

MINUTES
HOUSE BUSINESS COMMITTEE

- DATE:** Tuesday, February 21, 2012
- TIME:** 1:30 PM or Upon Adjournment of the House
- PLACE:** Room EW41
- MEMBERS:** Chairman Black, Vice Chairman Henderson, Representative(s) Collins, Bilbao, Chadderdon, Crane, Patrick, Bayer, Palmer, Thompson, Barbieri, DeMordaunt, Guthrie, Batt, Smith(30), Rusche, Cronin
- ABSENT/
EXCUSED:** Rep. Bilbao
- GUESTS:** The sign-in sheet will be retained with the minutes in the committee's office until the end of the session. Following the end of the session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.
- Chairman Black** called the meeting to order at 2:50 p.m. and introduced **Myleah Keller**, the committee's new page, who is from Idaho Falls.
- MOTION:** **Rep. Collins** made a motion to approve the minutes of February 15. **Motion carried by voice vote.**
- H 520:** **Rep. Leon Smith** presented **H 520**. He explained this bill will clarify that certain low-voltage electrical installations will not be covered for regulatory purposes. Rep. Smith said he had worked with Steve Keys, Division of Building Safety, in developing this legislation.
- Brian Stutzman**, President of Business Phone Specialists, a telephone wiring installation company in Idaho Falls, testified **in support of H 520**. Mr. Stutzman's company installs stereo systems, computer networks, phone systems, and the wiring that connects them; none of these systems involve life and safety concerns. He stated that a few words in the bill need to be changed to clarify that fire and security systems are not exempted. He noted that H 520 enjoys broad support from building contractors, the Idaho Association of Commerce and Industry, CenturyLink, retailers and others.
- Mr. Stutzman** explained the history behind this bill, saying that **H 139**, passed in 2005, opened the floodgates of regulation because of its vagueness. In 2006 the Division of Building Safety initially proposed many new rules but because of the unintended consequences they later asked that their own rules be rejected. Since that time, the regulation of these industries has remained undefined. Mr. Stutzman said H 139 will simply clarify the current exemptions applicable to low-voltage electrical installations. He said customers don't want to have regulations or permits for installation of phones, computers, speakers or similar products.
- Responding to a committee question, **Mr. Stutzman** said H 139 was vague enough that it led the Division of Building Safety to believe they could institute apprenticeship, permitting and inspection programs for low-voltage installations. Since DBS revoked those rules, the whole area of regulation of low-voltage installations has been undefined; H 520 will clarify the ambiguity.
- Mark Swenson**, owner and operator of Dad's Telephone, a sales and service company in Twin Falls that deals with telephones, overhead paging systems, fiber optic cable and data systems, testified **in support of H 520**. Mr. Swenson said this bill is necessary in order to exempt his industry from onerous regulations, permitting and inspections. Permit fees would be offset by the need for additional inspectors, and permits would be cumbersome and inconvenient. He testified it is his belief

that regulations are often proposed in order to protect an industry's profitability. Regulations create a barrier to entry for new businesses, which limits consumer choices, creates higher prices, and adds delays for customers.

MOTION: **Rep. Collins** made a motion to send **H 520** to the floor with a **DO PASS** recommendation.

SUBSTITUTE MOTION: After declaring Rule 38, **Rep. Crane** offered a **substitute motion** to send **H 520** to General Orders. Explaining his substitute motion, Rep. Crane said the amendment would remove the words "outside wiring for fire and security and" on page 1, lines 26-27. This change is necessary in order to clarify that the exemptions will not apply to fire and security systems. He said his business, which deals with security systems, is licensed and highly regulated, and their installations require permits. He stated he had talked with the bill's sponsors and they are amenable to this change. **Rep. Bayer** seconded the motion to send H 520 to General Orders.

WITHDRAWAL OF MOTION: **Rep. Collins** asked that his motion be withdrawn.

During committee discussion, **Mr. Stutzman** clarified that he and the bill's other sponsors concur in the suggested amendments to **H 520**. He said eliminating the seven words in question will clarify current law, rather than changing current law. He said it was not the intent of the legislation to extend exemptions to fire and security systems. **Rep. Crane** noted the regulations apply only to commercial installations, not to residential installations.

VOTE ON MOTION: **Chairman Black** called for a vote on the motion to send **H 520** to **General Orders** for amendment. **Motion carried by voice vote.** **Rep. Smith (24)** will sponsor the bill on the floor.

