

MINUTES
HOUSE LOCAL GOVERNMENT COMMITTEE

DATE: Tuesday, February 16, 2016

TIME: 1:30 P.M.

PLACE: Room EW05

MEMBERS: Chairman Luker, Vice Chairman Sims, Representatives Barbieri, Perry, Clow, Horman, Malek, Collins, Cheatham, Loertscher, Redman, Kloc, McCrostie, Nye

**ABSENT/
EXCUSED:** None

GUESTS: John Evans, Seth Grigg, Association of Idaho Cities; Roger Seiber, Steve Price, Ada County Highway Districts; Meghan Conrad, RAI; Russell Westerberg, Capital City Development Corporation

Chairman Luker called the meeting to order at 1:31 P.M.

MOTION: **Rep. Collins** made a motion to approve the minutes of the February 10, 2016 meeting. **Motion carried by voice vote.**

MOTION: **Rep. Horman** made a motion to approve the minutes of the February 12, 2016 meeting. **Motion carried by voice vote.**

H 404: **Jim Clark**, Frontier Communications, presented **H 404**. This legislation will create a policy of relocation of assets for the Telecommunication industry. Six years ago legislation was passed with the goal of reducing relocation costs. Frontier Communications has not seen savings or reductions in relocation costs as a result of this past legislation. Last session **S 1017** was brought forward to reimburse telecommunication companies for mandated relocation cost by the state, local highways, and URD's. An opinion of The Attorney General that stated that the state and local highway districts cannot pay relocation cost due to the state highways dedicated fund because it would be in violation of the code. It also stated that there are no constitutional issues with URD's mandated to pay relocation costs. The legislature is the responsible body to set the policy. Lastly the opinion states the Urban Renewal provisions are likely constitutionally defensible. This new piece of legislation only includes URD's, the legislation last year included URD's, highway districts and the Idaho Transportation Department. Road improvement projects continue to increase at the very time telecommunication carriers are making large investments in availability and speed of broadband infrastructure. These road projects are very costly and divert limited capital dollars away from network infrastructure improvements that benefits customers. With that being said, this legislation would amend a section of the Urban Renewal Law of 1965, 50-2007, Power Section. This is the same section of code that was recommended by the Attorney General's opinion. The language comes from the state of Utah's relocation of assets section of code. The language in the bill states that telecommunication providers will pay 100% of the cost of the relocation. **H 404** only provides service for phone and cable companies. **H 404** amends a section of the code that will catch the policy up with the telecommunication market place. Adding this language into code provides clear policy direction for URD relocation requests.

In response to committee question, **Mr. Clark** stated he is aware there is a Urban Renewal Interim Committee and he is bringing this legislation now instead of waiting for them to complete their work because this legislation will not be one of the sections that he believes will be revamped. **S 1017** was only asking for 75% reimbursement and this legislation is asking for 100% reimbursement. Urban Renewal agencies own the land and easements.

In response to committee questions **Renee Willer**, Frontier Communications, explained that Urban Renewal Agencies have the final say in how projects proceed. The right of ways may be owned by a city or highway district and the law requires the Urban Renewal Agency to consult with the city or highway district about designs or locations, but it is money from the Urban Renewal district that pays for projects. Franchise agreements are not intended to cover the cost of relocation. This legislation for the most part is concerning right-aways.

John Evans, Garden City Mayor and Legislative Chairman of the Association of Idaho Cities, is requesting **H 404** to be held in committee. Idaho Code 40-2010 already requires local governments to consult and coordinate with utilities if they are going to impact the infrastructure that is in the right-away. This practice is intended to minimize the cost. Urban Renewal agencies cannot operate in a right of way under their own authority. Currently URA's are able to negotiate with service providers for voluntary reimbursements as funds allow. **H 404** would single out urban renewal agencies requiring them to pay for utility relocation with public funds that no other public agency is required to do.

In response to committee questions, **Mr. Evans** explained telecommunication companies do not pay franchises if cable is combined because then there is a franchise component. Garden City does not have a franchise agreement with a telecommunication company that discusses relocation of facilities and expenses. He also explained that projects are contained in approved URA plans and the right of ways are usually owned by the city if it is outside city limits it is probably owned by a highway districts. The first step would be to have an approved project, then design the plan including the owner of the right of way.

