

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Monday, April 19, 2021

TIME: 1:00 P.M.

PLACE: Room WW54

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 1:05 p.m.

RS 28939 **A Senate Proclamation honoring the Ada County Highway District (ACHD) on its 50th Anniversary.**

Senator Winder said this proclamation commemorates ACHD on its 50th Anniversary. ACHD was formed by initiative and was primarily sponsored by the League of Women Voters. The purpose was to consolidate all cities and Ada County into one highway district. At that time, there was no cooperation or regional planning in place. There were duplications of equipment and personnel. Since then, ACHD has been striving to meet the needs of the public and Ada County.

MOTION: **Senator Winder** moved to send **RS 28939** to print. **Senator Heider** seconded the motion.

Senator Burgoyne said he will not vote to send **RS 28939** to print. He cited controversies surrounding ACHD's history and that the legislation did not acknowledge those controversies.

VOTE: The motion to send **RS 28939** to print carried by **voice vote**. Senator Burgoyne was recorded as voting nay.

S 1205 **Relating to Firearms seeking to protect Idaho citizens' rights regarding enforcement of new federal executive orders.**

Senator Todd Lakey, District 12, outlined **S 1205** and said Idaho's Legislature feels strongly about protecting citizens Second Amendment rights. Article 1, Section 11 of the Idaho Constitution addresses the right to keep and bear arms in Idaho. The State Constitution protects those rights more strongly than the U.S. Constitution. He said **S 1205** is a direct result of the Biden Administration's Executive Order, signed on April 7, 2021, restricting gun owners' rights.

Senator Lakey said in 2014, the Legislature passed S 1332, prohibiting a state or local official from ordering another state or local official, agent, or employee to enforce an executive order from the U.S. government contrary to the Idaho Constitution regarding a personal firearm. **Senator Lakey** stated **S 1205** is not a nullification bill. It builds upon and supports S 1332 by allowing that federal actions violating the Idaho Constitution will not be enforced or supported by government entities in Idaho as outlined on pages 2-3, subsection 4. **S 1205** also provides an emergency clause with a retroactive date to the commencement of the current federal administration.

DISCUSSION: **Senator Stennett** asked for clarification of the language on page 1, lines 15-16, and lines 35-39 of **S 1205**, that disallows federal restrictions of citizen's rights to own firearms. Is it the intent of this bill to say the Legislature has more authority over gun rights that, historically, has had judicial oversight. **Senator Lakey** said the bills statement of intent says the right to keep and bear arms is a fundamental right and that cannot be infringed upon. It does not take authority away from the Idaho Supreme Court to determine constitutionality. **Senator Stennett** referred to page 1, lines 20-21 and asked if **S 1205** says the State has no say over law enforcement. **Senator Lakey** said **S 1205** states that personnel, resources, and funds cannot be used to support federal executive actions that violate the Idaho Constitution. **Senator Stennett** asked what happens when people on public lands bring in federal agents in situations when local sheriffs lack the expertise or jurisdiction to act. **Senator Lakey** said the ultimate interpretation of **S 1205** would rest with the Idaho Supreme Court.

Senator Stennett said Native American tribes have the same sovereignty that states do. She asked if **S 1205** implies that the Idaho Legislature has more power than the sovereignty of tribes. **Senator Lakey** said tribes are federally recognized and therefore not an Idaho government entity. **Senator Stennett** asked about page 2, lines 21-24, which talks about money charged for violation of **S 1205**. She asked if the money was being paid directly to the Legislature or to the judiciary. **Senator Lakey** said that was existing language from S 1332 which passed in 2014, and if a violation occurred, the money would go to the entity that brought the action. **Senator Stennett** referenced page 2, line 5-9, in the case where state law enforcement works cooperatively with federal agents in situations such as human, or firearm trafficking; who has more control. **Senator Lakey** said **S 1205** does not limit the cooperation between agencies in those areas.

Senator Burgoyne asked about the fiscal note attached to the bill showing no fiscal impact. He talked about the many lawsuits related to gun control rights and said attorney fees will be involved, so how can the fiscal impact be zero? **Senator Lakey** said the Idaho Legislature is part of the three branches of government, and the judicial branch has the opportunity to determine the constitutionality of **S 1205**. **Senator Burgoyne** asked what could be the impact on funds coming from the Federal Government if **S 1205** passed. He specifically mentioned training funds for law enforcement, and law enforcement grants since receiving those funds requires a cooperation between State and Federal agencies. **Senator Lakey** said the S 1332, has been in effect since 2014 but if the Biden Administration changes the requirements for those funds or develops new programs, **S 1205** could impact funding.

