

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Monday, February 11, 2019

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairwoman Lodge, Vice Chairman Harris, Senators Hill, Winder, Vick, Anthon, Souza, Stennett, and Buckner-Webb

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 Senate State Affairs Committee (Committee) to order at 8:04 a.m. with a quorum present.

RS 26739 **RELATING TO BEER** by adding a new section to Idaho Code to authorize contract brewing in certain instances.

RS 26795 **RELATING TO VETERANS** to revise financial relief and assistance provisions.

RS 26796 **RELATING TO VETERANS** that interest related to the Idaho Veterans Recognition Fund shall be maintained by the Division of Veterans Services.

RS 26797 **RELATING TO VETERANS** to repeal Idaho Code, Section 65-208.

RS 26700 **RELATING TO THE STATE BRAND BOARD** to revise fees regarding ownership and transportation certificates and to revise provisions related to brand inspection fees.

RS 26805 **STATNG THE FINDINGS OF THE LEGISLATURE**for the North Idaho College to enter into an agreement with the Idaho State Building Authority.

MOTION: **Senator Anthon** moved to send **RS 26739, RS 26795, RS 26796, RS 26797, RS 26700,** and **RS 26805** to print. **Senator Buckner-Webb** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 11-0411-1802 **Rules Governing Equine Veterinary Practices, Permitted Medications, Banned Substances and Drug Testing of Horses.**

James Hammond, Chairman, Idaho State Racing Commission (Commission), stated that the Commission strives to continually provide effective and fair enforcement for all horse racing participants. He indicated that pursuing advances in equine drug enforcement, such as hair testing, remains a critical part of the Commission's mission to maintain the integrity of horse racing in Idaho. He advised that Idaho currently tests blood, urine, and saliva, and this proposed rule change adds the option to perform horse hair testing. It is believed this change will prevent and deter fraudulent activities during Idaho's live race meets. **Mr. Hammond** advised that many other tracks and some other states are already doing hair testing, and Idaho's horsemen are requesting this change to remain competitive.

DISCUSSION: **Vice Chairman Harris** asked how long it takes for drug residue to get into the hair. **Mr. Hammond** referred the question to **Artie Noyes**, Business Manager, Idaho State Racing Commission, who stated she could not say how long it takes

to get into the system, but it stays in the system for some time. Retests are done after 45 days; however, they can go back quite a length of time to see what drugs were in the system. **Vice Chairman Harris** asked how long it takes for a hair test to be returned. **Ms. Noyes** said time period is approximately 7 to 10 days.

MOTION:

Vice Chairman Harris moved to approve **Docket No. 11-0411-1802**. **Senator Vick** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
11-0403-1801**

Rules Governing Licensing and Fees.

Mr. Hammond advised that this rule relates to the fees for testing under **Docket No. 11-0411-1802**. He stated that the Commission does not currently have the funds to do the required testing, and would like to have the proposed rule move forward as a temporary rule in order that negotiated rulemaking can continue on this issue.

DISCUSSION:

Senator Winder asked why the fees were not included with the testing rule. **Mr. Hammond** responded that fees were placed in a separate rule so they can be changed if necessary.

Senator Souza inquired if there is a time frame for negotiated rulemaking. **Mr. Hammond** indicated that an exact time line has not been set, but it will be short because it is combined with the larger issue of continued horse racing in Idaho. He related that the Commission is a self-sustaining and self-supporting agency, and the horsemen must work with the Commission on a strategy that will support the regulatory responsibilities of the Commission, and also support the activities that go along with that in terms of testing and the cost of veterinary services.

MOTION:

Senator Souza moved to approve **Docket No. 11-0403-1801**. **Senator Buckner-Webb** seconded the motion. The motion carried by **voice vote**.

S 1040

RELATING TO ALCOHOL to remove the State from the issuance of new liquor-by-the drink licenses while grandfathering state licenses issued prior to the effective date of this legislation and preserving their existing rights to transferability.

