is to expire in September, but he believes the program will be funded and that it will continue. **Senator Davis** said wouldn't it be wise to wait until Congress re-authorizes the E-Verify program. **Senator Jorgenson** replied that he does not have a lot of faith in the Federal government to do something, and that is why the states are doing this. So many of our neighboring states are currently passing this type of legislation. The Federal government uses E-Verify for employment purposes, so he believes it will be funded.

MOTION: **Vice Chairman Pearce** moved to print **RS18732C1. Senator Davis** seconded the motion and said he has some questions especially regarding the re-authorization of the Federal Act, and **Senator Jorgenson** is not certain either.

Senator Kelly commented that she has some real concerns with regard to due process, and she is not clear about what licenses are exempt.

The motion carried by **voice vote.**

H65a **Senator Winder** presented **H65a** to the Committee and stated that the Federal Gun Control Act of 1968 allowed citizens to purchase a rifle or shotgun in states contiguous to their own. Idaho's current code conforms to this Act. In 1986 the Federal Firearms Owners Protection Act was enacted by Congress. The Federal Act allowed for the purchase of a rifle or shotgun from a licensed dealer in another state, but not those contiguous. Idaho law has yet to conform to this Act. **H65a** will allow Idaho to conform and permit the lawful purchase of rifles and shotguns in Idaho by citizens from other states. It will clarify that citizens of Idaho can purchase rifles or shotguns from other states in the United States that conforms to the Federal regulation. Clearance will be required by passing the Federal background check. All licensed dealers will be allowed to sell shotguns to residents of other states not just the ones contiguous to Idaho. This bill will not affect the current sale or regulation of hand guns, or to any rifle or shotgun less than twenty six inches of barrel length. **Senator Winder** said there is no fiscal impact to the general fund and there may be an increase to the State sales tax with the increased sales.

MOTION: **Senator Darrington** made the motion to send **H65a** to the floor with a **do pass** recommendation. **Senator Geddes** seconded the motion. The motion carried by **voice vote.**

S1142 **Bill von Tagen**, the Deputy Attorney General, for the Attorney General's Office addressed the Committee regarding **S1142**. **Mr. von Tagen** said that **S1142** proposes amendments to the State's Open Meeting Law, Chapter 23, Title 67 of Idaho Code. This bill updates language but more importantly, it proposes a different approach to enforcement. The entities that are governed by the Open Meeting Law are public agencies, which is an entity created by or pursuant to statute or an ordinance. Meetings are defined as the convening of a governing body of a public agency to make a decision or to deliberate toward a decision on any matter. The definition of "decision" is fairly easy, but the word "deliberate" is sometimes harder to grasp. Deliberation is defined as the receipt or exchange of information relating to a decision. The Open Meeting Law says that all decisions and

all deliberations of governing bodies of public agencies, are to be made at public open meetings. The meetings have to be properly noticed and properly memorialized.

Mr. von Tagen stated that the current Open Meeting Law was adopted in 1974, and that law contains the framework of what the law is today. In 1974 there were no penalties and no real remedies for a violation of the Open Meeting Law. The Legislature inserted remedies and penalties in 1977 and in 1992 additional amendments were added to the present structure of the Open Meeting Law. There is a provision for civil fines of $150 for a first violation, and up to $300 for a second violation. Decisions made in violation of the Open Meeting Law are null and void or if a deliberation was in violation according to law. There continues to be a great deal of argument over the Open Meeting Law, with regard to the language and the scope of enforcement. The confusion and disagreement is amongst the members of the governing boards, the attorneys of the boards including prosecutors, and members of the Attorney General's Office. **Mr. von Tagen** said there has never been an appellate court decision where the appellate court has upheld the enforcement provisions of the Open Meeting Law.