Senator Burgoyne said page 2, lines 4-6 seems to say that this bill does not affect Idaho law enforcement officers when assisting federal agents on drug or gang enforcement activities. He asked how issues such as immigration and foreign and domestic terrorism would be affected because **S 1205** seems to say police officers will not have any flexibility with respect to those issues. **Senator Lakey** said the line items mentioned were taken from S 1332 to be consistent. In regard to immigration enforcement laws, if those laws are contrary to the Idaho Constitution, **S 1205** would prohibit assistance or ordering law enforcement to participate in those actions.

TESTIMONY: **Paul Jagosh**, Idaho State Lodge of Fraternal Order of Police (FOP), spoke in support of **S 1205**. He said FOP members took an oath to support and defend the Constitution of the U.S.; **S 1205** will help protect officers from being ordered to enforce unconstitutional "gun grabs." (see Attachment A)

DISCUSSION: **Senator Stennett** asked what would happen if an officer tries to enforce a state law that violates federal law. **Mr. Jagosh** said Idaho police can only enforce State and local city laws, not federal laws. **Senator Stennett** said Idaho police officers currently assist federal agencies such as the Bureau of Alcohol, Tobacco and Firearms and

Explosives, Federal Bureau of Investigations, and the Department of Homeland Security, and receive funding for joint operations and training. If **S 1205** is approved would Idaho be required to refund moneys back to the U.S. government because officers were not participating in those actions.

Mr. Jagosh said since SB 1332 passed in 2014 we haven't had any of those issues. We are able to assist federal agents with enforcing current laws that are on the books, as long as those actions do not conflict with our Idaho Constitution. **Senator Stennett** asked, if there was a conflict where local and federal law enforcement are trying to manage a violent incident, how would that be managed since both agencies may be viewing how to proceed differently. **Mr. Jagosh** said public safety is always first on law enforcements minds. If a situation arose where local police were working with federal officers they would follow the federal officers lead but would only enforce state or city codes that they have jurisdiction over.

TESTIMONY:

The following testified in favor of **S 1205**:

- Gregg Pruett, Idaho 2nd Amendment Alliance
- Julie Paine
- Clayton Cramer
- Doug Nickle
- Joanna Keith

Those in support of **S 1205** provided the following reasons: **S 1205** gives Idaho citizens the right to bear arms as granted in the U.S. Constitution; maintains individual protections because criminals do not abide by the law, and strengthens Idaho citizens rights against federal overreach.

The following testified in opposition to **S 1205**:

- Alice Arambarri
- Diana David

Those in opposition to **S 1205** provided the following reasons: federal law is the law of the land and this law would bring unnecessary lawsuits in Idaho; and would do nothing to protect the people of Idaho from gun violence.

Senator Lakey closed by restating that **S 1205** is not a nullification bill; this is Idaho exercising its rights under both the U.S. and the Idaho Constitutions, and one that would strengthen current State laws.

MOTION: **Senator Harris** moved to send **S 1205** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion.

DISCUSSION: **Senator Stennett** asked if Senator Lakey approached the Idaho State Police, the U.S. Attorney's Office for the State of Idaho, or the Idaho courts about **S 1205** and if so, what input was provided. **Senator Lakey** said he spoke with the Idaho Fraternal Order of Police, the Idaho Sheriffs Association, and the Idaho Chiefs of Police, but not the judiciary or the U.S. Attorney's Office. The sheriffs association supports the bill and the police chiefs took a neutral stance.

Senator Harris spoke to his motion stating that the bill was clear and well-written, and the definitions were very clear. There has been a lot of work by Senator Lakey and others.

Senator Lee spoke in favor of the motion and recognized Senator Lakey's leadership with **S 1205**. She indicated she had viewed all versions of the bill and it is brought forward in order to ensure that we are not diminishing or undermining any previous

legislation. She stated her appreciation that all parties were brought together to craft this legislation ensuring Idaho's Second Amendment rights would remain in place.

Senator Burgoyne agreed that Article 1, Section 11 of the Idaho Constitution recognizes the rights of Idahoans with respect to guns. His concern was for law enforcement officers who are ordered, by their superior, to participate in an action that later is found to violate the Idaho Constitution. There have been times when a police officer is brought before the Idaho Supreme Court for an action they were ordered to participate in. The officer then faces being guilty of a potential misdemeanor, or liable for a civil fine over \$1,000, which is extremely unfair. Article 1, Section 11 also stipulates how federal and state laws intersect. If Idaho's Constitution violates the federal constitution, or if the Idaho Constitution violates a treaty, then the Idaho Constitution cannot be enforced even by the State of Idaho. On the issue of treaties in relationship to other countries when dealing with domestic terrorism, when that treaty is ratified by the U.S. Congress, it then becomes the supreme law of the land which means it may override the Idaho Constitution. **Senator Burgoyne** said he felt that **S 1205** would give a false sense of security to gun owners and law enforcement, and he would not support the motion.

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

ADJOURNED: There being no further business at this time, **Chairwoman Lodge** adjourned the meeting at 2:08 p.m.

Senator Lodge
Chair

Twyla Melton
Secretary

Florence Lince
Secretary