

MINUTES

HOUSE ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE

- DATE:** Wednesday, February 28, 2018
- TIME:** 1:30 P.M.
- PLACE:** Room EW41
- MEMBERS:** Chairman Raybould, Vice Chairman Thompson, Representatives Hartgen, Vander Woude, Anderson, Anderst, Mendive, Chaney (Chaney), Nate, Cheatham, Horman, Malek (Widmyer), Moon, Scott, Ehardt, Smith, Rubel, Gannon(5)
- ABSENT/
EXCUSED:** Representative(s) Horman
- GUESTS:** Darin Taylor, City of Middleton; James Askew, City of Middleton; Barry Burnell, Department of Environmental Quality (DEQ); Jess Byrne, DEQ; Zach Trillhaase, City of Parma; Nathan Leigh, City of Parma; Brett Laird, City of Parma; Jeff Cook, Idaho Rural Water Association (IRWA); Jeremy Hudson, Hudson Backflow; Dave Miles, City of Meridian; Alex Puckson, City of Meridian; Greg Wyatt, Suez; Shelley Roberts, IRWA; Robert Bolling, City of Twin Falls; Cyndi Grafe, Environmental Protection Agency (EPA) - DW Program; Dennis Teller, City of Meridian; Angie Wilch, City of Meridian; Bruce Evans, IRWA/City of Emmett; Ken Acuff, City of Eagle; Jay Shaw, Department of Administration, Administrative Rules; Dennis Stevenson, Rules Coordinator, Department of Administration; Jonathan Oppenheimer, Idaho Conservation League; Lynn Tominaga, IRWA; Russell Westerberg, RMP; Jonathan Parker, City of Caldwell
- Chairman Raybould** called the meeting to order at 1:30 p.m.
- MOTION:** **Rep. Smith** made a motion to approve the minutes of February 14, 2018, February 20, 2018, and February 22, 2018. **Motion carried by voice vote.**
- HCR 35:** **Rep. Clow** presented **HCR 35** saying the changes this legislation makes to IDAPA 58.01.08 do not change any rules or ordinances of any Idaho city or county. To change an existing administrative rule through the legislative process, the whole rule must be changed and not just a part of the rule. Rep. Clow stated his purpose is to make changes only to the parts of the DEQ rule that require annual backflow device testing, and he is not concerned with cross relations with irrigation systems. Rep. Clow opined that initial backflow device installation testing ensures drinking water quality and safety and annual inspections are unnecessary. He also indicated that Idaho cities should have the management and control of their own drinking water quality and safety, and state mandates on water quality are overreaching. He advised that cities could remedy failed backflow device issues with boil alerts.
- Darin Taylor**, Mayor of Middleton, representing the City of Middleton; **Barry Burnell**, Water Quality Administrator, DEQ; **James Askew**, Lead Water Operator, City of Middleton; **Greg Wyatt**, General Manager, Suez Water Company; **Robert Bolling**, Water Superintendent, City of Twin Falls; **Bruce Evans**, President, IRWA and Superintendent of Public Works, Emmett, ID; and **Jonathan Oppenheimer**, Idaho Conservation League, spoke **in opposition** to **HCR 35** saying that one of the most important things cities do is provide clean safe drinking water, and the risk of injury and damage far out weighs testing inconveniences. It is no burden to test sprinkler backflow devices annually, and **Mayor Taylor** claimed the City of Middleton has had no complaints regarding annual backflow inspections. Backflow devices are warranted for one year because of the significant risk to public health not because they are poorly made. There are a significant number of instances of backflow failures across the country every day, and people have died or been

hospitalized because without safe drinking water, life is not sustainable. Mr. Bolling advised that the City of Twin Falls did have backflow issues, and they have worked hard to get the annual backflow testing system in place for Twin Falls, Kimberly and Jerome. Concern was expressed that the process be regulated by both the DEQ and cities, and if any changes are needed, DEQ has a rule making process in place to properly address changes.

Barry Burnell, informed the committee DEQ has the primary role ensuring drinking water in Idaho from public water systems is safe. Public water safety is based upon multiple barriers and annual backflow inspections is one barrier that is an industry standard in plumbing codes. Since 1990 the annual testing control rules have been in front of the Legislature and supported three times. If **HCR 35** passes and cities or counties don't pass their own ordinances, DEQ would not have the authority to do what it can now for water quality safety.

In response to committee questions, **Mr. Burnell** replied the EPA Cross Connection Control Manual recommends testing backflow devices twice a year, and although an annual test is common, how often its done depends upon the degree of risk tolerated. He said freeze thaw and cracks from improper blow out are common causes of device failure. He further responded that when a city becomes aware of a problem to the public water system in a failure to test, the remedy in the rules is for the city to disconnect service, and DEQ would request cities to do this.

Rep. Clow explained **HCR 35** does not circumvent correct rule change procedures because legislation is part of the process.

MOTION: **Rep. Cheatham** made a motion to **HOLD HCR 35** in committee.

Mr. Brunell, was called upon to answer a question from the committee regarding whether DEQ would guarantee that the sections of this rule at issue would be addressed in DEQ rule making procedures. He explained that DEQ could assure the committee they would review the legislative changes in **HCR 35**, and consider holding negotiated rule making, but if **Rep. Clow** is looking for a particular outcome, that could not be guaranteed.

In support of the original motion, **Reps. Rubel, Thompson, and Anderst** opined the legislation was an inappropriate way to change an agency rule, concerned an area where the state has a compelling interest because some cities in Idaho cannot have safe drinking water while other cities do not, and the many concerned citizens and organizations testifying have asked for **HCR 35** to be held.

SUBSTITUTE MOTION: **Rep. Hartgen** made a substitute motion to approve the rule rejection in **HCR 35** with an added notation to DEQ to take the initiative to work with the appropriate parties to bring the rule into negotiated rule making before the next legislative session.

Chairman Raybould advised the substitute motion made was improper.

MOTION WITHDRAWN: **Rep. Hartgen** withdrew his substitute motion to approve **HCR 35** with the addition of a notation from the committee to DEQ.

SUBSTITUTE MOTION: **Rep. Nate** made a substitute motion to send **HCR 35** to the floor with a **DO PASS** recommendation.

In support of the substitute motion, **Rep. Nate** said cities should protect their communities with ordinances, and there should not be a state-wide standard.

ROLL CALL VOTE ON SUBSTITUTE MOTION: Roll call vote was requested by **Rep. Thompson** on the substitute motion. **Motion failed by a vote of 6 AYE, 10 NAY, 2 Absent/Excused. Voting in favor** of the motion: **Reps. Hartgen, Vander Woude, Nate, Moon, Scott, and Ehardt. Voting in opposition** to the motion: **Reps. Thompson, Anderst, Mendive, Chaney, Cheatham, Widmyer, Smith, Rubel, Gannon (5), and Chairman Raybould. Reps. Anderson and Horman were absent/excused.**

**ROLL CALL
VOTE ON
ORIGINAL
MOTION:**

Roll call vote was requested by **Rep. Hartgen** on the original motion. **Motion carried by a vote of 10 AYE, 6 NAY, 2 Absent/Excused. Voting in favor of the motion: Reps. Thompson, Anderst, Mendive, Chaney, Cheatham, Widmyer, Smith, Rubel, Gannon (5), and Chairman Raybould. Voting in opposition to the motion: Reps. Hartgen, Vander Woude, Nate, Moon, Scott, and Ehardt. Reps. Anderson and Horman were absent/excused.**

ADJOURN:

There being no further business to come before the committee, the meeting adjourned at 3:28 p.m.

Representative Raybould
Chair

Lorrie Byerly
Secretary