

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Friday, February 14, 2014

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman McKenzie, Senators Davis, Fulcher, Hill, Winder, Lodge, Siddoway, Stennett and Werk

**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.

CONVENE: **Chairman McKenzie** called the Senate State Affairs Committee (Committee) to order at 8:03 a.m. with a quorum present and welcomed Senator Goedde to the meeting to present **RS 22857C1**.

RS 22857C1 A Unanimous Consent Request to print from the Senate Transportation Committee Related to a Request for an Extension that Requires the Idaho Transportation Department (ITD) to Provide an Annual Report to the Senate Transportation Committee on the Progress with System Improvements to ITD's Software Operations.

MOTION: **Senator Davis** moved to send **RS 22857C1** to print. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

S 1335 Relating to Alcoholic Beverages to Provide for Sample Tasting of Distilled Spirits at a Distillery Subject to Strict Restrictions; presented by Senator Winder.

Senator Winder said that there are eight distilleries currently operating in Idaho that provide an economic benefit to the State. Idaho also has wineries and micro breweries within the State that allow tasting with restrictions. Adding small distilleries would be a benefit to those small businesses. **Senator Winder** introduced Jeremy Chou, Attorney at Givens Pursley representing 8 Feathers Distillery, to explain the bill.

Mr. Chou reiterated that **S 1335** would allow tasting at a distillery with very strict restrictions. Currently, in Idaho, you can provide samples at craft breweries and wineries within certain restrictions; that is not the case with distilleries. This bill would allow distilleries that are licensed by the State of Idaho and also have a permit issued by the Federal Alcohol and Tobacco Tax Trade Bureau to serve samples of their product in very small quantities. Each sample would be one-quarter of one ounce which is equal to one-half of a tablespoon limited to 3 tastings in a 24 hour period. Some of the restrictions are:

- Distilleries cannot charge for samples.
- Distilleries will have to sell the spirits to the State and then buy them back to make sure the state tax is paid.
- Samples can only be served by individuals 21 or older even though servers in Idaho only have to be 19 or older.
- The consumer must be 21 or older to taste these products.

Idaho currently has eight distilleries, some of which have garnered national attention. Large portions of product made in Idaho are exported and in some cases internationally. The distilleries are consumers of Idaho agricultural products by use of Idaho grains. The by-products are then returned to the farmers for animal feed. Currently, about 44 states allow for spirits tasting. The lack of this opportunity is viewed by the distilleries as a fairness issue because tasting of their products should be no different than tasting at a winery or brewery except for the need for additional restrictions. The Idaho Liquor Control Board and the Idaho Liquor Dispensary reviewed the language and their comments were incorporated into the bill. Information was sent to distributors and the Idaho Licensed Beverage Association was contacted. There was no known opposition.

Chairman McKenzie questioned the Statement of Purpose (SOP) which stated that sample tastings are allowed for beer and wine but not for distilled spirits. **Chairman McKenzie** said that there is a bill concerning beer in progress so a technical correction may be needed for this SOP. **Mr. Chou** responded that it may not be necessary. Currently, sampling and tasting can occur at breweries with a brewers license under Idaho Code § 23-1003 (e). That provision says "any brewer licensed within the State of Idaho that produces fewer than 30,000 barrels of beer annually will be issued a Brewers Pub License". In addition, Idaho Code § 23-1325 (c) specifically has the wine tasting requirements for events on premises with a retail wine license.

Sandee Price, representing 8 Feathers Distillery and other distilleries within the State, spoke in favor of the bill. **Ms. Price** stated that they do feel it is a fairness issue. The sample size is such that a 110 pound woman consuming all 3 of the samples within an hour would have a blood alcohol content of .004; public safety would not be an issue. It is not about people being intoxicated, it is about making an informed decision at the distillery about the products a person or entity may wish to purchase.

MOTION: **Senator Davis** moved to send **S 1335** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

RS 22631 Relating to Restoring the Constitutional Governance Act of Idaho to Prohibit the Detention and Disposition of Idaho Citizens who are not Serving in the Military; presented by Senator Thayn.

Senator Thayn recognized Jason Casella, People Against the National Defense Authorization Act (P.A.N.D.A.), who would be available to help answer questions. This bill addresses concerns about the indefinite detainment of citizens. The bill says that it would be the policy of the State of Idaho that the citizens of Idaho cannot be detained as enemy combatants nor can they be treated that way unless they are a part of the military or there has been a declaration of war.

MOTION: **Senator Fulcher** moved to send **RS 22631** to print. **Senator Siddoway** seconded the motion.