It has been thirty-five years since the original act was passed, thirty-two years since the first penalty provisions, and seventeen years since the 1992 amendments. The problems within the act are particularly in the area of enforcement and there is a good deal of confusion over the language. Idaho is a big state made up of different boards and many of the local government and boards do not have attorneys. The source of confusion comes from the language of the act which is ambiguous, and at times, archaic and confusing. There are different interpretations regarding amending the agenda "up to and including the hour of the meeting." The Attorney General's Office interpretation allows the agenda to be amended after the meeting has commenced. Others disagree and say an amendment cannot be made after the meeting has started. **Mr. von Tagen** said other areas of confusion are over the minutes of an executive session, and the use of the term "knowingly" in the penalty provision. Other problems are in the statute of limitations for enforcement actions. The penalty provisions were originally provided for in the 1977 amendments to the law. The Legislature said that these acts taken at an illegal meeting could be set aside. Two things have to occur to do that: 1) there must be an illegal meeting; and 2) there must be a decision reached at the illegal meeting. The problem is that decisions are not reached at meetings but most likely at a subsequent meeting, and sometimes decisions are reached months later. The Court held that there is nothing to set aside unless a decision is made at illegal meetings.

In 1992 the Legislature amended the statute of limitations to provide that matters could be set aside if a legal case is brought within thirty days of an illegal meeting, which results in a decision. This solved some of the problem, but it still remains in cases where the decision and illegal act did not occur within thirty days of one another. If the legal action is not brought within thirty days of the illegal meeting, then the courts have held that the challenge is not timely. If a decision is not reached at the illegal

meeting, and the decision is made more than thirty days following the illegal meeting, the action has no standing. **Mr. von Tagen** stated that **S1142** seeks to address these problems and the lack of enforcement at the appellate level, by changing the approach to enforcement. With the new approach, the governing body will be notified of the illegal meeting so that the defect can be repaired in most cases. An instruction book will be provided to all bodies with the intent to avoid enforcement actions in most cases.

Idaho Code Section 67-2343 addresses the issue of noticing meetings and the agenda. This reflects the interpretation of the present Open Meeting Law by the Attorney General and the majority of prosecutors. Agendas can be amended even after the start of the meeting if they are made in good faith. The proposed changes to Idaho Code Section 67-2344 contains the requirement for written minutes. These changes pertain to executive sessions not minutes "of" the executive session. On page 2, line 29 of the bill requires a reference to "specific statutory" authorization for the executive session. The requirement that the governing body is to identify the purpose and the topic is on line 31. The code section that deals with executive sessions is found in Idaho Code 67-2345. On lines 40 through 43 the definition of "executive session" is made clear by stating that an executive session is a meeting from which the public is excluded. **Mr. von Tagen** stated that the issues of employment are addressed on page 3, lines 3 through 6. This applies to executive sessions that are identifying and discussing specific employees, not discussing the need for staffing requirements.

The penalties have considerable changes to Idaho Code Section 63-2347. This bill aims for compliance and openness, not punishment. The present approach has not been effective in enforcing the law. The monetary penalties are on page 4 of the bill. The old statute had one type of monetary penalty, and in those cases the penalty could not be imposed unless specific intent was proven for entering into an illegal meeting. On lines 1 through 5, the fine has been lowered to $50, and the second type of monetary penalty is on lines 6 and 7 for a fine up to $500. This penalty is for the "knowingly" committed violation, which is an intentional violation. The third type of monetary penalty is on lines 8 through 10. If the Open Meeting Law is violated twice within a twelve month period, the fine can be up to $500. The first and third violation can be cured. The statute of limitations provisions are on lines 27 through 28. In the area of planning and zoning, deliberations may take place over a period of months. This simple change says that the action must be brought within thirty days of the decisions, not within the thirty days of the deliberation. Until a decision is made, attempting to challenge an illegal meeting is not going to stand.

