

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Monday, March 13, 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 Senate State Affairs Committee (Committee) meeting to order at 8:00 a.m.

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

RS 30644C1 **Relating to the Idaho Launch Program.** **Chairman Guthrie** noted the C1 designation for the record. This was a trailer bill to **H 24** (Launch Program) that became **S 1151**, which would not advance if **RS 30644C1** was sent to print. **RS 30644C1** replaced **S 1151**, with some noted changes. **Chairman Guthrie** said changes to this legislation was made with the assistance of Senators Cook and Lent. He described changes to include the removal of all allowable expenses for Launch dollars besides tuition. It removed room and board, fees for standardized testing, lowered the level to 80 percent or \$8,000, and added an accountable reporting requirement. It would limit Idaho Launch fees for community college and workforce training, and continued the opportunity for scholarship to be used at four-year institutions. Finally, it added a six-year sunset to the Idaho Launch Program, which was supported by educators.

Senator Lee wondered about significant changes from allowing dollars to be used at universities. Specifically, if there was a nursing program at a university, these funds could not be used and instead would access the income based scholarship for those health care programs. **Chairman Guthrie** affirmed that was his understanding.

MOTION: **Senator Harris** moved to send **RS 30644C1** to print. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

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

RS 30632 **Stating Legislative Findings and Approving Fee Rules of the Department of Agriculture, The Idaho Sheep and Goat Health Board, and the Division of Occupational and Professional Licenses Reviewed by the Senate Agricultural Affairs Committee and House Agricultural Affairs Committee.** **Senator Hartgen** presented the completion of the senate and house rules preparatory to a resolution.

MOTION: **Senator Anthon** moved to send **RS 30632** to print. **Senator Lee** seconded the motion. **Senator Winder** recognized Senator Hartgen's first year as Chairman and her work in completing the rules. The motion carried by **voice vote**.

PUBLIC PROCUREMENT - Amends and adds to existing law to provide that procurement decisions shall not be based on environmental, social, and governance standards. Senator Anthon described H 191 as maintaining status quo in the way local governments purchased, entered into contracts, and awarded bids. He stated Environmental, Social, and Governance (ESG) standards were subjective, ethical and sustainable types of standards, which he did not think had a place in public contracting bidding. He clarified, this narrow bill stood for the public policy used in Idaho for many years. He continued, when you spent public dollars, you looked for the most qualified contractor/person with whom to wisely spend the dollars. This bill desired to protect that public policy. The new law would prevent a unit of government, or institution using public dollars, from awarding a contract to someone other than the lowest bidder or the most qualified bidder by inserting an ESG standard. He deferred the remainder of the introduction to Idaho State Treasurer Julie Ellsworth.

Treasurer Ellsworth repeated, this maintained the status quo. It dealt directly with ESG and eliminated using the state government to implement ESG. This bill built upon existing law to avoid building a new structure for the bidding process. She reaffirmed it used existing statutes, existing law, and existing rights of appeal. **Treasurer Ellsworth** said this was presented to different entities of government, which were specifically asked if it impaired anything about their ability to take the least expensive, qualified bid. She received no negative input.

Senator Wintrow asked what subjective, ethical meant and referenced page four, lines 14-15. **Treasurer Ellsworth** explained, Idaho statute had a list of miscellaneous provisions that outlined when preferential treatment could be offered to an entity. If not outlined in law, it was subjective. Presenting a different standard than outlined in code was prohibited. **Senator Wintrow** offered an example of looking at a contract for the Transportation Department. What if, through the procurement process, the lowest bidder met all criteria but it was discovered they had numerous Environmental Protection Agency (EPA) violations? Or what if it was a foreign company (Russia) bidding on an Idaho contract for Internet Technology (IT)? Would this bill prevent the state from eliminating those kinds of bids? **Treasurer Ellsworth** responded, under existing law, if those contracts were taken and you did not come up with a subjective policy, it continued as is. Consideration was not given to the lowest bidder and other issues mentioned by Senator Wintrow's example. **Treasurer Ellsworth** repeated, existing protocols and existing statutes remained in place. Any problems, such as those suggested, and bills could be presented to address them later. This bill was an expectation to use the standards that are spoken to in law.

Senator Wintrow asked about a foreign country wanting to do an IT bid. If they met every other criteria in law, would the state be able to eliminate them with this kind of language? **Treasurer Ellsworth** stated the legislature had spoken on that (a Russian bidder) and public policy addressed that scenario. **Senator Wintrow** asked if this policy could potentially cut down on the number of bids the state could receive. Was it possible, with additional criteria in play, that the state could receive fewer bids that might be more economical, thus potentially increasing costs? **Treasurer Ellsworth** explained this bill was not adding additional requirements, or saying you could not pull additional ideas and put it into legislation. What it did, was prevent additional requirements from being pulled out and put into a procurement process that were not in code.