H 539: **Ed Lodge**, representing CenturyLink, presented **H 539**. He said advances in technology currently make it possible for both cable and telecommunications providers to offer telephone, broadband and video services. H 539 offers a streamlined franchising process for the entry of additional land-based video providers, which may encourage additional private investment in Idaho's broadband infrastructure. Mr. Lodge said the bill also assures equality of treatment between incumbent cable providers and new entrants to the market.

Mr. Lodge testified the legislation will preserve local control and regulation of local government public rights-of-way and will continue the right of cities and counties to receive up to a five percent (5%) franchise fee. H 539 continues opportunity for cities and counties to require video service providers to make dedicated video channels available for public, educational and governmental (PEG) use. Mr. Lodge said this is compromise legislation that is supported by the Idaho Association of Cities and the Idaho Cable Telecommunications Association.

Mr. Lodge said in every community where video service will be provided by CenturyLink, the company will pay up to 5% of revenues to the city or county and will provide the local community with government and educational channels. He said this legislation could enable video service to be provided over a fiber optic network in areas where it currently is not available. Mr. Lodge stated satellite providers do not pay franchise fees and do not make PEG channels available.

Bill Roden, representing CenturyLink, testified **in support of H 539**. Mr. Roden reiterated that this bill is now supported by the Association of Idaho Cities and the Idaho Cable Telecommunications Association. He said the bill provides a simplified process for companies coming from outside who want to provide video service in Idaho in addition to broadband and telecommunications. He stated incumbent providers may choose to continue with their existing franchise

agreements with local communities, or they may decide to come under the state franchise. If they opt into the state system, they will be subject to any increase in franchise fees that local cities decide upon. Mr. Roden said if a city is currently requiring the federally-set maximum of 5% in franchise fees, they must comply with those fees.

Mr. Roden reviewed major provisions of the bill, stating it contains definitions of an "incumbent service provider," a "non-incumbent service provider," and a "video service provider." It also spells out the application process for a new applicant, which entails applying to the Secretary of State, the payment of a fee, the showing of insurance and financial responsibility, and a definition of their service area, which must encompass the entire political subdivision.

Mr. Roden said incumbent cable providers may decide they want to operate under a state-issued franchise but they are not required to do so, choosing instead to continue under their current franchise. Thus, there may be little or no change in existing services. He said Boise is the only city in the Treasure Valley that has requested public access channels be provided by video service providers. Mr. Roden said the fees were discussed with the Secretary of State before they were set in this legislation. The Secretary of State's only duty is to see that the statutory requirements are met; if the application is complete and the fee is paid, the franchise will be issued. If a system operator wants to terminate service, it would file with the Secretary of State to do so. Mr. Roden pointed out the bill's provisions that allow local governments the power to continue to exercise full and complete authority over the use of public rights of way, saying he had visited with the Ada County Highway District, the Association of Idaho Cities, and the Highway District Association. He also noted that video service providers coming into an area must pay reasonable fees for opening and closing, as well as permit fees, in addition to any franchise fees that may be required.

Mr. Roden reviewed the fee provisions of the bill and said one issue that had been worked out with the cities was whether advertising revenue and home shopping revenues would also be subject to the 5% fee. The agreed-upon language stipulates that if there is an existing franchise agreement in effect on July 1, 2012 between an incumbent provider and a political subdivision, and if that agreement defines revenues that exceed what is described in H 539, the city's definition will still apply. There will be no loss of revenues to the city. Mr. Roden said another issue is that of "redlining," the question of whether video service providers can skirt areas that are not economically as affluent as other areas, or whether they can discriminate against certain areas based on the population of that area. He said this bill absolutely prohibits that practice and adds increased intervention authority for cities and counties to mediate those issues of discrimination. If either party is not satisfied with the mediation, there is an appeal process to a court, which can order the service to be provided to those areas.

Further explaining the bill, **Mr. Roden** said it mandates that if a new entrant is coming into Boise and the City of Boise currently requires incumbent providers to provide PEG channels, the new entrant coming in must continue to provide the same number of channels on its system as is required of incumbents under current agreements. If an incumbent were to determine it wants to be under a state franchise, the city and/or county can still require that public access channels be made available. Under both federal law and this bill, the negotiation for public access takes place between the city or county and the provider. This bill recognizes that PEG channels should continue to be provided without charge to the political subdivision in which service is provided. Mr. Roden said the bill also mandates that public access channels be located at a location that is subscribed to by more than 50% of subscribers, in order to assure that a majority of subscribers will have PEG channels available. Additionally, once a location on the system is established, that

location or channel must be continued and can't be moved without at least 60 days' notice to the political subdivision requesting the access channel.

