

MINUTES
HOUSE STATE AFFAIRS COMMITTEE

DATE: Thursday, February 11, 2016

TIME: 8:30 A.M.

PLACE: Room EW40

MEMBERS: Chairman Loertscher, Vice Chairman Batt, Representatives Andrus, Luker, Crane, Palmer, Sims, Barbieri, Holtzclaw, McMillan, Bateman, Cheatham, Nielsen, Smith, Jordan, McCrostie, Wintrow

**ABSENT/
EXCUSED:** None

GUESTS: Wayne Hoffman, Idaho Freedom Foundation; Julie Hart, RMP; Joe Leckie, Idaho Public Utilities; Will Hart, Idaho Consumer Owned Utilities; Mayor Rebecca Casper, City of Idaho Falls; Kathy Griesmyer, ACLU of Idaho; Giany Kennebeal, self; Don Kennebeck, self; Neil Colwell, Avista; Seth Grigg, Association of Idaho Cities.

Chairman Loertscher called the meeting to order at 8:35 a.m.

MOTION: **Rep. Smith** made a motion to approve the minutes of the February 8, 2016 meeting with the following correction: On page 1, paragraph 4, change 'then' to 'than' and February 9, 2016. **Motion carried by voice vote.**

RS 24118: **Rep. Troy** presented **RS 24118**, proposed legislation that adds an exemption to the Idaho Public Records Act for notifications and certifications required to be made to the Chief Law Enforcement Officer by Federal law in connection with the acquisition of fire arms under the National Firearms Act.

MOTION: **Rep. Palmer** made a motion to introduce **RS 24118**. **Motion carried by voice vote.**

RS 24360: **Rep. Miller** presented **RS 24360**, a proposed concurrent resolution that recognizes the history, power and impact of the cowboy in our society and reserves a National Day of the Cowboy each year on July 25th with appropriate ceremonies and activities.

MOTION: **Rep. Andrus** made a motion to introduce **RS 24360**. **Motion carried by voice vote.**

RS 24043C1: **Paul Kjellander**, Commissioner, Idaho Public Utilities Commission, presented **RS 24043C1**, proposed legislation that raises the civil penalties for violations of Title 61, Idaho Code, governing safety of pipeline facilities and the transportation of gas, or of any order, decision, rule or regulation duly issued by the Idaho Public Utilities Commission (PUC). He stated the Pipeline and Hazardous Materials Administration (PHMSA) is requiring all states that participate in the Pipeline Safety Grant Program to have statutory authority to seek civil penalties with maximum limits acceptable to the PHMSA. He stated the maximum limits are currently \$100,000 per incident per day, up to a maximum of \$1,000,000 per incident per related series of violations. He stated the PUC is seeking to amend Section 61-712A, Idaho Code to increase the penalty limit from \$2,000 per violation per day to \$100,000 per violation per day, and increase the \$200,000 maximum limit for a related series of violations to \$1,000,000. He stated the change would put Idaho in compliance with the limits accepted by the PHMSA.

In response to committee questions, **Mr. Kjellander** stated the legislation will help in minimizing the federal government's authority over the state. He stated the increase fine limits is the halfway mark according to the national average. He stated the lowest limits are in Mississippi at \$1,000 and the highest is in California at \$1.6 billion. He stated the legislation provides guidance to the PUC which allows them to negotiate fixing problems and reaching a settlement agreement. not just fining violators. He stated the cost of fines would rest with the shareholders not the customers. He stated the legislation is specifically for natural gas pipelines only. He stated the PUC speaks through orders, which are notifications of violations and any rule changes would go through the legislature to be approved.

Chairman Loertscher turned the gavel over to **Vice Chairman Batt**.

MOTION: **Rep. Andrus** made a motion to introduce **RS 24043C1**. **Motion carried by voice vote. Reps. Batt, Crane, McMillan, Nielsen and Sims** requested to be recorded as voting **NAY**.