TESTIMONY:

The following individuals emailed their opposition to ESG language in bills **H 189**, **H 190**, and **H 191**: Robert Baker, Kimberly Black, Ron Black, Melissa Blevins, Craig Campbell, James Carender, Lucas Cayler, Amanda Edinger, Darryl Ford, Sonja Graber, Nicole Hyland, Helen Jones, Cindy Lance, Love Idaho, Dorrie Phillips, and Richard Smith (Attachment 1).

Jonathan Oppenheimer, Idaho Conservation League, stated his belief the Russian question from Senator Wintrow only applied to investments, not procurement. He said there were unintended consequences in this bill. He explained ESG as a set of risk management considerations focused on climate related risks, social community impacts, and diversity of leadership. He continued that several firms measured and reported on an ESG matrix that investors used to manage investments. His group was concerned that a change in statute was unnecessary. He referenced the Uniform Prudent Investor Act (Act), which required entities to ensure resources were managed in the best interest of beneficiaries. He felt this bill was unneeded and raised a question about whether the state was required to contract with convicted felons, the Russian government, or Aryan Nations, which he identified as subjective considerations. He claimed the state could not put in every contract that a bidder could not be a convicted felon or tied to a foreign government. He was concerned that the fiscal note only addressed the potential impact to the general fund, but he believed it applied to all units of state government. His group felt this bill deserved greater scrutiny and he encouraged the Committee to consider what consequences there may be if it passed.

Senator Wintrow asked Mr. Oppenheimer to address the Act and the fiscal note. **Mr. Oppenheimer** responded, the Act in existing procurement laws required best value contracting. It required any contract by any entity to be managed in the best interest of Idaho's fiduciary beneficiaries. He opined a subjective, ethical consideration might involve convicted felons bidding for a contract over \$100,000. If the felons were the lowest bidder and it was not specified in the contract that a bidder could not be a convicted felon, these changes required the state to accept the bid from the felons. He stated the fiscal note was a critical issue. He believed Joint Rule 18 applied to the quality of fiscal notes. If there was no fiscal impact, it had to be described in the note. He said the fiscal note needed significant work. He referenced other states that experienced negative impacts as a result of the ESG question in contracts.

Senator Wintrow stated this bill required thought about what should be in the contract prior to the bidding process. It could not be considered if it was in the subjective, ethical standard. **Mr. Oppenheimer** quoted from the Act, page 6, lines 27-30, "ESG means procurement standards that screen or score bids in whole or in part on subjective, ethical or sustainability criteria, inclusive of all subjective, ethical criteria unrelated to the specifications in a solicitation or the qualifications of the bidder." He emphasized specifications and qualifications had to be outlined in contracts. He stressed the importance of it with multi-million dollars contracts. He asked, how qualifications and specifications required by statutory change. He continued that last year the legislature passed 1405 that said specifically, "...shall apply the Uniform Prudent Investor Act when selecting investments." How that applied to procurement, he suggested, was a question for lawyers.

Senator Wintrow clarified, based on what the legislature already passed, the Act must be used. Since that covered the state, she believed this bill was a prohibitive factor that potentially preempted qualifications of a bidder. She asked if Mr. Oppenheimer challenged the fiscal note because it could limit a bid opportunity. **Mr. Oppenheimer** replied, he did not have authority to challenge a fiscal note.

He said his understanding of Joint Rule 18 was that senators may consider fiscal impacts to all contracts in excess of \$100,000.

Braden Jensen, Farm Bureau Federation, spoke in support of **H 191** regarding the amendments of the relevant procurement statutes to restrict the state's use of ESG criteria in evaluating contract bids. Farm Bureau policy 134 stated the organization's opposition to unsolicited use of ESG scores and criteria to evaluate individuals, corporations, and institutions. He said **H 191** assured state public contract awards would be based on competitive pricing, contract requirements, and contractor qualifications. The bill prohibited the state's use of unrelated ethical, subjective, and bias sustainability criteria when determining whether contracts were qualified or a bid was awarded.

Senator Ruchti asked, if Farm Bureau members knew this bill could cost local governments millions of dollars and potentially increase costs to taxpayers, would that have been an important consideration? **Mr. Jensen** responded, the members were cognizant that the tax money the state received came from families engaged in areas of natural resources and production agriculture, some of which were ESG criteria that some businesses and organizations were working against. He said they understood there might be some consequences but it was within the legislature's bounds to establish criteria.