Responding to committee questions, **Mr. Roden** said federal law requires that public access channels be made available at no charge. He explained that if an incumbent provider decides to move to a state certificate of authority, that will void their existing agreement. The city would then be free to increase the franchise fee to the maximum allowable. He said there is nothing in the bill that prevents a political subdivision from changing a franchise fee under a state franchise; this would be done by city or county ordinance or resolution, after discussion with the provider. No permission is required from the state. Mr. Roden said currently TVCTV's PEG fees constitute about 25-30% of their total budget. They conduct fundraising, solicit grants, and get tax-deductible contributions. Pocatello is somewhat different; they are not as dependent on PEG fees.

Mr. Roden explained that the bill requires providers to have service across an entire political subdivision, but that does not mean across the entire state of Idaho. Agreements are negotiated between the provider and each individual political subdivision. What cannot be done is for a provider to have service in only one-half of Boise, for instance. Asked whether "public rights of way" referred to only land but not air, Mr. Roden confirmed that is the case. Asked whether there is any incentive for an incumbent provider who is currently at 2% franchise fee to enter into a state-issued franchise agreement and move to 5%, Mr. Roden said it would seem counter-intuitive to do so. A business may make the decision to do that, but it would be based on some other business reason.

Alex McNish, Executive Director of Treasure Valley Community Television (TVCTV), testified **in opposition to H 539**. She stated similar legislation has been before the Legislature the past four sessions, but this is the first time PEG fees have been eliminated from the language in the bill. Ms. McNish said TVCTV is a nonprofit entity, while other PEG stations are funded and structured differently. In Pocatello, for instance, the PEG channel is a city department. She said the bill will create a one-size-fits-all statewide franchising authority and said the current locally negotiated agreements, which have been working well, will be lost. She is also concerned about whether there is adequate oversight of a state system.

Ms. McNish reported that TVCTV is a small organization with one part-time employee who works ten hours a week; the rest of the staff is volunteer. She said they have not been able to engage in successful fundraising. According to Ms. McNish, PEG fees provide about 80% of her station's budget, not the 25% to 30% previously stated. She stated she does not know why PEG fees were omitted from this bill and said they were included in previous versions. Ms. McNish said callers to the Business Committee were given incorrect information when they were told that PEG channels would be funded. She stated the PEG fees for TVCTV are ten cents per subscriber per month; she asked that the legislation include PEG fees.

In answer to committee questions, **Ms. McNish** said their screen went black with a message crawler stating that TVCTV is in jeopardy of losing PEG fees if **H 539** passes unamended. She said the 10-cent PEG fee is a line item on cable subscribers' bills so it is a pass-through fee from the cable company. Ms. McNish said TVCTV receives about \$4,500 per month in PEG fees and \$54,000 from the City of Boise. Asked what her total budget is, Ms. McNish said those two figures constitute the bulk of it. Classes and producerships do not raise much revenue.

It was pointed out that last year's legislation contained PEG fee language but TVCTV did not support it. This year there is no PEG language but TVCTV still does not support it. **Ms. McNish** said she opposes it because of other concerns such as channel placement and the cost of switching to high definition. Asked whether TVCTV has conducted fundraising in order to supplement their PEG fees, Ms.

McNish said they have struggled to raise operating expenses. She said they are not asking the government to fund them and said the city should not take a portion of their franchise fee to fund a nonprofit. **Chairman Black** noted that among the more than 250 calls made to the Business Committee office regarding this bill, a number of callers indicated they would donate and work to support TVCTV if it was necessary to continue its operations. Ms. McNish said donations are not a secure source of revenue. She said she does not know how many viewers TVCTV has. TVCTV was the first in the Treasure Valley to operate public access television; Pocatello's station is one of the nation's oldest.

Ron Williams, representing the Idaho Cable Telecommunications Association, testified **in support of H 539**. He said a number of cities in Idaho have PEG channels and cable companies are required to provide access to that channel capacity free of charge. Mr. Williams said in many communities this is pretty valuable bandwidth resource. Some of these may have a few hours of broadcasting and then just run reader board announcements. Mr. Williams said only Boise and Pocatello charge additional PEG fees above and beyond franchise fees. Pocatello's charge is now a percentage, while Boise's is 10 cents per subscriber per month. He reported that the recent 2011 fourth quarter check was \$8,300; the annual amount is over \$32,000. The quarterly franchise check was \$292,437; the annual check is \$1,170,000. Mr. Williams said these amounts are declining as viewers switch to alternative providers including the internet.

