

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Thursday, March 23, 2023

TIME: 8:00 A.M.

PLACE: Room WW55

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

ABSENT/ EXCUSED: Senator Ruchti

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: **Committee consideration of the Gubernatorial Reappointment of George Eskridge of Dover, ID to the Idaho Energy Resources Authority for a term commencing June 30, 2019 and to expire June 30, 2024.**

Mr. Eskridge said he was a co-sponsor of the 2005 bill that established the Idaho Energy Resources Authority. He said it was a great program that helped finance low-cost transmission projects for municipal and co-op utilities across the State, and he was passionate about the work.

GUBERNATORIAL REAPPOINTMENT: **Committee consideration of the Gubernatorial Reappointment of Bud Tracy of Malta, ID to the State Building Authority for a term commencing January 1, 2021 and to expire January 1, 2026.**

Bud Tracy said he managed electric co-ops for 45 years and was involved with the Building Commission since 1996.

PRESENTATION: **HONORING THE PAGE - Kelly Plewe.** **Ms. Plewe** shared that she was a very politically-active person, and the page program helped inspire her to get active in local and state government. She said she enjoyed the opportunity to learn more about how government worked, leadership skills, and the ability to meet legislators. She thought her next step was to attend school at Utah State University.

Senator Harris shared that he was a Utah State Alum, and that he was excited for her.

Senator Winder thanked Kelly for her work, and said it was great to have her working in the Senate.

H 125 **CANDIDATES - Amends existing law to revise the date by which a write-in candidate shall file a declaration of intent.** **Representative Mitchell** said he was inspired to run **H 125** after conversations with county clerks in his District told him about how difficult it was to distribute absentee ballots that included write-in candidates in a timely manner. He said this bill gave clerks an extra week to distribute absentee ballots so they could list all candidates.

DISCUSSION: **Senator Wintrow** asked if **H 125** affected the duration potential write-in candidates had to make a decision about running. **Representative Mitchell** confirmed those people would lose a week. **Senator Wintrow** expressed her concern about the reduced decision time frame for potential candidates and asked if clerks really needed that extra week. **Representative Mitchell** said it was the goal of clerks to get ballots out timely and accurately. **Senator Wintrow** asked if clerks supported **H 125** across the State. **Representative Mitchell** said every clerk he spoke with liked the idea.

MOTION: **Senator Anthon** moved to send **H 125** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion.

DISCUSSION: **Senator Wintrow** expressed concern about the legislation, and said she was unable to support the motion.

VOICE VOTE: The motion carried by **voice vote**. **Senator Wintrow** asked to be recorded as voting nay.

H 173 **PROPERTY - Amends existing law to provide that a foreign government or foreign state-controlled enterprise shall not purchase, acquire, or hold any interest in certain types of property in Idaho.** **Senator Trakel** said the potential for foreign governments to hold property in Idaho was a legitimate security issue. He said **H 173** removed the ability for foreign governments or associated entities to acquire private land in Idaho. He said foreign governments purchased private agriculture land in the United States at a rate of 2.2 million acres per year, and they owned 122,000 acres in Idaho. **Senator Trakel** said the bill received support from the Farm Bureau. He added that land currently owned by foreign governments would be grandfathered and only future purchase attempts were prohibited.

DISCUSSION: **Senator Wintrow** inquired about Canadian mining claims in the State, and asked if State Endowment Lands were protected. **Senator Trakel** said the mining claims were fine, and Endowment Lands were protected. **Senator Wintrow** asked if the consideration of protection for timberland was needed. **Representative Boyle** said she hoped there was a stopgap, but that was a consideration for the Land Board.

TESTIMONY: **Bob Naerebout**, Idaho Dairyman's Association, spoke in support of the bill. He cited direct impacts from a water rights case in Arizona that affected Idaho. He said many dairymen had to purchase feed outside the state and that was partially a result of foreign government land acquisition.

David Bergvall, Manulife Investment Management Timber and Agriculture, said his group managed 123,000 acres of timber land and 6,500 acres of agriculture land in Idaho. The group managed lands across 18 states important for healthy foreign investment. He said the important matter of food security meant healthy foreign investment was needed in the agricultural economy. **Mr. Bergvall** cautioned against the State's involvement in international trade matters.

Emily McClure, Lobbyist and Attorney with Riley Stegner and Associates, recommended the Committee explore amendments to **H 173**. The current language had potential to affect public pension funds that were often used as an investment tool between friendly countries, and was a valuable benefit to United States (U.S.) agriculture. She said she understood the desire to prevent Russian and Chinese involvement, but recommended the changes include a provision to allow investments from allies' pension funds. **Vice Chairman Bernt** asked where a qualified pension fund was defined. **Ms. McClure** said it was defined in U.S. Code § 26-897. **Vice Chairman Bernt** asked if there were any provisions in that part of code that barred foreign entities from the acquisition of

private land. **Ms. McClure** said the Federal Government maintained two lists that identified likely allies and likely threats that contained threat assessments. She emphasized that investment funds had a fiduciary obligation to members and investors to maximize returns, so the worry of the export of food or other agricultural products was not a good model for them to do so.

