

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Wednesday, February 01, 2023

TIME: 8:00 A.M.

PLACE: Room WW55

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

ABSENT/ EXCUSED: None

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.

GUBERNATORIAL REAPPOINTMENT VOTE: **Committee Consideration of the Gubernatorial Reappointment of Kyle Wills as State Athletic Commissioner for a term commencing October 1, 2022 and to expire October 1, 2026.** **Kyle Wills** shared he worked at removing outdated regulations and duplicate language in the State Athletic Commission (Commission) rules. He reported the Commission was in compliance with the Department of Occupational & Professional Licenses and that he would continue to work on the Zero Based Regulations. Future goals included promoting new events and growing the Mixed Martial Arts (MMA) sport, which would enhance revenue. **Chairman Guthrie** said the Committee would vote on the appointment at its next meeting.

PASSED THE GAVEL: Chairman Guthrie passed the gavel to Vice Chairman Bernt.

DOCKET NO. 31-6101-2201 **Rules for the Measurement of Stray Current or Voltage (Stray Voltage Rules) (ZBR Chapter Rewrite) - Proposed Rule.** **Eric Anderson**, President, Public Utilities Commission (Commission), explained **Docket No. 31-6101-2201** was a rewrite of two chapters prepared last year as part of the Red Tape Reduction Act. Rules were promulgated after the Legislature created Title 61 Chapter 8 (Stray Current and Voltage, and Voltage Remediation Act) in 2005. Changes to this rule reduced unnecessary text and provided clarification. **Senator Anthon** asked for confirmation that the proposed changes were supported by the Idaho Dairymen. **Mr. Anderson** confirmed the Dairymen's support.

MOTION: **Senator Anthon** moved to approve **Docket No. 31-6101-2201**. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 31-8101-2201 **Energy Consumption Reporting Rules (ZBR Chapter Rewrite) - Proposed Rule.** **Eric Anderson** reported that the Commission and the Idaho Department of Water Resources consulted on the proposed changes to this rule. He explained the rules were necessary because Watermasters were statutorily required to prepare annual reports before the expiration of the Watermaster's appointment for the current year. He noted the Watermaster's report was critical as the basis for the inclusion of the delivery/measurement from the prior year for calculating assessments for the upcoming year within the February/March time frame.

MOTION: **Senator Harris** moved to approve **Docket No. 31-8101-2201**. **Senator Toews** seconded the motion. The motion carried by **voice vote**.

**PASSED THE
GAVEL:**

Vice Chairman Bernt passed the gavel back to Chairman Guthrie.

S 1016

Government - Amends existing law to provide that a public works contractor shall not be required to provide access to a multiple-occupancy restroom, multiple-occupancy shower facility, or multiple-occupancy changing room on any basis other than biological sex. **Senator Herndon** explained **S 1016** was not placing requirements on public works contractors. It was placing a prohibition on political subdivisions engaging in public works contracts so they could not require the public works contractors to provide a restroom facility, a shower facility, or changing room multi-use facilities. He defined multi-use as a facility with multiple lavatories or multiple toilets. **Senator Herndon** said this legislation would allow contractors to segregate facilities based on biological sex as stated on a birth certificate. Further, that the political subdivision could not say if there was a multi-use facility that the public works contractor had to allow men into a women's restroom or women into men's restrooms. He clarified that **S 1016** was only referencing facilities owned by the public works contractor. He referenced a 2014 Executive Order from the Obama administration that attempted to modify the Civil Rights Act of 1964 by adding the words gender identity as highlighted in the handout he provided (Attachment 1). He noted the flexibility provided by the Supreme Court for State funded and locally funded political subdivisions and public agency contracts. He concluded that OSHA requirements and other parts of the Federal government on employers had no such requirement as far as mixing biological sexes and multiple use restroom facilities. **Senator Herndon** said his concern was that political subdivisions and public agencies were using the same contract for Federally funded public works contracts as for locally funded public works contracts.

Senator Rutchti asked for an example. **Senator Herndon** responded that a contractor was asked to sign a document agreeing not to segregate his facilities based on biological sex, and to allow a biological man claiming to be a woman to use the female facilities and vice versus. He stated that requirement should not be placed on public works contractors.

TESTIMONY:

Chairman Guthrie advised of three citizens to present testimony.

