

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Tuesday, May 04, 2021

**TIME:** 3:00 P.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairwoman Lodge, Vice Chairman Guthrie, Senators Winder, Anthon, Harris, Lee, Heider, Stennett, and Burgoyne

**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:** **Chairwoman Lodge** called the meeting of the Senate State Affairs Committee (Committee) to order at 3:20 p.m.

**RS 28867** **A Concurrent Resolution Rejecting Certain Rules of the State Public Defense Commission (SPDC).**

**Senator Lakey** reported this concurrent resolution reflects the negotiated approval and rejection of certain public defense commission rules achieved by the Public Defense Commission and various stakeholders. The approval and rejection of these rules were approved by both the Senate and House Judiciary and Rules Committees.

**DISCUSSION:** **Senator Lakey** and **Senator Stennett** discussed that certain rules of the SPDC relating to General Provisions and Definitions and Requirements and Procedures for representing indigent persons are not consistent with legislative intent and should be rejected. **Senator Stennett** remarked there were many sections and paragraphs that will prohibit the SPDC from performing any services. **Senator Lakey** stated these items will be addressed in temporary rules and will be reviewed during the next Session.

**MOTION:** **Senator Lee** moved to send **RS 28867** to print. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

**RS 28955** **Relating to Uniform Controlled Substances.**

**Senator Grow** reported this proposed legislation will amend Idaho Code to prohibit the commercial promotion or advertisement of Schedule 1 controlled substances in the State of Idaho. He noted there is a law prohibiting advertising for simulated substances instead of the substances themselves. He explained how the legislation was authored to eliminate simulated substances and to add actual controlled substances.

**DISCUSSION:** **Senators Burgoyne** and **Grow** discussed why this legislation was not brought forth sooner. **Senator Stennett** remarked the legislation was confusing and asked about how it will affect compounding pharmacists or doctors because they all work for corporations. She noted there should be clearer language regarding the types of substances. **Senator Grow** explained the substances were registered as Schedule 1 controlled substances.

**MOTION:** **Senator Burgoyne** moved to return **RS 28955** to the sponsor. The motion died due to the lack of a second.

**MOTION:** **Senator Anthon** moved to send **RS 28955** to print. **Senator Lee** seconded the

motion. The motion carried by **voice vote**. Senator Stennett and Senator Burgoyne were recorded as voting nay.

**RS 28977 A Concurrent Resolution Approving Administrative Rules that Impose a Fee or Charge.**

**Senator Anthon** reported this concurrent resolution comes up annually, relates to rules that impose a fee, and is a housekeeping measure.

**DISCUSSION:** **Senator Burgoyne** asked to be reassured this measure would be passed by the House of Representatives. **Senator Anthon** reassured Senator Burgoyne that it would be likely.

**MOTION:** **Senator Lee** moved to send **RS 28977** to print. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

**RS 28978 A Concurrent Resolution Approving and Extending Temporary Rules.**

**Senator Anthon** reported this legislation is relevant to cooperation between the House of Representatives and the Senate. This is a customary resolution extending Temporary Rules with one exception. **Senator Anthon** noted that by adopting this concurrent resolution, the Legislature avoids having agency rules expire, which would cause additional expense to State agencies for readopting and republishing the temporary rules needed to conduct State business.

**DISCUSSION:** **Senators Anthon, Burgoyne, and Stennett** discussed the idea that temporary rules or sections of temporary rules that are excepted from approval or that were not submitted to the Legislature for review during the 2021 Legislative Session shall expire by operation of statute upon adjournment unless approved by adoption of a separate concurrent resolution by both Houses of the Legislature.

**MOTION:** **Senator Harris** moved to send **RS 28978** to print. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**RS 28982C1 Relating to a State of Extreme Emergency.**

**Senator Anthon** explained this is a bill that addresses the extreme emergency powers of the Governor as outlined and delegated in Idaho Code § 46-601. He noted the purpose of the legislation is to delegate authority to the Governor to act in a state of extreme emergency. He said the bill clarifies and limits the power of the Governor during these episodes of extreme emergency by providing a window of time where the Governor can act in an emergency before there is a required concurrence by the Legislature.

**Senator Anthon** stated this bill is also designed to protect Idaho workers as essential, protect suspension of their rights, protect Idahoans from the suspension of the right to peaceably assemble, and protect Idahoans' right to exercise their religion. He said **RS 28982C1** protects Idahoans with the right to bear arms during episodes of extreme emergency, such as the pandemic, and prohibits the Governor from unilaterally altering or suspending Idaho Code.

**MOTION:** **Senator Harris** moved to send **RS 28982C1** to print. **Vice Chairman Guthrie** seconded the motion. The motion carried by **voice vote**. Senator Stennett and Senator Burgoyne were recorded as voting nay.

**H 391 Relating to the State Disaster Preparedness Act to Revise Certain Provisions.**

**Representative Jason Monks**, District 22, remarked this legislation clarifies that constitutional rights cannot be suspended because of a declared emergency. **Representative Monks** commented the State and U.S. Constitutions prevail. He noted that does not mean there cannot be limitations to rights.

**DISCUSSION:** **Senator Stennett** inquired about rights that are being protected and what is the

standard practice.

**Representative Monks** stated rights have been suspended across the country, such as freedom of assembly during the pandemic. He noted those rights do not go away just because an emergency has occurred.

