

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Tuesday, March 19, 2024

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

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman Guthrie, Vice Chairman Bernt, Senators Winder, Anthon, Harris, Toews, Wintrow, and Ruchti

**ABSENT/ EXCUSED:** Senator Lee

**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 8:03 a.m.

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

**H 708** **CORPORATIONS - Amends and adds to existing law to provide that the State shall not act as the incorporator of a corporation and to establish provisions regarding the reformation or disassociation of certain corporations.**

**Representative Ehlers** stated that **H 708** was about accountability, transparency, and limiting State liability. He remarked that a State agency could create a corporation or act as the incorporator of any corporation that was not expressly authorized by State law. In addition, the State or State agencies would not incorporate another entity to carry out a State function. He remarked that independent public body politics that were created in statute to carry out a public purpose were exempted from **H 708**. He stated that **H 708** addressed State agencies that created, staffed, funded, and operated a nonprofit.

**Representative Ehlers** remarked that approximately 100 nonprofit organizations were incorporated this way. He remarked that **H 708** only addressed nonprofit organizations that were created by the State or State agencies and allowed for three ways to address these organizations. The organizations could be dissolved, disassociated, or reformed. He stated that the first step for organizations that chose to be reformed consisted of reporting to the Secretary of State. This report would be provided to the Legislature in the 2025 session. He remarked that, at the request of the Secretary of State, **H 708** be amended as noted in Attachment 7.

**DISCUSSION:** **Senator Wintrow** remarked that the reporting was a large undertaking. She asked which State agencies were providing input and collaborating on **H 708**. **Representative Ehlers** stated that the Secretary of State, the State Treasurer, Idaho's public universities, and State agencies were involved. He remarked that the exact number of agencies was unknown, but that the agencies had until 2025 to report. **Senator Wintrow** asked which agencies Representative Ehlers had met with and what were their concerns. **Representative Ehlers** replied that there was a lot of input and insight, but that the reporting process would reveal the specific organizations.

**Senator Bernt** stated that **H 708** brought transparency and made sense. He inquired what the process was for agencies that chose the reform path. **Representative Ehlers** replied that he was purposeful in not articulating the steps in the process. He remarked that there was a path to reform, but the Legislature

would determine the process in 2025. **Senator Bernt** asked if the process was similar to the administrative rules process in the Legislature. **Representative Ehlers** replied that it was. He stated that the Legislature was presented with the report, then made decisions regarding how to move forward.

**Senator Ruchti** asked what triggered **H 708**. **Representative Ehlers** yielded to Representative Manwaring. **Representative Manwaring** responded that he saw a report of nonprofit organizations created by the State, and some of those organizations would not provide information about their relationship with the agencies. **Senator Ruchti** asked what types of nonprofit organizations were used by State entities. **Representative Manwaring** responded that it varied. He stated that many were associated with universities. He stated that the list needed to be sorted out. He remarked that the key was voting control.

**Senator Winder** inquired if Representative Manwaring had seen and agreed with the Secretary of State's proposed amendments to **H 708**. **Representative Manwaring** replied that he was amenable to the changes. He remarked that the changes prevented confusion with non-State-created corporations. **Senator Winder** asked how booster and alumni organizations were distinguished. **Representative Manwaring** remarked that if the State was the incorporator, then those were included in the reporting. He stated that if those organizations were already disassociated, then they were not included in the reporting. **Senator Winder** remarked that organizations had one year to decide how to report. He asked how disputes regarding which organizations were included in **H 708** were handled. **Representative Manwaring** responded that there was a second step that occurred after the report was presented to the Legislature. He stated that financial reporting was triggered once an organization decided to reform.

**Senator Bernt** asked why **H 708** was presented during the 2024 session, which was almost over, rather than conducting more research. **Representative Manwaring** stated that it was important to gather the information to start the process. He remarked that he was not starting the process in 2024 to help or hurt a specific deal. He stated that there was a lot of work required, and **H 708** was very important.

**Senator Ruchti** stated that he agreed with the need to gather the data, but Section 30-501 appeared to be a prohibition for setting up these corporations in the future. He remarked that the data should be gathered first. **Representative Manwaring** responded that if the corporation did not self report, then the process to gather additional data was triggered.

**TESTIMONY:** **Phil McGrane**, Idaho Secretary of State, thanked the sponsors of **H 708** for considering and incorporating the amendments provided by his office. He remarked that he was concerned that **H 708** appeared overly broad prior to the amendments. He read the amendments to the Committee.

