

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Friday, March 15, 2024

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Guthrie, Senators Winder, Anthon, Harris, Lee, Toews, Wintrow, and Ruchti

ABSENT/ EXCUSED: Vice Chairman Bernt

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 Guthrie** called the meeting of the Senate State Affairs Committee (Committee) to order at 8:00 a.m.

WELCOME: **Chairman Guthrie** welcomed all to the Committee meeting.

MINUTES APPROVAL: Minutes of March 6, 2024. **Senator Wintrow** moved to approve the Minutes of March 6, 2024. **Senator Toews** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT: **Gubernatorial Reappointment of Travis "Bear" Prairie to the Idaho Energy Resource Authority.** **Mr. Prairie** introduced himself and discussed his experience. He was currently the General Manager of the Idaho Falls Power municipal utility. He had been in the electric and utility business for twenty five years. He wished to continue to serve on the Idaho Energy Resource Authority (Authority) because it assisted Idaho energy companies and others developing various energy projects and energy distribution, whether that was transmission or natural gas pipelines, to come together to produce joint projects that served the citizens of this State.

DISCUSSION: **Senator Wintrow** asked Mr. Prairie to discuss some of the challenges Idaho faced regarding energy and how the Authority might facilitate conversations relating to those challenges. **Mr. Prairie** stated that there were challenges as a result of the growth in this State. That put pressure on the Authority to develop resources such as transmission and distribution infrastructure. He cited several examples where the Authority helped a transmission line project come together and helped the Bonneville Power Administration with financing for projects.

Chairman Guthrie advised Mr. Prairie that the Committee would vote on his appointment on Monday.

GUBERNATORIAL REAPPOINTMENT: **Gubernatorial Reappointment of James Hammond to the State Building Authority.** Chairman Guthrie postponed this until later on the agenda.

RS 31638 Relating to Public Works. **Senator Harris** presented **RS 31638**. He explained that this was an update to the procurement statutes relating to political subdivision public works bids. Page 2, lines 15 through 16, increased the threshold for exclusion from the procurement requirements from contracts or purchases from less than \$50,000 to \$75,000. Page 3, lines 3 through 6, increased the threshold for procurement of public works construction from \$50,000, but not to exceed \$200,000, to \$75,000, but not to exceed \$250,000. These changes were the result of inflation.

MOTION: **Senator Toews** moved to send **RS 31638** to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Guthrie passed the gavel to Senator Winder.

S 1421 **Chairman Guthrie** presented **S 1421**. This bill clarified S 1120 enacted in 2023. Under S 1120, a liquor license coming off the list after July 1, 2023 couldn't be sold, leased or transferred. **S 1421** amended Idaho Code §23-903 (15) and provided that a license holder could move to a different location and keep the license. The license holder was still prohibited from transferring, selling or leasing that license. Section 17 provided clarification that a lease of a legacy license issued before July 1, 2023 could continue between the same owner and lessee of that license. The license could continue to be renewed, however, once the lease between the same two parties ended, the license could not be leased again. The owner of a legacy license, at that point, had several options. The license owner could operate his or her own business under that license or exercise the one-time transfer or sale option. In addition, the license owner could use the options under Section 16. This allowed the license to remain with a specific property. The license holder could continue to lease the license to different lessees on the same property and the property owner remained the owner of the license. Section (16) provided that if the license came off the list, the license holder had several options such as inheritance through a will or gift to a relative without compensation. The bill had the support of the Boise Metro Chamber of Commerce and various business owners.

DISCUSSION: **Senator Anthon** asked for clarification on Section 17 and whether that allowed an owner of a legacy license to renew the lease indefinitely. **Chairman Guthrie** responded that the license owner could renew the license in perpetuity so long as that lease remained in effect. **Senator Anthon** then asked whether Section 16 allowed a license owner, at the end of the lease, to transfer the license or exercise several other options under that section. **Chairman Guthrie** responded that the license owner could operate a business himself or herself or exercise a one-time option to sell the license.