Senator Ruchti asked, was fiscal responsibility important to the Farm Bureau members? **Mr. Jensen** replied affirmatively, and added, they also recognized where funds came from and they felt the state could establish policy about how to evaluate things.

Senator Anthon closed by reminding the Committee that **H 191** addressed competitive pricing and best qualifications, which was not more costly. He asked the Committee to imagine an entity that put out a contract and received the most qualified contractor and then set that one aside to take one that was more environmentally friendly or more diverse. Imagine that the new contractor was from out of state and competing with local companies for the bid. He speculated it could cost the state more money in that case. He added that scenario already occurred in the state of Idaho. Thinking that applying ESG standards to the public bidding process would save taxpayer money was not reality. **Senator Anthon** stated, if a private party wanted to apply ESG standards to evaluate their investments and business, it was their free market right to decide how to evaluate a company and how to award their own money. In opposition to that thought, if **H 191** was not passed, determine the lowest bidder and reevaluate them. Search their records to see how many employees were minorities. Search their records for EPA violations. Then award that bidder the contract, even if it cost the public more. He doubted that type of bid process would save the taxpayer any money. He referred to the hypothesis, what if the Russian government came in and tried to take a State of Idaho contract? Pretend it happened. **Senator Anthon** informed there was nothing in Idaho law that prevented the government from rejecting all bids. You reject all bids, draft new criteria, and start over. He reminded it happened in Idaho every day. When you realize the published bid specifications were not enough, you rejected all bids and began again. Will it cost taxpayers more to make this a more free process without ESG standards? What contractors would that discourage? He presumed it would discourage contractors depending on an ESG standard to get the job. He submitted that would be more costly to taxpayers. He advised the state was not already covered. There was no protection in law against ESG standards in local bidding. That was why **H 191** was presented. **Senator Anthon** asked that the bill be sent to the floor with a **do pass** recommendation.

Senator Wintrow understood from the presentation that the cities were in support but she wondered if any cities or counties drafted letters in support for the bill. **Senator Anthon** claimed no personal knowledge about support letters from the cities. He shared he encountered a constituent who lost a bid in Idaho because an ESG standard was applied and an out of state company was awarded the contract at a greater cost to the State of Idaho and the taxpayers. He disclosed under Rule 39(H) that he worked for a local government. **Treasurer Ellsworth** testified that cities neither supported nor opposed the bill. She said the language was reviewed by cities to see if it was workable within their frameworks.

MOTION: **Senator Lee** moved to send **H 191** to the floor with a **do pass** recommendation. **Senator Bernt** seconded the motion.

DISCUSSION: **Senator Wintrow** stated her opposition to the motion. She did not think it beneficial to preempt actions in contracting, especially since Mr. Oppenheimer discussed the Act and informed the state was already required to use all that criteria. She speculated the state could hem itself into a bad situation and she felt all opportunities should be available. She supposed those examining bids and contracts were not only looking at the lowest price but also considering quality and best product. She shared her knowledge about the Non-emergency Transportation System taking the lowest bid without considering the IT complications or the developmentally disabled population and other things. The bid was awarded to the lowest bidder and problems ensued that resulted in hiring another contractor as a result. **Senator Wintrow** cautioned about hemming in the state and encouraged leaving some things open.

Senator Winder acknowledged there were issues and speculations this bill did not deal with. The idea the Act required some type of ESG consideration was incorrect. The Act dealt with how the public invested its money. Contracting was a separated statute and separate area of code. He reflected on the example by Senator Anthon of ESG standards costing the state more money in the long run. **Senator Winder** stated the company in question was not credited for its Hispanic workers under the diversity standard and did not have enough people of other races or colors. As a result, even though the company was the lowest bidder, the bid was pulled away from it.

VOICE VOTE: The motion carried by **voice vote**. **Senators Wintrow** and **Ruchti** requested to be recorded as voting no.

H 274 **COMMUNICATIONS SECURITY - Adds to existing law to prohibit state employees from using or downloading Tik Tok on a state-issued device, to provide that the state shall implement controls to prevent the use of Tik Tok on state-issued devices, and to provide a penalty.** **Representative Hill** shared that he retired after 37 years with the United States Navy. During the last 14 years, he worked primarily with the China threat. The premise he established was that the Chinese Communist Party (CCP) was at war with the United States (U.S.) right now. He said it was a warfare that was in the political and informational spheres. He said this bill would prohibit Tik Tok from being on any state-funded device. **Representative Hill** defined Tik Tok as an application owned and operated by the CCP. There were 113,000,000 users in the U.S., 60 percent of them were between the ages of 18 and 24, or the core of our youth. He stated Tik Tok was addictive, subversive, disruptive, a surveillance device through which the CCP collected data. He quoted information from Black Ops Cybersecurity experts, "Tik Tok. That's a weaponized, military application in the hands of every child. It's meant to psychologically weaken the children, weaken values, weaken their thought processes, take them out of critical thinking, and basically lower their morals and standards." According to **Representative Hill**, in China, Tik Tok was referred to as a platform used for excellence, a platform

