

MINUTES

## HOUSE COMMERCE & HUMAN RESOURCES COMMITTEE

**DATE:** Wednesday, March 05, 2014  
**TIME:** 1:30 p.m. or Upon Adjournment of the House  
**PLACE:** Room EW05  
**MEMBERS:** Chairman Hartgen, Vice Chairman Anderson(31), Representative(s) Loertscher, Anderst, Hancey, Harris, Holtzclaw, Mendive, Romrell, VanOrden, King, Woodings  
**ABSENT/  
EXCUSED:** Representative VanOrden  
**GUESTS:** Jeremy Evans, Vial Fotheringham, LLP; Kristyn Kirschenman, Risch-Pisca; Matt Walker, A.M.I.; Colten Tippets, Hidden Springs

**Chairman Hartgen** called the meeting to order at 1:31 p.m.

**S 1310:** **Senator Rice** presented **S 1310**. He said this bill addresses a problem that exists throughout Idaho. He said some homeowners' associations (HOAs) levy fines against homeowners even when those owners are taking measures to remedy a problem. Some of these fines are assessed daily. This bill would require notice to the homeowner 30 days ahead of a meeting during which a fine would be requested. Homeowners who were attempting to remedy a situation could not be fined during their efforts to solve stated problems. Fines could not be used to increase salaries. The Idaho Farm Bureau Federation and Idaho Association of Realtors support this bill.

In response to questions, **Senator Rice** said the bill does not restrict when a HOA board could or could not meet. The bylaws of each association would still be followed for meeting schedules. A majority vote of a HOA board would be required to assess fines. Homeowners would be required to show good faith in resolving problems. A HOA would be supported in court should the HOA provide thirty-day notice to a homeowner in advance of a meeting and follow up with the homeowner.

**MOTION:** **Rep. Anderst** made a motion to send **S 1310** to the floor with a **DO PASS** recommendation.

**Juanita Globitz** spoke in opposition to **S 1310**. She is a realtor and also works for an association management company. She says the purpose of CC&Rs is to set community standards and maintain the overall value of homes. She believes this bill would negate the enforcement of CC&Rs. She is concerned that language would allow a loophole for offenses such as leaving trash cans out or keeping trailers where they are not allowed. She is also concerned about the increased costs associated with providing required notices. She would like to see different levels of violations outlined. Additionally, she believes HOA boards could have a more difficult time retaining board members due to additional requirements put upon their time as volunteers. She agrees with the intent of the bill but says it needs to be sent back for language changes.

In response to question, **Ms. Globitz** said if a fine is part of a multi-step process, HOAs could be forced to change their practices and allow the thirty-day wait time before taking the next step in their processes.

**Jeremy Evans**, Vial Fotheringham, said a great deal of Idaho's development is occurring within HOAs, without very much law to apply. He shares some of Ms. Globitz's concerns, however he said the additional guidance provided in **S 1310** would be helpful to Idaho HOAs.

In response to questions, **Mr. Evans** said he does not want to see this bill rewritten due to the legislature's proximity to sine die. He said collaboration could occur during the interim to make any agreed-upon changes, but that he would like to see **S 1310** move forward.

**Matt Walker**, A.M.I., spoke **in opposition** to **S 1310**. He said he likes the intent of **S 1310** but believes the language contains some problem areas. He would like to see definitions of fines versus fees, as there is the possibility for certain fees to be perceived as fines and to therefore be unable to be paid. Additionally, if certified mail is required for all notices, it could become expensive for associations. He said a typical certified letter costs approximately \$7 and his association would send out thousands each year.

In response to questions, **Mr. Walker** said there are written policies on how fines and fees are assessed, however not every HOA has these written policies. Generally speaking, once or twice a month someone from the HOA's management company will drive through a neighborhood looking for violations. They also receive letters of complaint and follow up on the information they are given. When a violation is discovered, a letter is sent to the violating homeowner. If the homeowner complies with requests to remedy the situation, there will not be a fine assessed. Approximately 5% of revenue for his management company comes from fines. He believes this bill will penalize HOAs and management companies who are already doing right.

In response to additional questions, **Mr. Walker** said his biggest concern is the lack of a definition of a fine. Most companies charge an administrative fee when they have to do extra work with a homeowner, and he is concerned that under this legislation that fee could be construed as a fine, which would mean the management companies are no longer able to be compensated for extra work.