Senator Jim Rice, District 10, stated that the topic of how Idaho issues liquor licenses has been the subject of interim committees and study groups out of the Governor's office for decades. The reason for this is that the current system of liquor licensing creates a commodity out of a license; it does that by creating a shortage and allowing transferability of those licenses. He indicated that this bill seeks to address that problem by creating a new license issued by cities and counties to restaurants and hotels only. Cities and counties are allowed to make their own decision on whether they would issue any licenses under this bill. They retain that local control, and can issue additional ordinances to regulate liquor licenses; however, the bill sets limits on what type of business they can issue a license to.

Senator Rice advised Idaho's previously issued licenses will remain in effect, but we will not issue any more of them. He indicated there are two categories of previously issued licenses: regular licenses, which would still be transferable and not be limited to their current location, but would be allowed to be transferred only to places where the retail sale of liquor is allowed; and specialty licenses, which are not currently transferable and would remain that way. Under this bill there would be a minimum \$3,000 annual fee, and the local jurisdiction can consider their direct and indirect costs in setting the license fee at any amount above the \$3,000. There is also a \$400 application fee. **Senator Rice** indicated that this is an attempt to address a need we have in many of our cities, small and large, where tourism business exists. They would like to bring in hotels and restaurants. He stated the bill additionally mandates training for servers

in a uniform fashion so that they are trained to identify and cut off people that have had too much to drink.

Senator Rice advised that this bill does some things to preserve the value of the previous licenses; they will receive a 10 percent discount on liquor purchases from the dispensary, rather than the previous 5 percent. New licensees will pay retail for their liquor. He advised that **S 1040** does not make any additional licenses available for bars.

DISCUSSION:

Senator Anthon asked why the language of "intoxicated or apparently intoxicated" was changed to "obviously intoxicated." **Senator Rice** responded that by changing the language to "obviously intoxicated," the server becomes responsible for a standard they can actually meet. They are not put in a problem situation with a definition that is vague and subject to interpretation, when punishment is a possibility. **Senator Anthon** also asked Senator Rice to confirm that current license holders would get a 10 percent discount on the price of liquor and the new licensees would pay the retail cost. **Senator Rice** confirmed that is correct.

In response to a question from Senator Stennett regarding who would be in charge of the process of issuing licenses, **Senator Rice** advised that there are a number of different responsibilities in any licensing. There are those responsible for creating ordinances, as well as boards of directors or owners, depending on how an entity is structured. **Senator Stennett** also asked for clarification on where current licenses can be transferred to within the state. **Senator Rice** advised that currently a license in Boise can only be transferred within Boise. **Senator Stennett** further asked if the bill contains language that allows minors in establishments that serve alcohol, such as restaurants. **Senator Rice** answered that a new section designated as Section 23-604B provides for that exception.

Senator Vick questioned whether some restaurants now licensed might elect to sell their current license and get a new one, thereby possibly increasing the number of bar licenses. **Senator Rice** indicated that this does not increase the number of potential bars, because it permanently caps the number of licenses that could be used by bars. He added that there is a significant competitive advantage to paying 10 percent less for liquor and, although there may be some who sell licenses, he feels most of them will see this discount as a long term competitive advantage; an important aspect to the health of their business. **Senator Vick** pointed out that a small restaurant that does not sell a lot of liquor may sell their license to Boise or Sun Valley, someplace that may pay \$200,000 or \$300,000 for a liquor license. **Senator Rice** agreed that is always possible.

Senator Winder questioned, related to the possible sale of a license, how long it would take a business to benefit from the additional 5 percent savings on liquor purchases compared to the benefit of a \$500,000 or \$200,000 sale of the license. **Senator Rice** indicated this would be based upon the amount of liquor sold, and that the average annual liquor purchase at this time among all license holders is \$25,000.