**DISCUSSION:** **Representative Ehlers** stated that **H 708** brought transparency and accountability, and that it protected liability to the State. He remarked that the report was important and helped direct the path forward.

**Senator Winder** remarked that the proposed amendments were helpful and the information was important. He proposed a working group over the summer to address the next step of the process.

**MOTION:** **Senator Winder** moved to send **H 708** to the **14th Order of Business** for possible amendment. **Senator Toews** seconded the motion. The motion carried by **voice vote**.

**S 1323**

**PUBLIC UTILITIES - Amends existing law to revise terminology and to clarify specified terms.** Senator Schroeder stated that **S 1323** clarified the scope of Public Utilities Commission (PUC) regulation for single customer water corporations. He remarked that **S 1323** clarified the definition of single customer water corporations and whether they would be regulated by the PUC. The PUC was designed to regulate monopolies in which the customer did not have a say. He realized that the competing interests should be vetted to determine the Legislative intent. He yielded to Norman Semanko.

**Norman Semanko**, Managing Shareholder, Parsons Behle and Latimer, stated the PUC had defined jurisdiction that did not apply in every instance. He remarked that more regulation was not the answer. In cases in the Idaho Supreme Court, there were definitions and interpretations that clarified the PUC's jurisdiction. He stated **S 1323** updated definitions in PUC Code that had not been updated in 100 years and codified these definitions for the general public. He remarked that certain entities were not regulated by the PUC, including homeowner's associations, cooperatives, and water districts. Past precedent specified that PUC regulation only applied to water companies serving more than one customer, and several water companies were set up in reliance on this case law, but the PUC indicated it may no longer adhere to this precedent. He remarked that **S 1323** codified the one customer rule and kept costs low for the customers. **S 1323** did not impact drinking water or water quantity.

Mr. Semanko provided a handout outlining definitions and analysis of **S 1323**. The handouts appear in Attachments 2, 3, and 4.

**TESTIMONY:**

**Albert Barker** stated that he was a practicing lawyer who had focused on resources for 40 years. He remarked that communities had their water systems separate from the homeowner's associations so that the water companies governed the water systems. Contracts required reasonable rates, and this practice had been in place for years. Approximately 100 companies were now being investigated, even though the PUC stated they would not regulate water companies that delivered to only one customer. He remarked that the agency should be truthful.

**Eric Anderson**, President, Idaho PUC, stated the PUC's job was to ensure safe, reliable drinking water at fair rates for consumers at a reasonable rate of return. He remarked that **S 1323** caused perilous consequences for consumers. The PUC received complaints from consumers regarding water quality and rates, and it was necessary to have protections for consumers for companies that operated as a monopoly. He remarked that **S 1323** provided no benefits for consumers. He believed that the Idaho Supreme Court cases had been misinterpreted, and the proposed changes were harmful to Idaho's customers, and those consumers had the right to call the PUC and issue complaints. He remarked that a homeowner's association could represent hundreds of members, and that should not fall under the definition of a single customer water company. Single customer water companies should be regulated, and he was opposed to **S 1323**.

**DISCUSSION:** **Senator Toews** asked Mr. Anderson who was harmed by maintaining the status quo. **Mr. Anderson** responded that the PUC had received hundreds of complaints in the nine years that he worked at the PUC. **Senator Toews** asked how many complaints had been received from single customer water companies compared to complaints received regarding regulated entities. **Mr. Anderson** replied the number of complaints were consistent, but consumers did not understand they had a service that was protected under the State of Idaho.

**Mr. Semanko** closed by stating that safe, reliable drinking water continued to be regulated under **S 1323**. Rates and homeowner's associations were regulated by contracts. He said more regulation was not needed, and **S 1323** was about reliance on law.

**Senator Ruchti** stated he did not support **S 1323**. The issue should be dealt with in the PUC's jurisdiction, and the Idaho Supreme Court should give definitive guidance.

**Senator Winder** remarked that **S 1323** clarified a current instance. **S 1323** codified the rules into Idaho Code so there were no gray areas.

**Senator Toews** remarked that **S 1323** clarified the current language and operation rather than changed it. There was no need for further regulation.

**MOTION:** **Senator Toews** moved to send **S 1323** to the floor with a **do pass** recommendation. **Senator Winder** seconded the motion. The motion carried by **voice vote**. **Senator Ruchti** asked to be recorded as voting nay.