**Colten Tippets**, Hidden Springs, said he thanks **Senator Rice** and the intention of this bill is good. He said smaller situations could be missed by this bill. He referenced situations not addressed in this bill such as aggressive dogs, violent behavior toward neighbors and fence disputes. He said Hidden Springs does send certified mail and also hand delivers letters to homeowners' doors. He said a homeowner can decline to sign for a certified letter and can then say (s)he never received it. He believes this bill needs more detailed language.

**John Eaton**, Idaho Association of Realtors (IAR), said the IAR has a legislative committee made up of 22 members from around the state. The committee designed a lot of the language in this bill. He said HOAs are currently able to levy fines against banks that own foreclosures. In one instance, a bank was fined \$100 per day for a lawn in disrepair, because the HOA knew the bank had the money to pay the fine.

In response to questions, **Mr. Eaton** said a bank-owned home is treated like any other home within an association. Fines and liens can be assessed, and there is an incentive to go after them because HOAs are aware of their deep pockets.

**Senator Rice** said this bill does not set limits on or amounts of fines for HOAs. It is not intended to dictate a specific step-by-step process all HOAs and management companies would be required to follow. He said it has an intentional light touch in order to ensure a fair process for homeowners.

**Rep. Holtzclaw** said he owns a property management company. He said some HOAs are issuing \$25 a day fines. This is problematic for owners who live out of town and do not receive notices of violations for a week or two. He **supports** the legislation.

**Rep. Harris** said it seems the intent of the bill is to address bad actors. As it does not seem there is a need to rush, he would like to see this bill reworked.

**Rep. King** said she has become convinced this could be a good bill. Thirty days seems long, however she likes the statement that no portion of a fine can be used for remuneration.

**VOTE ON MOTION:**

**Chairman Hartgen** called for a vote on the motion to send **S 1310** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Harris** requested to be recorded as voting **NAY.** **Rep. Youngblood** will sponsor the bill on the floor.

**S 1316:**

**Pam Eaton**, Idaho Retailers' Association (IRA), presented **S 1316**. This bill clarifies that private employers may give hiring preference to veterans. She said in the U.S. today, veterans face 20% higher unemployment rates than the general population. Although Idaho law already allows employers to hire and fire at will, the IRA would like to ensure protection for employers who wish to give preference to veterans, disabled veterans, and widows or widowers of veterans as long as they remain unmarried. Public employers already have this preference in place, this bill simply gives the same legal protection for private employers who want to provide the preference as well.

In response to questions, **Ms. Eaton** said the IRA wants to be sure the law clearly states giving preference to veterans is allowed. Some of the skills veterans have been taught in the military, and jobs they have successfully done while on active duty, do not translate well to civilian life. It is possible they require a certain adjustment period following a return from combat. She said this bill is not at odds with federal antidiscrimination laws. Other states who have added veterans' preference for private employers have not had legal issues. **S 1316** does not say businesses have to give preference to veterans, it simply allows the option. Ms. Eaton is not aware of a specific problem in Idaho, however across the country lawsuits are being brought and threatened when veterans' preference is shown. This bill would not change anything legally for Idaho employers. Idaho's at will employment law is vague. This would provide clarification that Idaho's private businesses can treat veterans preferentially.

**MOTION:**

**Rep. Holtzclaw** made a motion to send **S 1316** to the floor with a **DO PASS** recommendation.

**ROLL CALL VOTE:**

**Chairman Hartgen** stated he was in doubt regarding the voice vote and a roll call vote was requested. **Motion carried by a vote of 6 AYE, 4 NAY, 2 Absent/Excused.** **Voting in favor** of the motion: **Reps. Anderson(31), Loertscher, Anderst, Holtzclaw, Woodings, and Hartgen.** **Voting in opposition** to the motion: **Reps. Hancey, Harris, Mendive and King.** **Reps. Romrell and VanOrden were absent/excused.** **Rep. Holtzclaw** will sponsor the bill on the floor.

**ADJOURN:**

There being no further business to come before the committee, the meeting was adjourned at 2:50 p.m.

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Representative Hartgen  
Chair

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Mary Tipps  
Secretary