Meghan Conrad, attorney with Elam and Burke, asked the committee to hold **H 404** in committee. Their concerns include the constitutionality of **H 404** and that the language is unclear. Several Idaho Supreme court cases have addressed these concerns and have reaffirmed the common law rule that utilities are permissive uses of right of way and are responsible for the cost of relocations. The language creates a requirement to pay relocation costs but is not limited by any ability to pay urban renewal agencies that have no authorizations to levy funds to pay relocation costs and there are new districts that have zero revenue stream. Should these expenses occur it may impact existing obligations. This legislation includes language that shows an intent to apply relocation costs retroactively. These costs were not contemplated in the current existing projects so it is unreasonable to force those payments at this time. Definition of cost or relocation is very broad and would allow or appear to allow a telecommunications providers to also include cost of upgrades to relocation cost. At a minimum language should be added to provide that any increase in value in a new facility should be deducted from the cost of relocations. It is not good policy to single out urban renewal agencies for relocation cost with public money when no other public entity is required to pay, when in the end the fund used to relocate facilities will not be owned by the public.

In response to committee questions, **Mrs. Conrad** explained that when talking about telecommunication providers and there is no franchise agreements, URD's would be stuck with the bill but no other public entity would get stuck with these costs. There is no specific retro-active date but it would apply to existing projects which did not contemplate these relocation costs.

Seth Grigg, Executive Director, Association of Idaho Cities, encouraged the committee to hold this bill in committee. Within the state of Idaho, Urban Renewal Agencies are not the primary owners. Idaho cities, highway districts, counties, and irrigation districts are the primary owners and care takers of right of ways. Urban Renewal agencies should operate within right of ways. Courts have held and referenced an Attorney General's opinion that the bill is unconstitutional to have a city, or county highway district, or ITD pay relocation cost of a telecommunication infrastructure associated with a project. They feel this singles out a governmental entity to get around the fact that cities, county highway districts, and ITD are prohibited from repaying relocation cost to a telecommunication company. Telecommunication companies operate in existing public owned right of ways with privileges other utilities don't have. Urban Renewal Agencies do not levy property tax they rely solely on tax increment revenue to pay for projects. They may have outstanding debt that needs paid and have sufficient funds to pay those debts but if priority goes to relocation fees there could be insufficient funds to pay resulting in that agency going into default.

In response to committee questions, **Mr. Grigg** explained he is not aware of any circumstance where a URA has paid for relocation cost in process of negotiation, however the law is clear that if the Urban Renewal Agency wants to pay those relocation costs and has been approved they can do that. Idaho law allows for cities and counties to enact by ordinance franchise fee agreements for the right to use the right of ways and those funds can be used by the governmental entity for general purposes. Most of the time the franchise fees get put back into transportation costs. They may be applied to other utilities if it is a city project. When the Urban Renewal Agency submits plans for a project they can they include in their plans the cost of relocation.

Steve Price, General Council for Ada County Highway District, testified in **opposition of H 404**. The district has 4,763 lane miles of public right of ways and is the oldest urbanized area in the state of Idaho. This legislation is an attempt to ignore a time honored rule in the state that the utilities use the public right of ways as a permissive use and only at the convenience of the public. This legislation contradicts several other applicable laws regarding utilities and relocation. It is an attempt to shift the expense from a private telecommunication company to tax payers.

In response to committee questions, **Mr. Price** stated franchise fees are entirely for use of public right of ways. The Ada County Highways do not receive any of those franchise fees and while it is perceived they are for the use of public right of ways they are really used as a way to pay and compensate the municipality for not competing against that company. This relates to competition and the sole right to provide that service for economic gain. Permissive rights are a time honored rule. Idaho Code 62-701 states telephone corporations can instruct or install lines along the surfaces of a road or highway, beneath surface, or across water in such manner as not to invoke public use of the road or interrupt navigation of waters. Streets and highways belong to the public.

Mr. Clark, stated there has never been an attempt to go around anybody and this legislation just trying to come up with a solution to solve the problem of increasing costs of relocation.

MOTION:

Rep. Barbieri made a motion to send **H 404** to the floor with a **DO PASS** recommendation.

ROLL CALL VOTE: Chairman Luker called for a vote on the motion to send **H 404** to the floor with a **DO PASS** recommendation. Roll Call vote was requested. **Motion failed by a vote of 3 AYE, 11 NAY. Voting in favor** of the motion: **Vice Chairman Sims, Reps, Barbieri, and Cheatham. Voting in opposition** to the motion: **Chairman Luker, Reps. Perry, Clow, Horman, Malek, Collins, Loertscher, Redman, Kloc, McCrostie, and Nye. .**

MOTION: **Rep. Klock** made a motion to **HOLD H 404** in committee time certain at the discretion of the chair. **Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:47 P.M.

Representative Luker
Chair

Chelsea Cantrell
Secretary