H 447: **Will Hart**, Idaho Consumer Owned Utilities Association, presented **H 447**, legislation that exempts from disclosure any public record that contains sensitive information regarding critical infrastructure and also adds a specific definition for critical infrastructure. He stated there are three major problems with the current language found in Section 74-105, Idaho Code: 1) it is impossible to prove that disclosing the records would cause a threat to public safety, security or habilitation, 2) the statute does not protect property from disclosure, only person and 3) there is no current definition of a critical infrastructure. He stated the legislation is supported by the Idaho Newspaper Association and the Idaho School Board Association, among others.

Mayor Rebecca Casper, City of Idaho Falls, spoke **in support** of **H 447** and stated the legislation creates reasonable standards of openness. She stated the current definition of exemptions for record requests is very broad. She stated Idaho Falls and other areas in Idaho have power utility facilities which have critical infrastructure information. She stated public record requests can be made to those facilities under current law, which could produce a concern with public safety because the agency producing the records cannot ask why the request is made. She stated there are other places in the state with critical infrastructures as well, such as jails, prisons and schools and the purpose of the legislation is to protect critical infrastructure information from getting into the wrong hands. She stated all information that is requested is provided as long as the request is filled out completely because the current statute is so vague.

In response to committee questions, **Randy Fife**, City Attorney, Idaho Falls, stated if there is a possible exemption, the City Attorney reviews the request and decides whether to provide the records, deny in part, or deny the entire request. He stated the Supreme Court has ruled that a request must be read in a narrow way and the custodian has to prove the records would interfere with public safety if the request is denied. He stated if they are denied, the requester can then go to district court to ask for the records, wherein the judge would decide, after reviewing the records not disclosed, if providing them would indeed cause an issue with public safety. He stated the custodian of records might have records that are nationally related because there are facilities in Idaho that could have national impact.

MOTION: **Rep. Bateman** made a motion to send **H 447** to the floor with a **DO PASS** recommendation.

Rep. Luker spoke in support of the motion and stated the language is needed to protect our state and neighboring states but a community threat is not listed in the new language, which could be a problem. **Rep. Cheatham** spoke in support of the motion and stated many of the records for critical infrastructures are vulnerable to terrorism and they should be protected. **Rep. McCrostie** spoke in support of the motion and stated the legislation is a good balance between public safety and welfare. **Rep. Batt** spoke in support of the motion and stated the new language is needed to meet the threshold.

Kathy Griesmyer, ACLU of Idaho, spoke in opposition to **H 447** and stated there are already safeguards in place that protect certain public record requests. She stated the change in language could prevent the public from knowing about future plans.

In response to committee questions, **Ms. Griesmyer** stated anything that makes it difficult for the public to get records is bad public policy. She stated the language is very broad and could prohibit the public from getting records on potential building plans or rate hikes. She stated the public should be able to know what is going on with critical infrastructures and the records should be accessible.

Vice Chairman Batt turned the gavel over to **Chairman Loertscher**

Wayne Hoffman, Idaho Freedom Foundation, spoke in opposition to **H 447** and stated the new language is too broad and the custodian of public records in each agency would make the determination if the request was a threat to public safety.

Seth Grigg, Association of Idaho Cities, spoke in support of **H 447** and stated the new language strikes a balance with public safety and access to records.

Will Hart was recognized to provide a closing statement. He stated the current language in the statute does not protect from the threat of public safety when it comes to releasing records pertaining to critical infrastructures. He stated companies such as Idaho Power and the Association of Idaho Cities also support the bill.

SUBSTITUTE MOTION:

Rep. Nielsen made a substitute motion to send **H 447** to General Orders.

Rep. Bateman spoke in opposition to the substitute motion and stated confidence should be placed in the public officials who determine what records are released.

VOTE ON SUBSTITUTE MOTION:

Chairman Loertscher called for a vote on the substitute motion to send **H 447** to General Orders. **Motion failed by voice vote.**

VOTE ON ORIGINAL MOTION:

Chairman Loertscher called for a vote on the original motion to send **H 447** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Reps. Nielsen and Jordan** requested to be recorded as voting **NAY**. **Rep. Cheatham** will sponsor the bill on the floor.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 10:05 a.m.

Representative Loertscher
Chair

Kasey Winder
Secretary