Senator Werk asked Senator Thayn to explain the nature of the problem that is to be solved. **Senator Thayn** deferred to Mr. Casella to answer any questions. **Mr. Casella** explained that the concerns are that §§ 1021 and 1022 of the National Defense Authorization Act (NDAA) declare the entire world a battlefield and anyone can be detained indefinitely. This resolution would restore Constitutional rights because these two sections of the NDAA "trump" the Idaho Constitution in the eyes of those who passed it. As a human rights issue, there is a fundamental right to have a trial by jury if you are suspected of a crime.

Senator Werk asked if the NDAA codifies indefinite detention. **Mr. Casella** answered that it does. The laws of war would also be applied to American citizens. **Senator Werk** asked if part of the point of the NDAA would be to allow the indefinite detention of large groups of American citizens. **Mr. Casella** said it could be large groups or it could be individuals. Judge Katherine Forrest, a New York Federal District Judge, in *Hedges v Obama*, a current Supreme Court case, ruled this to be unconstitutional. The next day the current administration asked for an emergency stay which was granted. Judge Forrest said that this has a chilling effect on First Amendment rights.

Senator Werk asked Senator Thayne if there was an Attorney General's opinion about the nature of this bill, the constitutionality of it or any difficulties that would arise from the passage of this bill. **Senator Thayne** responded that he had not.

Chairman McKenzie restated that the motion before the Committee was to print **RS 22631**.

Senator Davis stated that he agreed with Senator Werk in his strong desire to accommodate the members of the body and their requests to print. This bill appears to do nothing more than to say that federal law does not apply in Idaho. **Senator Davis** expressed some of his concerns and will do more research, but he will vote to print the bill although he doesn't see that it will be enforceable as a matter of law.

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

RS 22862 Relating to Powers and Duties of the State Treasurer to Establish an Advisory Board to the State Treasurer; presented by Senator Hill.

Senator Hill stated that as a result of an audit of the Treasurer's Department, the auditors suggested that an advisory committee be established to help review investments by the Treasurer's office as well as provide advice and counsel. The advisory board will be patterned after the Endowment Fund Advisory Board (EFIB) with the exception that there are no legislators serving on this board. The board consists of five members from the public who serve without compensation except for \$50 per day when attending meetings; there is a minimal fiscal impact. **RS 22862** has been approved and endorsed by the Treasurer.

MOTION: **Senator Winder** moved to send **RS 22862** to print. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

Senator Werk expressed his appreciation to the Pro Tem but he will have questions about the scope of the advisory board and how they will be involved in the different types of operations.

S 1332 Relating to Firearms to Protect Idaho Law Enforcement Officers from Being Directed Through Federal Orders to Violate Their Oath of Office or Idaho Citizens' Rights Under the Constitution; presented by Senator Vick.

Senator Vick noted that **S 1332** is titled the Idaho Federal Firearm, Magazine and Register Ban Enforcement Act. It is a collaborative effort between lawmakers and law enforcement to protect Idaho citizens' rights and to protect law enforcement from unconstitutional orders related to firearms. A working group met to draft the language in this bill. It has support from law enforcement including the Fraternal Order of Police and sheriff's from around Idaho. The National Rifle Association also supports the bill. The purpose of the bill is summed up in § 2 Legislative Intent. **Senator Vick** read lines 13-17, page 1, where there is a quote that is virtually identical to § 11, Article I, of the Idaho Constitution which are the rights that this bill is attempting to uphold; the right to own firearms and ammunition. **Senator Vick** referred to lines 24-26 and read from the bill. This segment ensures that normal activities of local law enforcement may participate in are not disrupted.

Lines 27-29 makes it clear that decision makers that are committing an illegal act are the violators, not those who are following orders.

Senator Vick highlighted the language in the bill.

- It is a civil penalty for the first offense for a violation of the act.
- There is a reference to Idaho Code §§ 18-315 and 18-703 in this bill (line 6, page 2) for crimes that are currently being committed by public officers or persons; they will still be held accountable for those crimes.
- Page 2, lines 13-18 state that these are new executive orders and do not affect existing agreements.
- Subsection 3 is the enforcement clause.

Senator Werk posed the question: How can this bill declare a law unconstitutional if it hasn't been declared unconstitutional by a competent court of law? **Senator Vick** stated that he meant unconstitutional orders, not unconstitutional laws.

Senator Werk said he failed to see the difference. **Senator Vick** said that a federal order that violates the Constitution should not be upheld by local law enforcement. **Senator Werk** asked who becomes the judge of whether or not a federal order or law violates the Constitution. **Senator Vick** answered that it would be the officer that is giving the order. **Senator Werk** asked if it is normal that a law enforcement officer is given the authority to determine the constitutionality of an executive order or law. **Senator Vick** said he did not know the answer to that question. Law enforcement people will be speaking and they could possibly provide the answer.

