

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Tuesday, March 16, 2021

TIME: 8:30 A.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 8:31 a.m..

H 135 **Relating to the State Disaster Preparedness Act to protect the separation and balance of power between the executive and legislative branches of government.**

Representative Jason Monks, District 22, presented **H 135** and explained that this legislation was not an attempt to remove powers from the Governor, only that key elements were included to ensure checks and balances. **Representative Monks** noted that declarations of emergency must be essential to protect life or property. Referring to page 1, line 8, **Representative Monks** declared that because all jobs are essential, declarations of emergency must not restrict the right of Idahoans to work, provide for their families, and contribute to the economy of Idaho. He advised that orders and declarations must be narrowly tailored to their purposes and not restrict job holders by job type or classification. **Representative Monks** explained that, during a state of emergency, rules can be changed but laws cannot. He emphasized that **H 135**, page 4, lines 25-27, specifically state that rights guaranteed by the US or Idaho State Constitutions cannot be limited or suspended, including the right to peaceable assembly or free exercise of religion.

Representative Monks pointed out the 60-day time limit on an emergency declaration, noting that it can be extended if necessary. He explained the process of declaring, extending, and terminating a state of disaster, including the responsibilities of the Governor and of the Legislature.

DISCUSSION: **Senator Burgoyne** inquired about authorization of military intervention in case of an emergency. **Representative Monks** replied that the Constitution states that the Governor is the commander in chief of the National Guard and has the ability to activate the National Guard. **Senator Burgoyne** asked for clarification regarding the protection of property as mentioned on page 1, lines 13-14. **Representative Monks** explained that the protection of property refers to clean up and the restoration of infrastructure.

Senator Winder explained to the Committee that work on this bill began last summer to deal with issues surrounding emergency orders. He noted that it was decided more direction in cases of disasters and emergencies was needed to be placed in code. He thanked Representative Monks and the Legislators for their work on this bill.

Senator Guthrie observed that the word "infrastructure" should be added to the wording on page 1, line 14 to avoid confusion with real property. He asked for more

clarification regarding federal funds. **Representative Monks** indicated that the Federal Emergency Management Agency (FEMA) has limitations on how money can be spent, but he was unaware of any restrictions in receiving federal funds. He pointed out that current Idaho Code requires that the need to continue receiving federal funds must arise out of a declaration of emergency.

Senator Stennett asked how **H 135** would be any more efficient in the case of a natural disaster than the current process. **Representative Monks** explained that there would be no difference. He stated that this bill addresses only statewide emergencies and provides for immediate response from the executive branch.

Senator Heider inquired of Senator Anthon how previously considered legislation compared with **H 135**. **Senator Anthon** explained that discussions with Representative Monks and the appropriate attorneys were held to assure **H 135** benefits Idahoans. He explained that **H 135** deals with natural disasters and gives the Governor emergency powers to immediately deal with emergency needs. He added that in other extreme situations, such as having to change elections, the legislature would be involved.

Senator Burgoyne referred to page 1, lines 15-19, and page 4, lines 21-28, and asked if this would prevent evacuation orders or advisory evacuation orders. **Representative Monks** replied that adding "manufacturing" was the only change made, and that nothing else had changed. He pointed out that this section of the bill relates to all jobs being essential and that citizens' rights do not go away because of an emergency declaration.

TESTIMONY: The following testified in support of **H 135**:

- Patricia Gall, representing self;
- Lorna Mitson, representing self;and
- Steven Kaiser.

Reasons for support of the bill included:

- The federal government's application of additional conditions on emergency funding is still a concern.
- This bill corrects weaknesses in Idaho's emergency response procedures.
- The bill provides a balance of power correcting the view that the Idaho Constitution can be ignored in the face of an emergency.

DISCUSSION: **Representative Monks** indicated he wanted to expand some of his answers to questions asked earlier. He referred to Senator Burgoyne's question regarding the Governor's ability to call in the militia. He noted that the ability to use the militia is stated in another section of code, so it is implied. **Representative Monks** then addressed a question from Senator Stennett regarding evacuations. He pointed out that page 3, line 37, grants the Governor the authority to compel and direct the evacuation for all or a part of the population, and details the conditions under which he can do so. **Representative Monks** thanked Senator Anthon and others who helped develop this legislation. He observed that the most concerning aspects of the current emergency procedures were identifying some jobs as unessential and the violation of constitutional rights. **Representative Monks** emphasized that, even though the Governor needs to be able to respond immediately, the Legislature at some point must be involved in an emergency, even if it is not in session at its onset.

Chairwoman Lodge inquired if the Governor had violated any constitutional rights as he dealt with the COVID pandemic. **Representative Monks** replied that much was learned during this situation. He noted that at the beginning very little was known about the seat of responsibility, and that the Governor was not alone in

making determinations. He pointed out that the Department of Health and Welfare, city governments, and county governments all had some level of decision making power at that time. **Representative Monks** asserted that as more information was gathered, the restriction against peaceable assembly was in violation of constitutional rights.

Senator Guthrie inquired if the pandemic would fit under **H 135** or under **S 1136**. **Senator Monks** replied that some say it was man made; others say it was a natural disaster. **H 135** doesn't make a distinction.

MOTION: **Senator Lee** moved to send **H 135** to the 14th Order for possible amendment. **Senator Harris** seconded the motion.

DISCUSSION: **Senator Lee** expressed her appreciation for the work done by Representative Monks and for the Governor for his efforts. She noted as this work continues, it will bring the full force of the government together to manage extreme emergencies.

Senator Burgoyne expressed his respect for Representative Monks and his dedication as a Legislator, adding that **H 135** was basically a good bill. **Senator Burgoyne** also indicated he agreed with Senator Guthrie regarding the term "infrastructure." He advised that the language in the bill was not parallel to the state constitution. He also suggested some work on the language dealing with evacuations. **Senator Burgoyne** mentioned issues found in the Attorney General's review of **H 135** (see Attachment A). **Senator Guthrie** indicated the issue of whether the pandemic falls under **H 135** or **S 1136** is not clear. **Senator Anthon** explained that **H 135** deals with a lower level emergency, and the Governor's power would not be as great as his power would be under **S 1136**.

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

ADJOURNMENT: There being no further business at this time, **Chairwoman Lodge** adjourned the meeting at 9:25 a.m.

Senator Lodge
Chair

Twyla Melton
Secretary

Carol Cornwall
Assistant Secretary