A discussion ensued between **Senator Burgoyne** and **Representative Monks** regarding lawful manufacturing of firearms or ammunition and the definition of constitutional rights. **Representative Monks** stated every Supreme Court Justice grapples with the question of constitutional rights as outlined in the Idaho and U.S. Constitutions.

**MOTION:** **Senator Harris** moved to send **H 391** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion.

**DISCUSSION:** **Chairwoman Lodge** and **Representative Monks** discussed communications with the Governor's office relating to this bill. **Senator Lee** noted she was personally involved with this bill and received input from others and from the Governor.

**VOTE:** The motion to send **H 391** to the floor with a **do pass** recommendation carried by **voice vote**. Senator Stennett and Senator Burgoyne were recorded as voting nay.

**H 392** **Relating to the State Disaster Preparedness Act to Revise Certain Provisions.**

**Representative Monks** reported this legislation clarifies that the power and authority to create and amend laws is reserved for the Legislature and that, during a declared emergency, the executive branch cannot change laws but can change rules, and is silent about enforcing laws.

**DISCUSSION:** **Chairwoman Lodge** commented the Governor would be able to suspend regulations but not law under **H 392**. **Representative Monks** indicated this bill makes a statement that laws cannot be changed during an emergency just because there is an emergency, but rules are changed all the time as necessary. He noted a simple statement was added that says during any disaster emergency, the Governor may not alter, adjust, or create any provision of the Idaho Code. Laws were broken and changed without legislative input last year. **Representative Monks** noted the Governor can issue temporary rules any time and he can choose not to enforce the law.

**Senator Lee** commented some rules for inspections of food manufacturing facilities were suspended during the last emergency due to safety concerns.

**Senator Burgoyne** pointed out he thought the Governor as well as the President of the U.S. were bound to enforce the law.

**Senator Stennett** commented on the election process and that the primary election was in jeopardy on May 19 primarily because it was going to be very hard for the clerks to be able to manage through an absentee ballot process. She noted there would be a shortage of polling places and workers because of COVID-19 concerns. She remarked that **Representative Monks** mentioned the election process was changed without legislative input. **Representative Monks** stated the Legislature cannot be absolved even though others may make decisions involving the State.

**Senator Burgoyne** commented he wanted to know what this language accomplishes and how it relates to the Idaho Constitution. He expressed a concern of why 5 percent of funds have been sequestered for 12 months and no one is concerned. **Representative Monks** remarked he thought this bill helps tremendously as it addresses the issue of appropriations.

**MOTION:** **Senator Anthon** moved to send **H 392** to the floor with a **do pass** recommendation.

**Senator Lee** seconded the motion.

**DISCUSSION:** **Senator Anthon** commented the Governor does not have the authority to suspend, adjust, create, or do away with a law unless he is vetoing a bill nor does the Secretary of State or the Speaker of the House have that authority. **Senator Anthon** said laws are created by the Legislature that says elections are to be held and that sacred right should be protected at all costs.

**VOTE:** The motion to send **H 392** to the floor with a **do pass** recommendation carried by **voice vote**. Senator Stennett and Senator Burgoyne were recorded as voting nay.

**H 393** **Relating to the State Disaster Preparedness Act to Revise Certain Provisions.**

**Representative Monks** stated this legislation identifies that all jobs are essential and that any restrictions during a declared emergency be narrowly tailored to not place restrictions based on job type or classification.

**DISCUSSION:** **Senator Stennett** and **Representative Monks** discussed restrictions on the economy for both large and small businesses. **Representative Monks** stated he thought there is latitude, but it is not so open that a declaration of an emergency affect the economy. **Senator Stennett** clarified that in a state of disaster emergency, threatening the safety of persons or property within the State must be narrowly tailored to effectively protect without placing unnecessary restrictions on people. **Representative Monks** noted this bill is a guidance to the Governor the restrictions that should not be made unless they are absolutely necessary.

**MOTION:** **Senator Heider** moved to send **H 393** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion.

**DISCUSSION:** **Vice Chairman Guthrie** stated the default has to be in the governmental system and the people in office. Every possible policy cannot be anticipated. The Legislature must stop the conflict and disagreements and become unified and do the best for the benefit of the citizens. He noted it is time to move forward.

**Senator Burgoyne** stated he could see potential lawsuits and cannot support this bill.

**Senator Lee** stated she supports the motion because this is delegated authority from the Legislature and only gives guidance. She noted it is important to look across all of the powers and statutes.

**Senator Winder** noted the essential worker is necessary for the safety of the people. The Legislature is trying to say that they respect everyone's life and there are requirements to provide for Idaho citizens and their families.

**Chairwoman Lodge** thanked all who have worked so hard to try to bring all these difficult issues together. She indicated she wanted to see a healing of the relationship between the Legislative and Executive branches of government.

**VOTE:** The motion to send **H 393** to the floor with a **do pass** recommendation carried by **voice vote**. Senator Stennett and Burgoyne were recorded as voting nay.

**ADJOURNED:** There being no further business at this time, **Chairwoman Lodge** adjourned the meeting at 4:45 p.m.

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Senator Lodge, Chair

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Twyla Melton, Secretary

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Linda Kambeitz, Secretary