Senator Souza asked if an existing bar can be denied by local ordinance under this law. **Senator Rice** advised this law does not allow local authorities to go in and take away state licenses that already exist unless they violate terms of their current license. However, it does expressly limit where one can move on to, because it just gives transferability wherever liquor by the drink establishments are allowed. **Senator Souza** asked if license fees will go to the state or local government. **Senator Rice** responded that current state licensees will still pay fees to the State; new fees will be paid to the issuing jurisdiction.

Vice Chairman Harris asked if there are organizations that provide the "ServSafe Alcohol" training program and the "training for intervention procedures"

programs mentioned in the bill; if so, what is the usual cost to train a server. **Senator Rice** stated that these are two programs that had been mentioned in a previous working group convened by the Governor, and the bill also allows other equivalent programs approved by the director. He indicated he does not know the cost of training.

Senator Winder asked Senator Rice to help him understand how the current system works when someone applies for a license, and then explain how the new system would maintain some standard of oversight. **Senator Rice** advised that the process is essentially the same, it is just a shift in who will handle the licensing procedure. With both, there is an application fee and a background check. There are some exclusions for individuals who have had their licenses taken away, or have committed certain crimes within a particular period of time, and other things of that nature. **Senator Winder** commented that the current system is under the control of the Idaho State Police. **Senator Rice** agreed, and for beer and wine, it is going to continue as it is. This bill only affects liquor licensing. **Senator Winder** noted in this bill it is no longer under the control of law enforcement, but the local political bodies. He asked Senator Rice to explain this change. **Senator Rice** explained that the cities would still do background checks through law enforcement, and law enforcement would still enforce city ordinances. Processing will be handled however they choose to do it. He stated cities do a good job with enforcing their ordinances.

Senator Souza asked for an explanation of the section regarding hours of sale of liquor and listed holidays, and whether this new law will impact local decision making through ordinance. **Senator Rice** advised that this section is actually existing law so it will work exactly like it does now. **Senator Souza** further asked how small cities who do not have police forces of their own will enforce these new laws. **Senator Rice** advised there are a number of cities that contract with the county sheriff's office for their law enforcement and this would fall under those contracts.

Senator Stennett asked if the Idaho Attorney General had been consulted as to the constitutionality of this bill since the Idaho State Constitution grants the legislature authority to oversee licenses, not cities and counties. **Senator Rice** indicated he had not consulted with the Attorney General, but when the constitution grants the legislature the right to regulate something, it can choose a state entity to act on its behalf.

TESTIMONY:

Ray Stark, representing Boise Chamber of Commerce (Chamber), spoke in favor of **S 1040**, stating that the Chamber likes the local option of this bill as well as the training provisions. **Senator Stennett** asked Mr. Stark how he saw the economic gain if a liquor license is issued, and then sold and sent somewhere else, and is no longer in the community. **Mr. Stark** stated that the current system of the State regulating liquor licenses creates a monopoly; it artificially escalates the purchase price of a license. Unless we change the way licenses are issued we will be dealing with this year after year.

Russell Westerberg, representing Idaho Licensed Beverage Association (ILBA), spoke in opposition to **S 1040**. He stated that ILBA's concerns focus on the significant economic demolition this bill will inflict on the market value of their businesses. He indicated eliminating the transaction value of a state issued quota license in Idaho's more populous communities will cause the investment portfolios of many small business owners to evaporate (see attachment 1 for further comments).

Kevin Settles, representing himself, disclosed that he is the owner and operator of Bardenay Restaurants and Distilleries and serves on the Board of Directors of the National Restaurant Association, which markets the ServSafe Alcohol

training program and also serves on their Educational Foundation Board. He spoke in favor of **S 1040**. He stated that he owns three licenses, all purchased at retail value, and he is very concerned about that value. **Mr. Settles** indicated that the basis for this current bill was drafted in 2008 by a Governor's committee because the economy was thriving, and there was a lot of pressure for change. He emphasized that this bill allows cities and counties to meet their needs, and enhances safety through the mandatory training for the service and sale of alcohol by the drink.