Mr. Williams said the statement from Ms. McNish that this year is the first time PEG fees were omitted from the legislation is not correct. He said all but one of the previous eight bills over the last five years had the same consequence; that is, they did not include additional fees for PEG channels. He said it has always been his association's position that PEG can be a very valuable community resource. Mr. Williams said there is a lot of money already being paid to the City of Boise that is going into the general fund; if Boise wants to maintain PEG channels, it should make some of those funds available for peg funding.

Mr. Williams was asked why the PEG people were not brought into the negotiations on this bill. He responded that interested parties did meet with the PEG people, with Alex McNish and others, and with the mayor of Pocatello, where PEG is a city service. He said they implored the public access channels to seek additional sources of funding instead of looking to cable television subscribers, since the number of those subscribers declines every year. Mr. Williams said he does not foresee a wholesale movement of his members from local franchise agreements to a state-issued franchise. Asked whether this legislation would authorize local governments to simply impose a PEG fee above the franchise fee, Mr. Williams said he did not think so. He pointed out specific language on pages 7-8 that spells out what local governments can do to establish fees.

Asked whether satellite companies don't pay fees because they don't require the same rights-of-way, **Mr. Williams** said this is a sore point in the industry. He said cable systems operate at a 5% disadvantage because of required franchise fees. He said there could be a way to equalize the industries but it would have to be through use of a new tax on the satellite industry, as has been done in some states. Mr. Williams was asked whether Cable One had decided to go with a state-issued franchise or stay with local contracts. He reported that the vast majority of cable operators said they could not see a good reason to get state franchises.

Chairman Black explained that because of the short time remaining for the bill hearing, he would ask those waiting to testify to limit their remarks to three minutes each.

Dave Carlson, a PEG producer and user and a video engineer in Pocatello, testified **in opposition to H 539**. Mr. Carlson said Pocatello does a good job of financing their operation; 90% of their franchise fees goes to the PEG operation. He said if a new company does enter the market, PEG fees cannot be required of them. He testified Idaho is the only state in which franchising is being considered. Mr. Carlson suggested the bill should be sent to General Orders in order to make the language more similar to last year's version. He said all opposition would probably vanish if those changes were made. Mr. Carlson thanked Ed Lodge for his help, noting that Mr. Lodge was always available and willing to answer technical questions about the legislation concerning live programming and transmission format. Mr. Carlson said Mr. Lodge was honest in admitting that he did not know whether he could make any progress with regard to PEG fees because of possible opposition from the cable association. Mr. Carlson suggested that if PEG fees were included, it should be specified that they can only be used for brick and mortar, not for salaries.

In consideration of the time constraints, **Rep. Crane** asked whether the testimony on **H 539** could be completed and then a vote could be taken at the committee's next meeting on Thursday, February 23. **Chairman Black** agreed to do so.

Pete Peterson, a private citizen, stated his **opposition to H 539** by saying that TVCTV is a leaky canoe which will sink if nearly 80% of its funding is taken away. Mr. Peterson said the quality of public access television varies greatly but said TVCTV has a worldwide audience. He testified that for at least ten years BSU communications students have been able to get state-of-the-art, hands-on training which will go away if TVCTV dies with passage of the bill.

Pamela Thompson, producer of "Capitol Wrap" on TVCTV, testified in opposition to H 539. Ms. Thompson talked about various types of programming on TVCTV, including educational, spiritual, and political. Idaho Media Showcase promotes artists and photographers throughout Idaho. TVCTV also allows interested people to become producers by taking classes and paying a fee. Ms. Thompson said she believes this is a free speech issue. Noting that the current system has worked for years, she encouraged defeat of H 539.

Patrick Bailey, who works at TVCTV as a volunteer, testified **in opposition to H 539**. He stated the Boise City Council meetings are broadcast live and he fears that moving channels from the basic tier to somewhere down near the pay movie channels will eliminate that ability. Mr. Bailey said he would like the bill to include wording that would guarantee live broadcasting or maintain channel placement. In addition to City Council meetings, arts, entertainment and political programming are important. He is also concerned that video service providers can change their arrangement with 60 days' notice.