Cindy Thorngren, President of the Southwest Idaho National Organization for Women, opined this Legislation seemed to codify bias against women and expressed concern about men going into women's restrooms on a construction site. She noted 14 percent of women were in construction. She did not see the need for Idaho women to be protected from other Idaho women.

Senator Anthon commented that under current Federal and State laws, regardless of whether **S 1016** passed, a business could not discriminate against women based on sex. **Ms. Thorngren** responded that Idaho did not have protection for gender or sexual orientation and questioned the validity of providing protection for a State contractor.

Luis Munilla, owner of CoyotePak Construction, testified that as bidder of a contract, some bid documents required him to provide bathrooms and housing, and that facilities could not be segregated by gender. He stated it was wrong to require mixed genders to share a room. As a religious person, Mr. Munilla believed biological gender was given by God and he chose not to bid on projects that discriminated against his religious beliefs. He expressed support for **S 1016**.

Senator Bernt asked if the contract Mr. Munilla referenced was a State or Federal contract. **Mr. Munilla** identified it as a Bonner County Solid Waste contract for facilities improvements. He thought it was funded by Bonner County Solid Waste with American Rescue Plan Act (ARPA) and U. S. Agriculture funds.

Mae Roos claimed there were three flaws relative to trans inclusion in **S 1016**: 1) Scientific flaws related to restricting usage of bathrooms based on biological sex, defined solely as a physical condition of being male or female; 2) the wording of the bill wielding biological sex as a condition to access everyday services; and 3) the harm caused by infringing on freedom. She feared trans and non-binary people could potentially be killed as a result of this bill.

Senator Herndon advised he worked on this legislation with the Idaho Association of General Contractors (IAGC), who were major contributors to the language in the bill. He stated the proposed legislation would close off any possibility to offend anyone concerned about being forced into the same facility with people of the other biological sex. He asked the Committee for a **do pass** recommendation.

Senator Winder commented that the contract alluded to by Mr. Munilla might have involved Federal funding for a local project. He asked for clarification that this legislation did not apply to federally funded projects. **Senator Herndon** denied having examples of it, explaining this legislation would help close loopholes. He understood some civil attorneys used one contract form for all contracts. He proposed to prevent that with **S 1016**. According to **Senator Herndon**, the IAGC agreed the practice of using one contract form had been a possibility.

MOTION:

Senator Anthon moved to send **S 1016** to the floor with a **do pass** recommendation. **Senator Toews** seconded the motion. **Senator Wintrow** shared that she had been on many construction sites and could not imagine anybody wanting to use the facilities she had seen, regardless of gender. She commented it was impossible not to have attitudes, values, and beliefs of bias bleeding through this legislation. She stated Idaho had nondiscrimination laws to ensure people could be who they are and earn a living. She suggested this bill was death by a thousand cuts and a way to message that some people don't belong. She concluded she did not think bathroom facilities was that big of a deal and would be voting against the bill. The motion carried by **roll call vote** with Senators Ruchti and Wintrow recorded as voting no.

Initiatives - Proposed a state constitutional amendment to require an initiative petition to be signed by at least 6 percent of legal voters at the last general election in each legislative district. Senator Okuniewicz explained the purpose of **SJR 101** was to include more people in the initiative process by expanding the process from 18 districts to 35 districts to avoid an urban versus rural approach to issues. The proposal did not increase the number of signatures required; it was still 6 percent of the total number from the prior election. Rather than acquiring the 6 percent from half of the legislative districts, it would include all 35 districts.

Senator Winder asked the difference between this proposed amendment and the legislation that was struck down by the Supreme Court. **Senator Okuniewicz** responded that S 1110 was struck down in 2021 with the Court ruling the Legislature did not have authority to impose new changes on the people. If **SJR 101** was to pass both bodies as a constitutional amendment, it would go to a vote of the people to include all 35 districts, or to leave it at 18 districts.

Senator Wintrow asked the purpose of a ballot initiative and referendum process to be instilled in the constitution. She noted it was not something required by the U. S. Constitution, adding that Idaho was one of the states that had an initiative process. **Senator Wintrow** asked what problem was proposed to be solved with **SJR 101**. **Senator Okuniewicz** informed the initiative process was implemented over 100 years ago to pass or repeal laws. Now the primary issue was venue shopping by wealthy entities/individuals to get a question on the ballot. While **SJR 101** would not change that practice, it made sure less represented areas of the State, where signatures are not as easily sought, are included in the initiative process. For clarification, **Senator Ruchti** said this bill would put language in the Idaho constitution that was deemed unconstitutional by the Supreme Court in 2021. **Senator Okuniewicz** explained the language was the same but the mechanism was different. He clarified it was the mechanism the Supreme Court ruled on, not the language. He noted the Attorney General's office assured him this approach would withstand legal scrutiny. **Senator Ruchti** argued the Supreme Court measured the proposal against the language that was in the Constitution, which in statute was so restrictive it rendered the initiative process useless. **Senator Okuniewicz** disagreed with that characterization and repeated it was as simple as the mechanism.