Senator Ruchti asked whether a person receiving a license through inheritance or by transfer without compensation to a relative would still have the right to transfer the license or give it to a relative. **Chairman Guthrie** replied yes, those options would be available to a legacy license owner.

TESTIMONY: **Rex Chandler**, owner of Chandlers Steakhouse, expressed a concern about being able to renew his lease without triggering the one-time transfer under S 1120. **S 1421** allowed him to continue to lease without having the lease cancelled after each lease term.

Steve Thomas representing Chandlers and Block 22, spoke in favor of **S 1421** and thanked Chairman for his hard work.

Dave Krick, representing Fare Idaho, a membership of farmers, independent food and beverage producers, and independent retailers, testified. **S 1421** kept the intent of S 1120, but clarified several questions regarding that bill. He thanked Chairman Guthrie for his efforts and urged the Committee to help **S 1421** become law.

Anne Kunkel, representing the Eastern Company, testified in support of **S 1421**. This allowed a non-legacy license owner, an owner of a license issued after July 1, 2023, to transfer that license from premises to premises, but did not allow the transfer of that license. It allowed the license owner to associate the license with a property. In exchange for that ability, the license owner gave up the right to a one-time transfer. The owner of the property remained the license owner which provided transparency as to both the person owning and operating under the license. **S 1421** also helped those new into the food and beverage business avoid the speculative market to purchase a liquor license.

Written testimony on all agenda subjects appears in Attachment 1.

A letter in support of **S 1421** appears in Attachment 3.

MOTION: **Senator Harris** moved to send **S 1421** to the floor with a **do pass** recommendation. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Senator Winder passed the gavel back to Chairman Guthrie.

HCR 31 **Representative Pickett** presented **HCR 31**. This resolution was part of America 250, a nationwide project to celebrate this country's 250th birthday in 2026 developed by the America 250 Commission. This resolution called out the reason for the celebration, founding principles, and values leading up to the Declaration of Independence. The resolution established a Legislative Council that would oversee the implementation of America 250.

Janet Gallimore, Idaho Historical Society (Society), continued the presentation. The Society was excited to be part of this initiative to further the understanding of the founding of our country and the pursuit of happiness, liberty, and justice. They had previously been involved in celebrating the Lewis-Clark Bicentennial, the Idaho Territorial Sesquicentennial and the Centennial of women's right to vote.

MOTION: **Senator Anthon** moved to send **HCR 31** to the floor with a **do pass** recommendation. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

GUBERNATORIAL REAPPOINTMENT: **Gubernatorial Reappointment of James Hammond to the State Building Authority.** Mr. Hammond introduced himself and shared his experience. This was his fourth appointment to the State Building Authority (Authority). The Authority had purchased more facilities and reduced the amount of facilities they rented. They had built prisons, facilities at every institution of higher learning in the State, the parking garage, and expanded the State Capitol building. All of these projects added value to the State.

Chairman Guthrie advised Mr. Hammond that the Committee would vote on his appointment on Monday.

HB 659

Steve Goodson, policy advisor to the Idaho Public Utilities Commission (PUC), presented **HB 659**. This legislation amended and repealed outdated and unnecessary terms and codes within the PUC law in Idaho Code, Titles 61 and 62. It deleted references to common carriers, airlines, truck companies, bus lines, and streetcars. It eliminated airplanes because they were no longer regulated by the PUC. Section 20 on page 5, line 33 deleted the requirement that the PUC hold a public hearing on asset transfers of electric utilities and provided that the PUC may hold a public hearing on asset transfers of electric utilities. Asset transfers usually involved willing parties. Public hearings involved the cost of a court reporter and few people, if any, attended them.

A set of three handouts provided by Mr. Goodson appears in Attachment 2.

DISCUSSION:

Chairman Guthrie asked whether public interest or angst would cause the PUC to hold a public hearing. **Mr. Goodson** responded yes. **Chairman Guthrie** then asked whether the PUC kept records about attendance at public hearings to justify not holding a hearing. **Mr. Goodson** stated that the PUC had to be open and give public notice. The public had a right to express their interest.

