

MINUTES  
**HOUSE EDUCATION COMMITTEE**

**DATE:** Wednesday, March 01, 2023

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

**PLACE:** Room EW41

**MEMBERS:** Chairman Yamamoto, Vice Chairman McCann, Representatives Boyle, Clow, Mendive, Ehardt, Wisniewski, Garner, Hawkins, Hill, Lanting, Nelsen, Price, Sauter, Berch, Galaviz, Mathias

**ABSENT/  
EXCUSED:** None

**GUESTS:** The sign-in sheet will be retained in the committee secretary's office; following the end of session the sign-in sheet will be filed with the minutes in the Legislative Library.

**Chair Yamamoto** called the meeting to order at 8:00 am.

**MOTION:** **Rep. Sauter** made a motion to approve the minutes for the February 14, 2023 meeting. **Motion carried by voice vote.**

**MOTION:** **Rep. Galaviz** made a motion to approve the minutes for the February 14, 2023 and February 21, 2023 sub-committee meetings. **Motion carried by voice vote.**

**H 139:** **Rep. Crane (12)** presented **H 139**, which would prohibit distribution of certain materials to children in public libraries and public school libraries. He spoke about the role of temperance and morality in the Idaho Constitution. He said librarians have an obligation to protect minors and they should take reasonable and responsible efforts to restrict inappropriate material. Rep. Crane (12) yielded his time to **Blaine Conzatti**, Idaho Family Policy Center, who spoke about the statewide problem of access to inappropriate and obscene materials in public and school libraries. He stated the bill outlines legal ramifications if reasonable efforts to restrict inappropriate material are not made.

In response to questions, **Mr. Conzatti** explained the legislation establishes a duty of care and relies on a reasonableness standard, so it is not intended to be burdensome to libraries. He also stated the plaintiff bears the burden of proof, and courts have discretion to award expenses to the defendant if the lawsuit is deemed frivolous.

As a co-sponsor of **H 139**, **Sen. Carlson** continued presenting the bill and stated this legislation is not trying to punish librarians, but is intended to hold the institution responsible. She also clarified literary works are not included as harmful materials in the bill.

**Ron Nate**, Idaho Freedom Foundation, testified **in support** of **H 139**. He spoke about harmful materials in libraries and the need for accountability. It was explained the significance of the penalty is commensurate with the harm to children and would help enforce the law.

**Sherry Scheline**, testified **in opposition** to **H 139**, every library is different across the state and the financial impacts on small libraries would be detrimental.

In answer to a question, **Ms. Scheline** explained discerning what is objectionable material is difficult. As an example, she stated even the Bible has excerpts that could be considered obscene.

**Heather Greenman** testified in support of **H 139** and requested to read excerpts from objectionable books. She spoke about her efforts to have harmful material removed from her library. She was denied the request.

**Chair Yamamoto** stated she would not allow reading excerpts from books in committee, but testifiers could provide written examples, or pass around exhibits. **Rep. Wisniewski** objected to the Chairman's statement.

In response to a question, **Ms. Greenman** stated her library board said it was following state law when it denied the request to remove the books in question.

**Bonnie Shuster, Heather Stout, Gregory Taylor, Alex Stein, Sherry Hughes, and Lance McGrath**, Idaho Library Association, spoke in opposition to **H 139**. Their concerns centered on local control; parental rights and responsibility; and restricting access to constitutionally protected material.

Response to committee questions included emphatic statements confirming librarians do not provide obscene material to children, and local library board policy sets the age a child can go to the library unaccompanied.

**Joseph Greenman, Lyle Johnstone, Nina Beesley, Kathy Thompsen, Rachelle Ottosen**, Community Library Network, and **Rep. Crane (13)** spoke in support of **H 139**. Their support centered on children being harmed and having a right to their innocence; access to pornography can lead to addiction; and the government's constitutional fiduciary responsibility to prevent children's exposure to pornographic material. **Rep. Crane (13)** explained the bill allows for local discretion and policies, but suggesting the bill go the General Orders in an effort to bring the parties together to reach a compromise.

In closing, **Rep. Crane (12)** and **Sen. Carlson** stated the bill was not a book ban, it was only asking libraries to make reasonable efforts to restrict minors' access to harmful materials.

**MOTION:** **Rep. Mendive** made a motion to send **H 139** to the floor with a **DO PASS** recommendation.

In answer to questions, **Mr. Conzatti** explained all obscene acts are under the purview of the definition included in the bill.

**SUBSTITUTE MOTION:** **Rep. Garner** made a substitute motion to **HOLD H 139** in committee.

Committee members speaking in support of the substitute motion explained concerns about excessive monetary damages; no automatic ability for libraries to recover attorney's fees if legal proceedings are judged as frivolous; impacts on local control; freedom of speech infringement; and lack of definitions to guide what is of literary value or obscene.