Senator Toews asked what the total amount of foreign investments was in Idaho. **Ms. McClure** said she did not know the dollar value, but she knew the total acreage.

Senator Anthon asked if there was anything that precluded China, for example, from identifying as or using pension funds to invest in Idaho lands. **Ms. McClure** said she did not have an answer for that. She said security safeguards like this bill were considered in Congress because of the potential implications to the North American Free Trade Agreement (NAFTA).

DISCUSSION:

Senator Trakel addressed concerns with a statement that, unless a foreign government owned and controlled 51 percent or more of the asset, then they were not affected. He said this was a solution to the long term protection of Idaho.

Senator Winder asked for clarity on the term controlled interest. **Representative Boyle** said the term was defined on line 26. **Senator Winder** noted there were critical mineral mines that were controlled by Canadian investors, and asked if they were precluded from potential expansion if the bill passed. **Senator Trakel** said that was determined by the definition of controlled interest, and if the investors were government actors.

Senator Anthon asked if, for example, the State could prevent the issuance of a loan from a foreign government to a dairy operation. **Mr. Naerebout** noted the difference between government and private entities, so foreign companies were able to assist in such a manner if they were not government owned.

Senator Lee noted a potential correction to the language to include controlled to define the interest from a foreign entity. She asked why there was opposition to the pension portion. **Mr. Naerebout** said there was no opposition to that element, but rather there was a concern about the addition of more complexity from the State side to an already challenging portion of U.S. Code. He said the Dairymen were amenable to discuss other solutions or to work on potential amendments.

Vice Chairman Bernt referred to the dairy example from Senator Anthon and asked how nationalized banks were affected by the proposal. **Mr. Naerebout** said the State should be concerned about the potential for a foreign government's bank to lend money to an operation in Idaho.

MOTION:

Senator Anthon moved to send **H 173** to the floor with a **do pass** recommendation. **Senator Wintrow** seconded the motion.

DISCUSSION:

Senator Anthon said his views on the issue had changed, and that it had been well-vetted. He said it was likely not a concern that Idaho agriculture operations would pursue loans from banks owned by foreign governments, but did have some concerns about the pension problem.

Senator Winder said he was in support of the bill, but noted there were some parts that needed to be fixed in the future.

VOICE VOTE:

The motion carried by **voice vote**.

H 174 **ADMINISTRATIVE PROCEDURE ACT - Adds to existing law to provide that agency policy statements and guidance documents shall not have the force and effect of law.** **Senator Toews** emphasized that **H 174** was a common sense bill that clarified State Code to ensure agency policies and guidance did not have the full force and effect of law.

DISCUSSION: **Senator Winder** said **H 174** was a good piece of legislation, and it ought to pass.

Senator Wintrow observed that agencies made their own internal policies, and she expressed concern over the potential for Memorandums of Understanding (MOU), loans, or other agreements to be sidetracked if **H 174** was passed. **Senator Toews** said that, as long as the agency carried out its responsibilities in accordance with State Code, it was not an issue.

TESTIMONY: **David Lehman**, Idaho Agricultural Aviation Association, said he believed it was a good idea for guidance to be moved into rule. He said he thought it would facilitate greater discussion and negotiation between agencies and regulated entities.

Senator Winder asked why the provision that policy was not able to supersede State Code was included in the bill's language. **Mr. Lehman** said he was not sure, because administrative rules were a mechanism for the application of State Code and was different from policy documents that signaled intent.

Senator Lee said she liked the bill, but had concerns that related to administrative rules and potential codification. **Representative Boyle** said the reason the language penalty under rules was added was because penalties came from rules, while oversight could be challenged.

Senator Winder said administrative rules were not statutory law and that language created confusion. He said if those few words were struck, the desired goal would be accomplished. **Representative Boyle** said she had no problem with that potential amendment.

MOTION: **Senator Lee** moved to send **H 174** to the 14th Order for possible amendment. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

H 340 **VOTER IDENTIFICATION - Amends existing law to revise provisions regarding voter identification and proof of residence.** **Representative Mitchell** said he was inspired to sponsor **H 340** because he noticed a flaw in the State's same-day voter registration process. He said he worked with the Secretary of State on this bill that established uniformity for registration requirements. **H 340** also made some changes to voter identification. Military Identification (ID) cards, passport, free, State-issued ID, and proof of residence like a utility bill were eligible, while student ID's no longer were.

Secretary of State Phil McGrane said he worked closely with Representative Mitchell on **H 340**. He said it was important for poll workers and the registration process. **Secretary McGrane** said it was good policy to align the requirements for registration and voting. He said this bill clarified standards and would make voting less confusing in the future.