Senator Wintrow asked Mr. Goodson to provide a history of the requirement for a public hearing. **Mr. Goodson** explained that it originated with a transaction between Pacific War and Scottish Power. There was some angst in the Legislature.

Senator Lee stated she was hesitant to remove the requirement that the PUC hold a public hearing and replace that with discretionary language. She asked why the PUC felt it necessary to use a court reporter. **Mr. Goodson** explained that the PUC was quasi-judicial in nature and needed to keep a record. **Senator Lee** asked why they didn't use current technology rather than use a court reporter to create a transcript. **Mr. Goodson** replied that had been the PUC's historical practice.

MOTION:

Senator Lee moved to hold **H 659** in Committee. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

H 626

Senator Harris presented **H 626**. He explained that courts were often deferential to a state agency's interpretation of its administrative rules even though it may conflict with judicial precedent. This tipped the scales in favor of the government agency. This legislation ensured that the judicial system did not automatically defer to a state agency's interpretation of the law and would make their own interpretation of any vague language. This leveled the playing field between citizens and State agencies.

DISCUSSION: **Senator Ruchti** cited the following language in Idaho Code § 67-5279: "In an action brought by or against a state agency, after applying all customary tools of interpretation, the court shall exercise any remaining doubt in favor of a reasonable interpretation that limits agency power and maximizes individual liberty." It wasn't clear whether that meant interpretation of the law or facts. In addition, he felt that language contradicted subsections (1), (2), and (3) which seemed to refer to the courts deference to the agency's findings of fact and asked for clarification. **Senator Harris** wasn't certain of the answer.

Senator Lee commented that IDAPA and administrative rules did not supersede law, but in a sense they were law where a court gave deference to an agency's interpretation unless proven otherwise. This bill created a balance and an opportunity for the statutes to be the prevailing law.

Senator Wintrow was concerned about this bill's impact on agencies whose interpretation did follow the law. **Senator Harris** responded that was why there were judges.

Chairman Guthrie explained that his interpretation of the final sentence in Section (5) was that if, after exercising customary tools of interpretation, there remained some doubt, the court must interpret the law in a manner which minimized agency power and maximized individual liberty.

TESTIMONY: **Jim Manley**, State Legal Policy Deputy Director, Pacific Legal Foundation (Foundation), testified in support of **H 626**. The Foundation had drafted legislation similar to this bill. **H 626** created a presumption in favor of liberty where there were two reasonable interpretations of the law from the agency and the citizen and the court couldn't decide. For example, the law favored the person who signed a contract over the drafter of the contract and the law favored the person accused of committing a crime. Responding to Senator Ruchti's question regarding whether this applied to law or fact, **Mr. Manley** stated that Section (1) made it clear that the courts would give deference to the agency regarding questions of evidence, of fact. Section (5) referred to interpretation of the law.

Brian Norman, Director of State Affairs, the Goldwater Institute, spoke in support of **H 626**. He argued that judicial interpretations that were deferential to agencies weakened the separation of powers and effectively turned state agencies into lawmaking agencies. This bill leveled the playing field between the government agency and citizen and required courts to review agency actions without deference. **Mr. Norman** noted that numerous states had enacted similar action.

Russ Hendricks, Idaho Farm Bureau Federation, testified in support of **H 626**. This bill ensured a level playing field where an individual had a disagreement with a State agency. He noted that the U.S. Supreme Court had a couple of cases before it involving the Chevron deference. The Chevron deference compelled federal courts to give deference to a federal agency's interpretation of an ambiguous statute or regulation.

MOTION: **Senator Lee** moved to send **H 626** to the floor with a **do pass** recommendation. **Senator Toews** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT: There being no further business at this time, **Chairman Guthrie** adjourned the meeting at 9:01 a.m.

Senator Guthrie
Chair

Peggy Caraway
Secretary

Meg Lawless
Secretary