Senator Werk said that the U. S. Constitution "trumps" the Idaho Constitution. In this instance, it would put the Idaho Constitution first. This bill is asking law enforcement to enforce what they believe is a violation of the Idaho Constitution regardless of whether or not the U. S. Constitution or Supreme Court sees that law or order as constitutional. **Senator Vick** explained that they are asking local law enforcement to follow Idaho laws and the Idaho Constitution which we are allowed to do. The Supreme Court has repeatedly held that the federal government may not commandeer state officials in service of federal policy. **Senator Werk** stated that the point to be made here seems to be the authority of the federal government to engage local state officials to enforce law. **Senator Vick** said this is about following the Idaho Constitution and Idaho laws.

Chairman McKenzie called Michael Kane to speak about **S 1332**.

Mr. Kane, representing the Idaho Sheriff's Association (Association), stated their appreciation for the opportunity to work with the sponsors of this legislation and especially to Senator Davis who listened to their concerns. The Association supports the bill.

This bill is not in any way designed to affect the laws of search and seizure. It does not create a new civil cause of action. His understanding of the concept of this bill is that if a federal order of some kind is issued and a state official determines that it violates the Idaho Constitution, that state official should not order a police officer to enforce that federal order. This bill is designed for those situations where a new federal order of some kind is issued and requires action, such as one that involves firearms or ammunition and potentially violates the Idaho Constitution. In those instances, the official may not order one of the line officers to enforce that order. If that person does so, there would be a civil penalty. After a myriad of discussions, the Association supported the bill.

Senator Stennett asked who would be responsible for paying the legal fees if this bill is contested. Is it the individual officer whether they acted appropriately or not? Is it the expense of local governments because the officer is under their jurisdiction? **Mr. Kane** answered that it is not the individual officer, and this could only happen when an individual who believes they are wilfully violating the Idaho Constitution, orders another officer to seize firearms or ammunition under a federal order. There are funds available to the officer for out-of-pocket expenses until resolution of the case. There is a statute that says if you are prosecuted and found not guilty then the officer may go back to the public entity to seek reimbursement for the costs.

Senator Werk asked if the person interpreting the constitutionality of the issue is an elected official such as a sheriff. **Mr. Kane** said that Senator Werk's reading is partially correct. It would be someone in authority who orders the confiscation of a firearm knowingly violating the Idaho Constitution. If that person is brought into court, the court becomes the referee. **Senator Werk** had further questions about how to define the person in authority. **Mr. Kane** responded by reading lines 36-38 on page 1.

Senator Stennett pointed out that holding someone to that level of responsibility is very difficult to prove. How easy is it to determine the lines of willful or not willful action? **Mr. Kane** explained that law enforcement officers have to make that call every day. The mental intent has to be proven; sometimes by actions, sometimes by words. This bill is not designed to make it easy to prove such intent even though the specific intent language is included.

Chairman McKenzie called for further questions. **Chairman McKenzie** stated his appreciation to the sponsors for the work that was done on this bill. This bill was in Committee in a prior session but was held due to his concerns with the language. A primary issue was creating a new crime. This bill creates a new civil penalty with an extremely high standard. A knowing and willful violation would be a very remote possibility. Another issue was the separation of powers which related to Senator Werk's questions. It is the courts that will ultimately make that determination. In order to prosecute under the high standard, it would almost take an Idaho court to find that a federal order violates the Idaho Constitution. There can be higher protections in a state constitution than those in the federal constitution; just not lower protection.

MOTION:

Senator Fulcher moved to send **S 1332** to the Senate floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

**PAGE
GRADUATION:**

Chairman McKenzie called Aaron Sweet before the Committee to present him with a letter of recommendation from the Chairman of the Committee, a letter from the Committee members and a watch in appreciation of his service. **Chairman McKenzie** commented on Aaron's quiet efficiency and his musical and athletic talents. He asked Aaron to tell about his experience, what he has gained from it and where he will go from here.

Aaron thanked the Committee and the Legislators for welcoming him here. **Aaron** said one very important thing he has learned is that it has increased his speaking skills "a lot". The first day he was extremely nervous and would not have been able to stand up and speak as he is today. He is planning to go to the College of Western Idaho to get his core classes and then transfer to Boise State University (BSU) to become a math teacher.

Senator Fulcher asked if there were any more siblings that would be coming to the Capitol. **Aaron** answered yes, one sister, but she is a freshman so it will be a couple of years. (Note: Aaron is the third family member to serve as a page; two sisters have served, one in 2011 and one in 2013.)

MOTION: **Senator Winder** moved to accept the Minutes of January 24, 2014. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Fulcher** moved to accept the Minutes of January 27, 2014. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Siddoway** moved to accept the Mminutes of January 31, 2014. **Senator Fulcher** seconded the motion. The motion carried by **voice vote**.

MOTION: **Senator Stennett** moved to accept the Minutes of February 3, 2014. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman McKenzie** adjourned the meeting at 8:55 a.m.

Senator McKenzie
Chair

Twyla Melton
Secretary