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Joan Majors  
Secretary