Senator Lee asserted **SJR 101** did not put this into statute or change the Constitution; it was a proposal asking the people of Idaho whether or not they should be able to vote on this, not necessarily the merit of the change. **Chairman Guthrie** commented on the irony that people who opposed this, were essentially opposed to giving the people a chance to vote on it.

TESTIMONY:

Prior to the Committee meeting, 112 people from around the State had electronically registered for or against **SJR 101**. Of that number, 30 indicated they did not want to testify and 82 indicated they wanted to testify. The following individuals testified either in person or virtually in opposition to the bill: Tina Hilding, Elinor Chehey, Dennis Sutton, Julie Hopkins, Maggie Shaw, Madison Paules, Kathy Dawes, Michael Stollo, Diane Schwarz, Karen Hansen, Sarah Nelson, Jean Gerth, Melissa Reilly, Brennan Harris, Lisa Hecht, Mary Ruckh, Sussan Eastlake, Gail Kirkpatrick, Brad Brady, Ashley Prince, Crystal Ivie, LaRae Wilson, DeAnn Thomas, Kendal Shaber (on behalf of Betsy McBride), Sallie Wilhelm, Jim Ruckh, Ed Wardwell, Becky Klassen, Sally Moon, Kathy Clees, Terri Pickens, Hollie Conde, Jeffrey Canfield, Tony Torres, Lucile Scopinich, Destinie Hart, Bayley Bingham, Lillie Young, Kay Hummel, and Stephen Bender. The following individuals provided written testimony at the

meeting: Elinor Chehey, Lisa Hecht, Julia Page, and Jim Ruckh. Copies of the written testimony were attached (Attachment 2).

The following individuals provided either email (Attachment 3) or telephone comments in opposition to **SJR 101**: Martha Agler, Homer Beauchamp, Janet Beauchamp, Stephanie Bender-Kitz, Katie Best, Louise Brannon, Kenneth Burchell, Kathy Dawes, Vickie Fadness, Ken Harris, Barbara Kemp, Kevin Kitz, July Labrie, Linda Larson, Julie Manning, Betsy McBride, Julie Miller, Pam Nielsen, Mary Ollie, Elizabeth Roberts, Amy Rustad, Marie Schubin, Louise Seeley, Starr Shepard, Amy Steckel, Hobart Swan, Angie Kirkpatrick-Wald, Anna Wingert, and Victoria Young.

The general consensus of the testimony against the initiative process was that it was already difficult and increasing from 18 to 35 districts would exacerbate the process without necessarily improving the fairness. Many noted that collecting signatures was a volunteer effort that often required long hours and taking time to educate people about an issue in order to obtain signatures. Some suggested citizens did not understand what was on a ballot and often voted by what they were given by some organization. Participants argued that doubling the signature requirements was doubling the difficulty of the task. They commented on how hard it was to circulate through rural areas and said **SJR 101** would create a tyranny by a minority of voters. It was voiced by many that this system was not broken and they asked that the Senators not to try to fix what was not broken.

Senator Okuniewicz addressed the comments about tyranny and one district having veto power over the remainder of the districts. His example was if there were 35 people in a room, it would not be reasonable to 18 to get a say while the other 17 were not allowed to be involved. He concluded this legislation was giving the voters a chance to decide.

MOTION: **Senator Anthon** stated he had some concerns about the language of **SJR 101** in its current form. He did not feel it was ready for the floor and recommended **SJR 101** be sent to the 14th order for possible amendment. **Senator Lee** seconded the motion. The motion carried by **voice vote** with Senator Wintrow recorded as voting no.

Chairman Gurthie informed the remainder of the items on the agenda would be acted on at the next meeting.

ADJOURNED: There being no further business at this time, **Chairman Guthrie** adjourned the meeting at 11:05 a.m.

Senator Guthrie
Chair

Joyce Brewer
Secretary