DISCUSSION: **Senator Wintrow** asked why there were so many election bills and if the sponsors thought we were close to fixing the problems in Idaho's elections. **Secretary McGrane** said Title 34 needed work since the 1970's and many laws were outdated, so there would continue to be changes. **Senator Wintrow** urged Secretary McGrane to take a bipartisan approach to the work on those solutions. **Secretary McGrane** confirmed he would do so.

MOTION: **Senator Lee** moved to send **H 340** to the floor with a **do pass** recommendation. **Vice Chairman Bernt** seconded the motion. The motion carried by **voice vote**.

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

RS 30639 **Stating findings of the legislature and rejecting a certain rule of the State Board of Education relating to registration of postsecondary educational institutions and proprietary schools** **Senator Guthrie** said **RS 30639** was the rules rejection for a specific rule related to the State Board of Education (SBE), and asked for a motion to send the RS to print and then to the 10th Order.

MOTION: **Senator Harris** moved to send **RS 30639** to print and the 10th Order. **Senator Anthon** seconded the motion.

DISCUSSION: **Senator Wintrow** asked what specific rule or rules were to be rejected. **Senator Guthrie** said it had to do with the registration of post-secondary proprietary schools. **Senator Wintrow** asked for further clarification. **Senator Guthrie** said he did not know all the details because he was a stand-in for Senator Lent, but he trusted the Education Committee properly vetted the proposal.

Senator Toews said he served on the Education Committee and the bill had to do with conflicting rules that related to Western Governors University (WGU) and insisted they would not be negatively affected by the rejection.

VOICE VOTE: The motion carried by **voice vote**.

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

S 1187 **MINORS - Amends and adds to existing law to revise an affirmative defense regarding disseminating material harmful to minors and to provide for the establishment of provisions regarding policies to protect minors from harmful materials.** **Senator Winder** said **S 1187** amended State Code to provide for affirmative defense in the event age was misrepresented in an attempt to acquire videos or motion pictures with explicit subject matter and a parent or guardian was not present. He said the bill allowed for families and community members to form advisory boards to school and library boards that had two-year terms. It also required governing boards to adopt, by August 1, 2023, policies that required the training of staff and volunteers to comply with this law. **Senator Winder** said the bill did nothing that affected a city or county's ability to restrict or regulate business, planning, and zoning.

DISCUSSION: **Senator Wintrow** raised a concern over the requirement that one member of the advisory boards had to be from the religious community, and that it was potentially a violation of the establishment clause in the First Amendment. **Senator Winder** said that, since no specific religious community was enumerated, it was likely fine. **Senator Wintrow** suggested the membership be changed to include youth representation and asked how the sponsors decided the makeup of the proposed advisory boards. **Senator Winder** said they wanted to establish manageable groups that had the ability to meet on a somewhat regular basis. He said youth tended to have very unpredictable schedules that would likely not work with the others.

TESTIMONY: **Lynn Laird** spoke in support of **S 1187**. She said individuals and businesses took responsibility to protect children, and suggested government institutions do the same. She said it was important for taxpayer-funded entities to ensure children were safe and to maintain their innocence by the removal of only harmful material from shelves.

Senators Lee and **Winder** acknowledged Ms. Laird's involvement in the bill's creation. **Senator Lee** then asked about any potential impact on colleges and universities. **Ms. Laird** said those institutions primarily served adult-age populations, and she did not think that was a problem.

Lance McGrath, Idaho Library Association, **Bruce Delaney**, Rediscovered Books, **Erin Kennedy**, and **Bonnie Shuster** spoke in opposition to **S 1187**. There were concerns raised about the Constitutionality of mandatory religious community involvement in the governing of public assets. They also said that libraries did not provide harmful materials to minors, and there were mechanisms in place to remove material that was deemed objectionable, so there was concern certain groups could band together to remove material that met legal standards only because they disagreed with the subject matter. The need for advisory committees was questioned because governing policies, trustees, and boards made sure libraries were operated properly. The final concern was over the potential for librarians to be subject to criminal charges.

DISCUSSION: **Senator Winder** suggested the Committee close the hearing and continue discussions tomorrow.

MOTION: **Senator Harris** moved to hold **S 1187** in Committee until March 24, 2023. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

S 1188 **MINORS - Amends existing law to provide that certain institutions may be enjoined for selling, distributing, or promoting material harmful to minors and to provide for the abrogation of existing ordinances, rules, and regulations.** Due to a lack of time, **S 1188** was held in Committee for later consideration.

ADJOURNED: There being no further business at this time, **Chairman Guthrie** adjourned the meeting at 9:59 a.m.

Senator Guthrie
Chair

Joyce Brewer
Secretary

Kieran Sprague
Assistant Secretary