In response to questions from the Committee, **Mr. Settles** confirmed that even though he has three existing licenses, he is in favor of this bill. He stated that with the new municipal license, a food menu must be available until you stop the sale of alcohol, and with the existing license you can stop the sale of food and continue to sell alcohol. The practice at Bardenay is to shut the kitchen down, or go to a limited menu, at 9:00 or 10:00 p.m.; they no longer allow minors at that time, and only sell alcohol. This has financial benefits as kitchen labor is one of the most expensive operating costs. **Mr. Settles** indicated that the benefits of the existing license are threefold: 1.) annual renewal fees are less; 2.) you get a discount on liquor purchases; and 3.) operational costs are much lower when you do not serve food. He stated he is fully behind training for servers. The cost is about \$30 and it takes 2 to 3 hours.

Roger Wood spoke in opposition to **S 1040**. He stated that he is the owner of a small bar in downtown Boise. This bill will obviously add more bars and restaurants selling liquor by the drink, but nothing in the bill says there will be more people partaking of liquor. He does not see this as economic development, rather it will potentially reduce his customer base and could put him out of business.

Mark Grubert, owner of a small business craft brew company, Spring Creek Brewing Company, located in Ada County, spoke in favor of **S 1040**. He stated that this bill will allow him to get a liquor by the glass license much quicker than the current 13-year wait. He feels it changes the system in a way that is beneficial to new startups.

Brad Selvig, owner of the End Zone Bar in Boise, spoke in opposition to **S 1040**. He stated that he purchased his license and has obtained business loans based upon the value of the license. He fears that if this bill passes it will devalue his license (for further comments, see attachment 1).

Jess Harrison, Executive Director, Association of Idaho Cities (AIC), spoke in favor of **S 1040**. She stated that AIC has been interested for many years in finding a comprehensive solution to what it sees as flaws in the current system of liquor license issuance, which stifles competition and unfairly favors current license holders. AIC believes this legislation allows local communities to tailor licenses to their unique social values and economic development needs.

Senator Vick asked how AIC comes to a decision to support or oppose legislation. **Ms. Harrison** advised that AIC has a 26 member board made up of elected mayors and city council members throughout the state. The board meets weekly and votes on each piece of legislation that comes before it. She added that the vote on **S 1040** was unanimous for support and that it takes only a majority vote to support or oppose legislation that comes before the board.

Joe Ostermiller, Boise, spoke in opposition to **S 1040**. He stated that he has been on the current liquor license waiting list, and is about 2 to 3 years away from being offered a state license. He stated that while the current laws regarding liquor licensing certainly need work, he does not believe **S 1040** does

enough to open the door to entry level Idaho entrepreneurs, and still favors big money due to the high initial investment cost of the municipal license and restaurant startup. He indicated the bill does not fairly address the initial loss of value to those who paid a high dollar amount for a license transfer (for further comments and analysis, see attachment 1).

John Evans, Mayor, Garden City, and Legislative Chair of the AIC, spoke in favor of **S 1040**. He stated that from an economic standpoint, this bill gives cities the ability to attract high-end sit-down restaurants. If an individual can afford to put a restaurant together, and wants a license to serve alcohol with a meal, Garden City wants the opportunity to grant that. He indicated that he likes the fact that cities also enjoy the ability under this bill to promulgate additional rules above the high standards that are placed in the bill if there is a need to tailor something more specifically.

Ted Challenger, representing Idaho's Alcohol Industry Leaders (IAL), spoke in opposition to **S 1040**. He stated that IAL is a think tank consisting of diverse liquor license holders who came together with a purpose that Idaho needs to reform Title 23, Idaho Code. He indicated IAL's goal is to hold roundtable discussions to come up with a bill that can be supported by everyone.