Committee members speaking in opposition to the substitute motion stated it protects children from graphic pornography.

**AMENDED SUBSTITUTE MOTION:** **Rep. Clow** made an amended substitute motion to send **H 139** to General Orders.

Committee members speaking in support of the amended substitute motion stated the amount of the damages could be easily fixed in General Orders.

Committee members speaking in opposition to the amended substitute motion expressed concerns the word pornography is not included in the bill, and definitions of law need to be more than a list of examples.

**MOTION:** **Rep. McCann** made a motion to call for the previous question.

**Rep. Berch** asked for clarification on General Orders procedures. **Rep. Clow** provided clarification.

**ROLL CALL  
VOTE:**

Roll call vote was requested. Having failed to meet the two-thirds present requirement, the **Motion failed by a vote of 10 AYE and 7 NAY. Voting in favor** of the motion: **Reps. McCann, Clow, Garner, Lanting, Nelsen, Sauter, Berch, Galaviz, Mathias, Yamamoto. Voting in opposition** to the motion: **Reps. Boyle, Mendive, Ehardt, Wisniewski, Hawkins, Hill, Price**

Committee members speaking **in opposition** to the amended substitute motion, stated the bill needed a number of concerns to be addressed and General Orders was not adequate to address them.

Committee members speaking **in support** of the amended substitute motion stated the debate needed to occur on the House floor, and a vote otherwise would essentially kill the bill.

**ROLL CALL  
VOTE ON  
AMENDED  
SUBSTITUTE  
MOTION:**

**Chair Yamamoto** called for a roll call vote on the amended substitute motion to send **H 139** to General Orders. **Motion failed by a vote of 8 AYE and 9 NAY. Voting in favor** of the motion: **Reps. Boyle, Clow, Mendive, Ehardt, Wisniewski, Hawkins, Hill, Price. Voting in opposition** to the motion: **Reps. McCann, Garner, Lanting, Nelsen, Sauter, Berch, Galaviz, Mathias, Yamamoto.**

**ROLL CALL  
VOTE ON  
SUBSTITUTE  
MOTION:**

**Chair Yamamoto** called for a roll call vote on the substitute motion to **HOLD H 139** in committee. **Motion carried by a vote of 9 AYE and 8 NAY. Voting in favor** of the motion: **Reps. McCann, Garner, Lanting, Nelsen, Sauter, Berch, Galaviz, Mathias, Yamamoto. Voting in opposition** to the motion: **Reps. Boyle, Clow, Mendive, Ehardt, Wisniewski, Hawkins, Hill, Price.**

**H 227:**

**Rep. Nelsen** presented **H 227**. This bill sets a policy and process for public schools, public charter schools and public libraries to establish policies addressing complaints; organization of materials, including sectioning off certain materials; and issuing library cards. He stated he trusts local control and issues can be addressed at the local ballot box.

In answer to questions, **Rep. Nelsen** explained public charter schools are addressed separately but consistently in the bill because public schools and public charter schools are governed under different sections of code. He clarified the process for issuing library cards to children, and emphasized parental responsibility for monitoring children's activity in libraries.

**Lyle Johnstone, Nina Beesley, Destinie Hart, Charity Myser and Ron Nate**, Idaho Freedom Foundation, spoke **in opposition** to **H 227**. They were concerned self-governance without penalty is ineffective and the bill does not include standards for the written word. Ms. Hart did not believe any bill addressing this matter was necessary.

**Margaret Ellsworth, Lance McGrath**, Idaho Library Association, and **Jessica Dorr**, Boise Public Library, spoke **in support** of **H 227**. They stated the bill takes reasonable steps to restrict access to certain materials from children, while also protecting adults' rights to constitutionally protected materials. It provides a consistent framework for how local libraries can establish safeguards and empowers parents to make choices about what is best for their children.

In answer to questions, **Rep. Nelsen** confirmed the bill addresses written works and while it is not a satisfying solution for everyone, it provides a way forward for communities to find balance.

**MOTION:**

**Rep. Garner** made a motion to send **H 227** to the floor with a **DO PASS** recommendation.

**SUBSTITUTE  
MOTION:**

**Rep. Ehardt** made a substitution motion to **HOLD H 227** in committee to a time certain of March 25, 2023.

Committee members speaking **in support** of the motion stated the library association had input into this bill and only protects librarians, but doesn't meaningfully address the unheeded concerns of parents.

Committee members speaking **in opposition** to the substitute motion stated it was time to make a decision, or bring the parties together to reach a resolution sooner than the motion allows.

**MOTION:**

**Rep. Price** made a motion to adjourn. **Motion carried by voice vote.**

**ADJOURN:**

There being no further business to come before the committee, the meeting adjourned at 10:54 a.m.

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Representative Yamamoto

Chair

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Amy Bengtzen

Secretary