

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Monday, May 03, 2021

**TIME:** 8:00 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 8:03 a.m.

**H 258** **Relating to Alcohol for Waterfront Resort Liquor Licenses involving a public right-of-way.**

**Representative Jim Addis**, District 4, presented **H 258** dealing with liquor licenses and right-of-ways. He said this bill was brought on behalf of a constituent in District 2, although the subject matter pertains to business owners in District 4 - along with others throughout the State - concerning Idaho Code § 23-948.

In 2017 the Buttonhook near Coeur d'Alene (see Attachment A), was purchased by a new owner. When the new owner tried to transfer the license through the Alcohol Beverage Control Division (ABC), the division returned it on a technicality. After the application period expired, ABC denied the transfer of this long-standing, existing license on the grounds that a public right-of-way bisected the property between the waterfront and the restaurant, creating two separate parcels; the property is one parcel according to the area plat map, not two separate parcels.

**Representative Addis** stated there has been a four year battle in the court system culminating with Kootenai County District Judge John T. Mitchell ruling in favor of the Buttonhook's owner. Judge Mitchell stated, "There is nothing in Idaho Code that requires the resort to be a waterfront parcel." **Representative Addis** said It is very common throughout Idaho to see a right-of-way along a waterfront such as a sidewalk, a roadway, or a bike path. Other waterfront resorts could be affected by this issue if they seek to sell their property. A simple modification to a very narrow code to codify this judicial ruling is appropriate to save future businesses in this same situation.

**DISCUSSION:** **Senator Burgoyne** asked if the applicant brought a court action to determine if ABC's interpretation was correct and, if so, the result of the court action.

**Representative Addis** answered in the affirmative and the ruling was in the applicant's favor.

**Senator Stennett** asked if there were other communities that might be impacted by the court decision. **Representative Addis** said there is a restaurant called Tony's in District 4 that has been in business approximately 70 years that ABC inquired about concerning this issue. **Representative Addis** said he has spoken with Senator Burtenshaw and Representative Rod Furness about the Highland Park Resort Hotel in eastern Idaho whose owners expressed concerns about this issue.

**Senator Heider** asked if there is any difference between the Buttonhook situation and the one the Committee dealt with earlier in the Session with the Highland Park Resort. **Representative Addis** responded that the Highland Park Resort case dealt with water flow; this bill concerns right-of-way issues.

**MOTION:** **Senator Winder** moved to send **H 258** to the Senate floor with a **do pass** recommendation. **Senator Heider** seconded the motion.

**DISCUSSION:** **Senator Burgoyne** stated he is not in favor of the motion. He said changing the law is not necessary since the applicant took the case to court and won.

**VOTE:** The motion carried by **voice vote**. Senator Burgoyne was recorded as voting nay. **Chairwoman Lodge** explained that this bill was discussed several weeks ago but it just came to the Committee. She also noted that the liquor laws must be reviewed and updated to make them economically responsible for the citizens of the State.

**H 322** **Relating to Federalism to provide a method to interpose between Idaho citizens and the federal government.**

**Representative Sage Dixon**, District 1, explained that this legislation is a tool or procedure to use when examining federal actions to determine whether they comport with the Idaho and U.S. Constitutions then, if not, to determine whether those federal actions would be enforced within the State (see Attachment B). **Representative Dixon** explained the process that would be used by the Committee on Federalism (COF). This bill allows the COF to hold hearings and determine if a complaint is valid. He remarked on the anti-commandeering laws that state the federal government cannot force states to enact federal actions and rules. **Representative Dixon** related that courts in several other states recently upheld actions not enforcing federal actions based on anti-commandeering laws and 10th Amendment principles.

**DISCUSSION:** **Senator Stennett** said she views the dispute at hand as a power struggle. This bill would give the Legislature the ability to invalidate federal actions. She also inquired if taxpayers would be expected to pay for litigation costs. **Representative Dixon** responded that during COF hearings, it would be determined if the action was not within the purview of the federal government. He said the federal government shouldn't force actions on the State beyond its jurisdiction. He stated the disputes would not always end up in court. There is no fiscal note because the COF is a standing committee that falls within the legislative budget.

**Vice Chairman Guthrie** asked if the COF's actions would contradict open meeting law. **Representative Dixon** said he could not answer that question.

**Senator Heider** referred to an earlier issue from the 2020 Legislative Session concerning boys and girls sports, and asked if this is a similar issue where the State disagreed with federal actions. **Representative Dixon** said this matter is not similar. The COF would not require a court case before hearing a complaint.

**Chairwoman Lodge** inquired about what types of issues, other than land issues, would the COF review, for instance, personal federal taxes. **Representative Dixon** said taxes would not be under their purview. COF would look at issues the federal government forces on states when it does not have the authority to do so.

**TESTIMONY:** **Russ Hendricks**, Idaho Farm Bureau Federation (FB), spoke in support of **H 322**, noting that this is not a new or novel idea, as it existed before the federal constitution was ratified. James Madison and others wrote the Federalist Papers, in part, to convince the states that the Constitution was a good idea. **Mr. Hendricks** quoted from Federalist No. 46 which stated "should an unwarrantable measure of the federal government be unpopular in particular states or even unwarrantable measure be, so the means of opposition to it are powerful and at hand." Madison

then listed several issues that disquieted the people.