Senator Hill asked Mr. Challenger how the IAL roundtable would be structured, how it is going to make sure different parts of the state and different interests are represented, and that it is not just a group that all have the same idea and are trying to find a way to make that idea work. **Mr. Challenger** indicated the group consists of two of Idaho's major resorts, a multiple hotel owner, a nightclub and lounge owner, a small restaurant owner, and Idaho's largest liquor distiller. They would like to add law enforcement, bar owners, mayors, legislators, distributors, distillers, innkeepers, and retailers. **Senator Hill** thanked Mr. Challenger for what he is doing, but cautioned that he make sure he involves stakeholders at the table with different types of solutions so they can develop the best solution.

Senator Winder asked if there are any states that have a system that Mr. Challenger would say is a good model. **Mr. Challenger** indicated he had not yet done that research.

Jeremy Chou, on behalf of his family operated restaurant in Boise, Yen Ching, spoke in favor of **S 1040**. He stated that his father was on the liquor license waiting list for 20 years before receiving a license, and it would have been nice if this bill had been available in 1986 when he first put his name on the list. He indicated that there has been a lot of fear of competition expressed, but he submits that competition is good. He further stated that this bill creates a level playing field between the large chains that can afford to pay for a current license and the small business.

Emre Houser, owner of the Balcony Club in downtown Boise, spoke in opposition to **S 1040**. He stated that existing license holders are going to bear the brunt of this legislation. He purchased his license for about \$175,000 and played by the rules, now this proposed legislation would change the rules. He wondered how many bars and nightclubs were consulted on this proposed legislation.

Wes Harris, Regional Legislative Chair for Region 4, Idaho Licensed Beverage Association (ILBA) spoke in opposition to **S 1040**. He stated the current quota system we have today works, and it works well. He added that the current quota system has created a stable bar and restaurant environment. It is a responsible way to make alcoholic beverages available to the public in a safe and controlled way so as to prevent the excess of intoxication.

Rob Nielsen, owner of a restaurant in McCall, ID, spoke in opposition to **S 1040**. He stated that he agreed with Mr. Challenger that there is a path forward, but this is not it.

Brian Donesley, an attorney, spoke in opposition to **S 1040**. He stated he has seen the quota system work for 40 years, and feels it is bad public policy to base economic development policy for the state on selling more liquor (see further comments at attachment 1).

Chairwoman Lodge asked if Mr. Donesley had ever put his name on a waiting list for a liquor license. **Mr. Donesley** responded that he had placed his name on a list 26 times; he now has his name on one list, and has one license. **Chairwoman Lodge** asked if Mr. Donesley had sold any licenses. **Mr. Donesley** responded that he had not.

**WRITTEN
TESTIMONY:**

For additional written testimony submitted to the Committee, see attachment 2.

REBUTTAL:

In response to claims that **S 1040** violates Article III of the Idaho State Constitution, **Senator Rice** quoted Article III, Section 26, regarding the Legislature's role/power in permitting, controlling, and regulating liquor. He indicated this does not imply they have the sole duty of doing all the regulation of liquor in the State of Idaho, but is the broadest grant of authority to the legislature to provide a methodology, scheme, and set up the regulation of alcohol, not just liquor. **Senator Rice** disputed the results of the study presented that stated more outlets that serve alcohol will result in more per capita drinking problems. In response to the reference in testimony to "bar-straunt" in CDC advice, **Senator Rice** indicated the CDC encouraged the language in the proposed legislation defining an eating establishment.

In closing, **Senator Rice** stated this is not a hurried bill without discussion with interested parties from all directions. It is a long term project that has been done by this legislature and previous legislatures, and it is time we address the issue.