Mr. von Tagen said that the "cure" provisions are important and reflect the change in this law. They are found on page 4, lines 31 through 45 and into page 5. To cure a violation, an agency must recognize the violation and they have fourteen days in which to fix it. If the agency is notified by a citizen, a prosecuting attorney or by the Attorney General that is has violated the law, it has fourteen days to recognize the violation

and another fourteen days to cure it. The agency cures it by declaring the decision is void. The results of the cure are on page 5 and the agency can cure the first violation with no penalty. If it is "knowingly" it can be cured, but it is at the discretion of the prosecutor or the Attorney General as whether or not to fine the agency $500. A repeated violation can be cured if the agency recognizes the violation. **Mr. von Tagen** stated the Open Meeting Law is working in the vast majority of cases not because of statute. It is due to the commitment of local government, cities, counties and the State government and boards along with the prosecutors, city attorneys and the Attorney General's Office to ensure that the law works. **S1142** will provide a statutory framework that is equal to the commitment of the Open Meeting Law.

Senator Davis asked **Mr. von Tagen** after the cure will the enforcement relate to the prior decision, or does it apply to the date it is recognized? **Mr. von Tagen** responded that it applies to the date they acted properly. To cure it the agency states it is void and they are going back and starting over again. **Senator Davis** said why not just stay the action and that it is void until the cure, does that make sense? **Mr. von Tagen** responded that event is unlikely because they have fourteen days to recognize it and to cure. If they don't recognize it in the first fourteen days the action can proceed. In order to cure it in the second fourteen days and the agency decides not to cure it, the action can proceed. **Senator Davis** said if they fail to recognize it then why would they stay the enforcement. **Mr. von Tagen** replied the action could go forward in the first fourteen day period if the agency said there wasn't a violation and they do not intend to do anything about it.

Vice Chairman Pearce asked **Mr. von Tagen** if he views this as being unfriendly to the individuals who are willing to serve on the boards in our communities? **Mr. von Tagen** replied "no" because we are moving away from an illegal act and a penalty to an illegal act that can be fixed. This is a large and diverse state where agencies and boards may meet on a daily or weekly basis, who have counsel there all the time. Other entities do not have that ability who are small and made up of volunteers. This is not meant to discourage them, but if they violate the law potentially there is a penalty, and it can be cured by recognizing it. The State does not want to discourage the citizen government because the State relies upon them. People from all walks of life may not be sophisticated in the way of Idaho Code, but they bring their experience to bear on public problems.

Senator Geddes commented that he had several opportunities to meet with **Mr. von Tagen** to discuss this proposed legislation. He has done a fine job of addressing the balance. A lot of our elected officials have little if any procedural experience of managing government and the open meeting process. The importance and the necessity of conducting open meetings has not been deviated from. **Mr. von Tagen** has also balanced the issue of a mistake with a solution, and a way to correct it without an excessive fine. In light of the fact that most of our representatives are lay people, this goes a long way to make the entire process balanced and well defined. The cure process is a great opportunity for improvement and learning.

TESTIMONY: **Betsy Russell**, President of the Idaho Press Club and President and co-founder of Idahoans for Openness in Government (IDOG) testified in support of **S1142**.

Senator Davis asked **Ms. Russell** if she is a registered lobbyist? **Ms. Russell** answered that she is not.

Ms. Russell stated that most of the Committee probably know her as a newspaper reporter for The Spokesman-Review. Last year she filed an open meeting complaint against the State Board of Education. After a thorough investigation by the Attorney General's Office, they concluded that the Board may have violated the law, but they couldn't prove that it was done so "knowingly." In the Idaho Supreme Court decision of *State of Idaho vs. Yzaguirre* the meaning of "knowingly" had never been used before in interpreting Idaho's Open Meeting Law. Essentially, this blew a giant hole in the law preventing its enforcement. If a public official knew nothing about the Open Meeting Law, then he or she couldn't "knowingly" violate it. Under this interpretation, boards could argue that they didn't think they were violating the law, so therefore they were not violating the law.