Robert Nicholas, a producer, testified **in opposition to H 539**. Mr. Nicholas said PEG fees are a concern because support from a community reflects the attitude of the community. Because PEG fees are such an issue, people must not be very community-minded. Either they are behind certain programs or they are not. He pointed out that BSU students are able to receive valuable training at TVCTV.

Gynii Gilliam, Economic Development Director for the Department of Commerce, testified **in support of H 539**. Ms. Gilliam said the legislation has the potential to attract significant new investment in Idaho. She stated the three pillars at her Department are: 1) protection and retention of existing business, 2) support of existing business, and 3) expansion of new business. This legislation addresses all three of those goals because it enables companies to expand business opportunities and services and it supports recruitment of new business. Ms. Gilliam said the availability of broadband is important to existing Idaho businesses as well as those thinking of moving here. She said in order to provide expanded services,

additional telephone and cable companies need to build out their capacity. Idaho's role in this expansion is to change public policy and regulatory policies in order to encourage broadband expansion.

Tom Williamson, representing SOA entertainment, testified on **H 539**. Mr. Williamson said he would prefer that the bill be amended so the PEG fees could be phased out gradually rather than all at once on July 1. Mr. Williamson said TVCTV accomplishes a lot with their limited budget and he asked committee members to send the bill to General Orders for amending.

Ken Harward, representing the Association of Idaho Cities, testified **in support of H 539**, saying he has been part of the negotiation on this bill for five or six years. Mr. Harward said he is pleased with the improvements that have been made and he is supportive of the current bill.

Responding to questions from the committee, **Mr. Harward** said he has heard some of the conversation Boise City has been having regarding PEG fees and public access channels. He said Boise's existing locally negotiated franchise agreement with Cable One will expire in the next few months. Since there is no obligation on the part of the cable provider to continue collecting ten cents per subscriber, nor any obligation on Boise's part to expand the definition of gross revenue, this legislation will be a protection for Boise. Mr. Harward noted that Boise City is very interested in seeing TVCTV continue operations, and they will need to work out a system to assure that. It was pointed out that Mayor Bieter had sent a letter expressing his support for this legislation, which would seem to indicate that Boise City has some plan in place to move forward. Mr. Harward said this legislation had a more acceptable solution to the definition of "gross revenues" which allows for the application of a more expansive definition to apply going forward, if that more expansive definition is in existing contracts in place before July 1, 2012.

John Eaton, Government Affairs Director for the Idaho Association of Realtors, testified **in support of H 539**. Mr. Eaton said people who are trying to sell property in this area stress that the ability to have broadband capability is an important priority for buyers. This is true for both residential and commercial properties and it has become more important as more people are working from home offices. Mr. Eaton said this legislation will help attract greater broadband investment into our state.

Peter Lutze, a founder of TVCTV who also teaches at Boise State, testified **in opposition to H 539**. Mr. Lutze said the total fees the station receives each year is \$32,000; it also received an initial \$200,000 to purchase equipment and get the station set up. He said television is an expensive and labor-intensive business. Mr. Lutze said if this bill passes, all interests will be taken care of except the economic interests on the public access side. He pointed out there was a time when basic cable service cost \$13 per month, but now it is \$50. He stated public access may be able to continue, but the city's resources are decreasing and it is difficult to get funding from the city. Mr. Lutze said TVCTV provides a tremendous service for the university and the community.

Celynda Roach, General Manager of Cable One, testified **in support of H 539**. Ms. Roach said Cable One's profit margin is very low, which makes it necessary for them to make adjustments to their business in order to remain profitable. She said cable customers do balk at any price increase, no matter how small. Cable One's market share is shrinking; according to one recent study, 54% of all U.S. consumers receive video services from an alternative source such as the internet. Given this reality, Ms. Roach pointed out that the model supporting PEG fees is going away. In 2004, Cable One's payout for fees was \$14,000 per quarter, compared to last year's fourth quarter payout of \$8,300. In order to help Treasure Valley Community Television secure adequate funding in this new environment, Ms. Roach said she would offer her help to organize fundraising efforts for TVCTV.

Jayson Ronk, Vice President of the Idaho Association of Commerce & Industry, testified **in support of H 539**, saying this compromise legislation will encourage competition and greater investment in Idaho by video service providers.

Chairman Black stated he will give **Mr. Lodge** an opportunity to conclude his testimony at the committee's next meeting on Thursday afternoon. Following Mr. Lodge's concluding testimony, the committee will discuss and vote on the bill.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 5:35 p.m.

Representative Max C. Black
Chairman

MaryLou Molitor
Secretary