**Mr. Hendricks** said, as Representative Dixon pointed out, there are several U.S. Supreme Court cases regarding anti-commandeering doctrine (see Attachment C). He noted that this Legislature just passed a bill, **S 1205**, that accomplished that to which **H 322** refers.. **H 322** is a two step process: 1) an idea or issue is brought to the COF, and 2) the COF reviews it for merit and decides whether to proceed with legislation.

**Chairwoman Lodge** asked why, if **S 1205** was authored and drafted by members of the Legislature, is there a need to have another committee to participate in the process. **Representative Dixon** said it is more formal and initiates the process.

**Senator Burgoyne** noted that **H 322** is not an anti-commandeering bill, it is a nullification bill. He read from page 1, line 10 which "declares a procedure to make null and void..." He said his research found that no federal court would uphold this approach; federal law has been ruled as supreme. He referred to a letter from former Idaho Supreme Court Chief Justice Jim Jones (see Attachment B) and asked Mr. Hendricks for his comments. **Mr. Hendricks** clarified that **H 322** is not a FB bill, but FB policy supports the concept of not enforcing laws that the State does not think are good for Idaho. **Mr. Hendricks** referred to page 1, lines 28-31, that says no agency or political subdivision of the State shall take action or use resources to enforce the federal actions in question.

**Jonathan Oppenheimer**, Idaho Conservation League (ICL), spoke in opposition to **H 322**. The ICL is interested in this legislation because of its potential impact on air, water, and public lands. This bill is inconsistent with Article I, Section 3, of the Idaho Constitution as well as Article I, paragraph 2, of the U.S. Constitution. Both affirm that the U.S. Constitution is the supreme law of the land. Also, the COF violates open meeting laws. **Mr. Oppenheimer** spoke about the lack of a fiscal note and anticipated legal fees would ensue if the Legislature passes **H 322**. He discussed the differences between the advance of **S 1205** and the process for **H 322**. **H 322** allows the COF to take action for any federal action after January 1, 2021. **Mr. Oppenheimer** then elaborated on the differences between state and federal laws, and how they interact.

**Representative Dixon** made his closing statements and clarified several issues from Mr. Oppenheimer's testimony; the fiscal note, commandeering and anti-commandeering, and the COF process.

**DISCUSSION:** **Vice Chairman Guthrie** asked for clarification of when the pause would start during the process. **Representative Dixon** responded it would start as soon as the COF hearing process started.

**Vice Chairman Guthrie** commented that he appreciates the frustrations when dealing with the federal government. However, he is not convinced **H 322** includes the correct mechanics to counter those frustrations. This bill could cause lawsuits and other actions could be problematic. He stated his love for the State and that he doesn't always agree with what the federal government does, but there should be some respect for the system.

**MOTION:** **Vice Chairman Guthrie** moved to hold **H 322** in Committee. The motion was seconded by **Senator Heider**.

**Senator Winder** explained the difficulty when cities and counties are authorized by state law and federal law is authorized by the states. The pause could put Idaho in court. **S 1205** exemplified how to properly resolve a problem through legislation. **Senator Winder** said the Legislature should always be sensitive about how its actions impact Idaho citizens.

**Senator Lee** expressed her concern with the immediate pause requirement. There

is currently a process in place and the COF can currently go through the process outlined in this bill and bring a proposal to the Legislature.

**Senator Burgoyne** stated this legislation would make the COF very powerful. **H 322** is a mix of nullification and commandeering, and a small group of people would make large decisions.

**Chairwoman Lodge** acknowledged that page 1, lines 11-15 are concerning. She referred to the undocumented drivers bill and **S 1205** as examples of how legislation is successful. This bill needs some more work; she will support the motion.

**VOTE:** The motion carried by **voice vote**. Senators Winder, Anthon, and Harris were recorded as voting nay.

**H 348** **Relating to City Appropriation Ordinances and certain required reporting for financial information.**

**Jason Hancock**, Deputy Secretary of State, explained that **H 348** is a trailer bill to **H 73** which the Governor signed in March. **H 73** delegated financial reporting for cities to the State Comptroller's Office (SCO) which includes access to a website for all financial reporting. Cities currently send financial reports to the Secretary of State's Office; this bill eliminates that process, and instead, those reports will go to the SCO. This change eliminates duplication.

**DISCUSSION:** **Senator Lee** asked why this bill couldn't wait until next year. **Mr. Hancock** responded that cities would duplicate reports over the next year.

**MOTION:** **Senator Heider** moved to send **H 348** to the Senate floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**MINUTES APPROVAL:** **Senator Lee** moved to approve the Minutes of **April 19, 2021**. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

**Senator Winder** moved to approve the Minutes of **April 20, 2021**. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business at this time, **Chairwoman Lodge** adjourned the meeting at 9:08 a.m.

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Senator Lodge  
Chair

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Twyla Melton  
Secretary