Senator Anthon noted that the city or county would have to promulgate their own set of regulations as to how they will move forward, and to what limits they would place on this kind of licensing. He asked what the legal liability or exposure of a local government unit would be if it is deemed to act arbitrarily to allow some to have and some to have not. **Senator Rice** responded that the legislation does create sideboards; however, there are times when people act arbitrarily and capriciously; that seldom happens, but there is always liability for that. **Senator Anthon** asked if Senator Rice contemplated that a local government could limit the number of licenses allowed within their jurisdiction. **Senator Rice** responded that there is no prohibition on limiting the number. This legislation allows the cities to make that decision based on their needs.

Senator Hill asked Senator Rice if it is his belief that this bill would increase liquor consumption. **Senator Rice** responded that you may get some shift in drink selection, e.g., selecting a martini over a glass of wine, but it is not his belief that it would result in an increase in alcohol consumption.

Vice Chairman Harris asked if those on waiting lists for licenses would have grandfather rights. **Senator Rice** advised they would not; they will receive their deposits back.

MOTION:

Senator Souza moved to send **S 1040** to the floor with a **do pass** recommendation. The motion died for lack of a second.

MOTION:

Senator Anthon moved to send **S 1040** to the floor **without** recommendation. **Senator Souza** seconded the motion.

SUBSTITUTE MOTION:

Senator Winder moved to hold **S 1040** in Committee and allow the sponsor to continue to work with stakeholders. **Vice Chairman Harris** seconded the motion.

Senator Souza asked Senator Winder if it is his intention, by holding this in Committee, that the sponsor would have the opportunity to bring back a compromise bill this session. **Senator Winder** indicated that may be optimistic, but it would be his goal to get everyone around the table and see if there is a solution. He stated he sees the big question centering around how to amortize the value of the existing license.

Senator Stennett stated she understands the economics of this legislation and has been a big proponent of it for local governments. She also voiced concerns about the uniformity of how one acquires a license under the new jurisdictions, and questioned the ability of any staff or council having the knowledge for regulation. She indicated she would also like to take time to run this by the Idaho Attorney General so we do not end up with a lawsuit that will cost taxpayer dollars.

Chairwoman Lodge thanked Senator Rice for his work on this legislation and indicated she would be supporting the substitute motion.

VOTE ON SUBSTITUTE MOTION:

The substitute motion to hold **S 1040** in Committee to allow the sponsor time to work with stakeholders, carried by **voice vote**. **Senator Anthon** and **Senator Souza** requested they be recorded as voting nay.

PRESENTATION:

Mark Estess, Partner, Eiguren Ellis Policy Firm, appeared before the Committee on behalf of his client, Verizon. He introduced Andrew Cole, Community Engagement, Verizon Communications, and stated that Mr. Cole will be updating the Committee regarding activity, in both large and small communities, in terms of investment being made in telecommunications infrastructure - specifically around small cells. **Mr. Cole** indicated that Verizon's approach is built around recognizing and valuing partnerships with local jurisdictions, and they are pleased to say that strategy is working with wireless infrastructure investment; that means digital access to innovation and growth for Idaho communities.

RECORDING LINK:

To hear Mr. Cole's presentation in full go to:
<https://legislature.idaho.gov/sessioninfo/2019/standingcommittees/SSTA/>.

DISCUSSION:

Senator Winder asked what additional service the pole mount antennas provide in the downtown area. **Mr. Cole** indicated these essentially provide more access to data transfer. By adding small cells, Verizon is increasing the bandwidth – the ability to transfer those data services on your phone. **Senator Stennett** stated her area of the state is under served by broadband, and cell phone access is sporadic. She asked if small cells are capable of pushing service out from a center into places that are under served now. **Mr. Cole** advised that small cells are lower power, so they propagate less distance than a macro facility. He indicated there could be certain applications where it does make sense, based on topography, to use a small cell or series of small cells rather than a macro. In general, he indicated Verizon will deploy most of their small cells in urban environments.

ADJOURNED:

There being no further business, **Chairwoman Lodge** adjourned the meeting at 10:45 a.m.

Senator Lodge, Chair

Twyla Melton, Secretary

Assisted by Lois Bencken