to challenge people to do better in school, and to treat elders and family with values. A recent study checked the algorithms on Tik Tok. Initially, when someone activated the application and got a suicide image, youth saw it and the algorithm kept feeding those types of images to the user. **Representative Hill** cautioned the application was not only subversive, but evil. He said studies showed Tik Tok purposefully tried to influence children in a negative way. He noted moves across the world to ban Tik Tok and asked for push back on Tik Tok.

MOTION: **Senator Anthon** moved to send **H 274** to the floor with a **do pass** recommendation. **Senator Toews** seconded the motion. The motion carried by **voice vote**.

PRESENTATION: **Voter Registration Maintenance - (2022 - S 1351)**. **Phil McGrane, Secretary of State**, provided a handout of the listed maintenance by counties (Attachment 2). He explained that Idaho Code § 34-418, Subsection 2 required his office to provide an update to the legislature regarding the maintenance of the voter registration roles. The handout reflected the activity of the last year to make sure voter roles were up-to-date. County Clerks worked on the roles throughout the year to maintain voter integrity. **Secretary McGrane** recognized all the work that occurred behind the scenes to ensure connectivity with all the counties. He explained how information was shared about voters moving between states and the networking with the driver's systems. He said data was shared with the Idaho Department of Correction so when someone was convicted of a felony, their name was removed from the voter list. Likewise, Vital Statistics shared death records so names could appropriately be removed from the roles. He said protecting the rights of the voters was important for clean voter roles.

Senator Wintrow asked the process of a how a person who committed a felony got back on the roles. **Secretary McGrane** said, once rights were fully restored, meaning they completed their sentence, any probation, and paid all fines, the felon could reregister. **Senator Wintrow** asked why people were removed from the roles every four years. **Secretary McGrane** said the National Voter Registration Act (NVRA) regulated removals. Most states assessed their lists every eight years. Idaho had an exemption from the NVRA that allowed it to remove people more frequently because of its same day registration. List maintenance, the purge, was a catchall provision implemented after every general election.

Senator Toews wondered about the moved out of state/county list. He suggested splitting the moved out of state from the county moves. **Secretary McGrane** agreed but the system tracking had it combined. He advised there was ongoing work to this process. Better sharing of data was a nationwide concern for all Secretaries of State.

Senator Ruchti asked about the challenged column. **Secretary McGrane** responded, it meant someone outside of the clerk's office initiated a challenge. A challenge did not mean automatic removal from the list without due process. The clerk would notify the voter of a challenge and try to get clarification about such things as incomplete addresses. Not all challenges were acted on or removed. **Senator Ruchti** pointed to the challenges in Kootenai and Bannock Counties. He said 6.5 percent of the voters in Kootenai County were challenged. What tools exist to prevent challenges being used as a sword as opposed to a shield. **Secretary McGrane** recognized the hot spots regarding challenges. He said the rights of the voters were protected, but people also had a right to challenge. The ultimate goal was clean voter roles. He felt the national comparison between the 50 states needed more attention, citing common names and birth dates.

GUBERNATORIAL Committee consideration of the Gubernatorial Appointment of Jack Hetherington to the Treasurer's Investment Advisory Board to serve a term commencing March 8, 2023 and expiring July 1, 2026. Jack Hetherington shared he grew up in Emmett, Idaho and graduated from University of Idaho with a degree in Agricultural Economics. His employment history included the Federal Land Bank in Idaho and Washington. He had 33 years of banking experience and looked forward to the opportunities and challenges to serve on the Treasurer's Investment Advisory Board (Board).

Senator Winder shared the Board was established to bring in expertise from outside the Treasurer's office to help with investments and provide more experience and direction. He felt Mr. Hetherington's background made him well-suited to advise and assist the Treasurer's office.

Chairman Guthrie informed the Committee would vote on Mr. Hetherington's Gubernatorial Appointment at the meeting of March 15, 2023.

**MINUTES
APPROVAL:**

Senator Winder moved to approve the minutes of March 6, 2023. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business at this time, **Chairman Guthrie** adjourned the meeting at 9:09 A.M.

Senator Guthrie
Chair

Joyce Brewer
Secretary