Ms. Russell said after that case, the Attorney General contacted various entities to work on improvements to the Open Meeting Law. The goal was to: 1) fix the "knowingly" problem with a workable, enforceable law ; 2) to clarify exemptions that are being construed over-broadly; and 3) to make the Open Meeting Law simple and clear for any public official or member of the public to understand what is required, what is forbidden, and what the sanctions are. The result is what is before the Committee today. **Ms. Russell** stated that although she can't say she loves every piece of the bill, it does have balance. It is a good package of reforms that takes important steps toward improving the Open Meeting Law. The changes will be workable and enforceable and it will provide incentives for compliance rather than the incentive for ignorance. IDOG supports **S1142.**

Ben Ysursa, the Secretary of State, testified in support of **S1142**. **Secretary Ysursa** stated that he does not believe this will discourage citizens from participating in government. The cure provision is for compliance not punishment. The public's business needs to be conducted in public. **Secretary Ysursa** said he supports this as a board member of IDOG and as the Secretary of State.

Senator Davis asked **Secretary Ysursa** if anyone can file a written complaint? **Secretary Ysursa** responded he believes that is correct.

Justin Ruen who represents the Association of Idaho Cities testified in support of **S1142. Mr. Ruen** stated that this bill makes important improvements to strengthen the Open Meeting Law.

Dan Chadwick, Executive Director for the Idaho Association of Counties, addressed the committee regarding **S1142. Mr. Chadwick** stated that the Counties have no objections to this legislation. The counties have two

immediate interests in this legislation as counties. Number one, the boards of county commissioners and all the voluntary agencies or boards at the local level are affected by this bill. The prosecuting attorneys are responsible for the enforcement of the Open Meeting Law for all local jurisdictions. **Mr. Chadwick** said **Mr. von Tagen** did a nice job of upholding the standard and getting everyone together to reach an agreement. The law has been fine tuned and down the road it may need more work. The bill is useable for all the volunteer leaders in our communities.

Elinor Chehey, who represents the League of Women Voters, stated that she is a volunteer, not a lobbyist. The League of Women voters of Idaho speaks in support of **S1142.** The revisions clarify the law regarding notice of public meetings, agendas and conduct of executive sessions. The League believes that governmental bodies must protect the citizens' right to know by giving adequate notice of proposed actions, holding open meetings, and making public records accessible. **Ms. Chehey** said the revisions in **S1142** clarify the law and she asked the Committee to vote in favor of the bill.

MOTION: **Senator Davis** made the motion to send **S1142** to the floor with a **do pass** recommendation. **Senator Kelly** seconded the motion. The motion carried by **voice vote.**

RS18849C1 **Senator Davis** presented **RS18849C1** to the Committee and stated that this RS is brought forward from the Majority and Minority Leadership of the Senate. The intent of this legislation is to provide for the entire disclosure of potential conflicts that may exist for public officers, namely constitutional officers and legislators.

Senator Kelly stated that this bill includes candidates and it is a great first step that will affect us personally.

Senator Darrington asked **Senator Kelly** what did she mean by first step? **Senator Kelly** responded it is a first step in the sense that we are one of three states that do not have this requirement in statute. **Senator Darrington** asked what is the second step. **Senator Kelly** said that will be for future legislators to decide.

MOTION: **Senator Stegner** moved to print **RS18849C1** and **Senator Fulcher** seconded the motion.

Vice Chairman Pearce said this type of legislation usually comes forward because of a problem. He asked **Senator Kelly** if there is a problem that motivated this? **Senator Kelly** replied if there is a future hearing more details will be provided. This is a conflict of interest and disclosure law for elected officials and candidates to provide the public with more information, regarding the actions they take as public officials.

The motion carried by **voice vote.**

GUBERNATORIAL APPOINTMENT: **Chairman McKenzie** said the confirmation vote of **Wendy Lively** to the Bingo-Raffle Advisory Board is before the Committee.