**HJR 5** **ELECTIONS - Amends existing law to provide that individuals who are not citizens of the United States cannot vote in any election in the State of Idaho.** **Senator Okuniewicz** stated that in many cities in the United States, non-citizens were allowed to vote. Article 6, Section 2 of the Idaho Constitution defined a qualified elector as "every male or female citizen of the United States, eighteen years old, who has resided in this State, and in the county, where he or she offers to vote for the period provided by law, if registered as provided by law". He read an article by Joshua Douglas implying that judicial interpretation of Idaho statute might have allowed municipalities to extend voting rights to other groups, and municipalities could enact laws that were not in conflict with the general laws of Idaho. He remarked that **HJR 5** allowed voters to decide whether or not to close that loophole, and amendments similar to **HJR 5** had been passed in other states. He proposed that the Constitution be amended by adding that "no person who is not a citizen of the United States shall be a qualified elector in any election held within the State of Idaho".

**TESTIMONY:** **Julianne Donnelly Tzul**, American Civil Liberties Union of Idaho (ACLU), stated that the ACLU opposed **HJR 5** for three reasons: values, existing policy and practice, and impact. Immigrants were a part of Idaho communities and comprised less than 2 percent of Idaho's population. Idaho already had a policy that ensured only citizens could vote, and putting **HJR 5** out to ballot confused Idaho voters into thinking that non-citizens could vote, which was not true.

**Ryan McGoldrick**, Conservation Voters for Idaho, stated he opposed **HJR 5**. While he agreed with the intent, he disagreed with placing the amendment on the ballot because it created confusion among voters. He was concerned that if the amendment was placed on the ballot and didn't pass, it created confusion among voters that non-citizens would be allowed to vote. He believed the Constitution was already clear enough.

**Phil McGrane**, Secretary of State, testified in support of **HJR 5**. He remarked that

Idaho's elections were secure. Non-citizens were not allowed to vote in Idaho, but there were concerns across the country, and the clarification of **HJR 5** put citizens' minds at ease.

Written testimony from the American Civil Liberties Union in opposition to HJR 5 appears in Attachment 5.

Written testimony from the Conservation Voters of Idaho in opposition to HJR 5 appears in Attachment 6.

Written testimony from Elinor Chehey of the League of Women Voters in opposition to HJR 5 appears in Attachment 7.

A handout from the American Civil Liberties Union in opposition to HJR 5 appears in Attachment 8.

**DISCUSSION:** **Senator Okuniewicz** closed by clarifying that **HJR 5** was not an indictment of what was happening in the State of Idaho.

**MOTION:** **Senator Harris** moved to send **HJR 5** to the floor with a **do pass** recommendation. **Senator Toews** seconded the motion. The motion carried by **voice vote**.

**RS 31648** **Relating to a Commendation for Robert Gwin.** **Senator Okuniewicz** stated that this proclamation honored Douglas Robert Gwin, a World War II veteran who turned 100 next month.

**MOTION:** **Senator Harris** moved that **RS 31648** be sent to print. **Senator Bernt** seconded the motion. The motion carried by **voice vote**.

**RS 31665** **Relating to Pesticides.** **Senator Harris** stated that **RS 31665** amended Idaho Code, Title 22, Chapter 34 and Title 48, Chapter 6 regarding pesticide labeling. He clarified that **RS 31665** used the "clear and convincing" evidence standard and applied only to existing products in their existing classification as of July 1, 2024. There would be no federal authority over Idaho products without approval of the Legislature. He remarked it was important for Idaho's elemental phosphorus production.

**DISCUSSION:** **Senator Ruchti** asked why the date of July 1, 2024 was significant. He remarked that **RS 31665** was introduced late in the session and had significant impact on Idaho's citizens. **Senator Harris** replied **RS 31665** dealt only with current registered pesticide products and was important to the State of Idaho.

**Senator Winder** stated **RS 31665** was a "going home" bill and was important to communities involved in mining activity, and the label provided some protection.

**MOTION:** **Senator Winder** moved that **RS 31665** be sent to print. **Senator Bernt** seconded the motion. The motion carried by **voice vote**. **Senator Ruchti** asked to be recorded as voting nay.

**RS 31681** **Relating to Public Works.** **Senator Harris** stated that **RS 31681** modified procurement statutes requirements relating to political subdivisions public works bid thresholds by changing the amount from \$50,000 to \$100,000.

**MOTION:** **Senator Winder** moved that **RS 31681** be sent to print. **Senator Bernt** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business at this time, **Chairman Guthrie** adjourned the meeting at 9:34 a.m.

---

Senator Guthrie  
Chair

---

Peggy Caraway  
Secretary