

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Wednesday, May 05, 2021

TIME: 10:45 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 11:30 a.m.

RS 28991 **A Concurrent Resolution to allow for a recess from May 6, 2021 to May 12, 2021.**

Senator Winder stated that **RS 28991** would allow the Legislature to recess for a five day period that would allow the Governor to determine whether to sign into law or veto any bills that were on his desk. The RS also terminates per diem payments to the Legislators during that time period, which is in keeping with the Citizens' Committee on Legislative Compensation's guidelines.

MOTION: **Vice Chairman Guthrie** moved to send **RS 28991** to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

S 1218 **Relating to Uniform Controlled Substances amending existing law to prohibit the commercial promotion or advertisement of Schedule 1 Controlled Substances in the State.**

Senator Scott Grow, District 24, stated that this legislation would make what the State does with tobacco advertising, i.e., no advertising on billboards or television consistent with prohibiting advertising of Schedule 1 controlled substances.

TESTIMONY: The following testified in opposition to **S 1218**:

- Joe Evans
- Russ Belville, Idaho Citizens Coalition
- Daniel Potter
- Tyler Booze

Those in opposition to **S 1218** provided the following reasons: marijuana cannot be sold in the State because it is illegal; attacking out-of-state advertising is against freedom of speech; the bill says "advertise and promote," so it prohibits more than just advertising; would give rise to unintended consequences; promoting marijuana is a First Amendment right.

DISCUSSION: **Senator Stennett** questioned the use of the word "person" on behalf of a legal entity. She asked if a person might lose control over their private property under this bill. **Senator Grow** said violation would result in a misdemeanor, and a corporation could not be put in jail for a violation; it must be someone who knowingly commits

an illegal act. He said **S 1218** only relates to Schedule 1 controlled substances. **Senator Stennett** asked to what degree does this bill control the ability to advertise CBD products. **Senator Grow** reiterated that this only applies to Schedule 1 controlled substances.

Senator Burgoyne noted that under federal law, CBD could be sold with trace amounts of THC, but under Idaho law, any amount of THC constitutes a Schedule 1 drug. **Senator Grow** replied that this bill is directed towards marijuana, methamphetamine, and fentanyl; those are included as Schedule 1 drugs.

Senator Grow explained the difference in First Amendment rights between commercial and noncommercial speech. He referenced *Central Hudson Gas and Electric Corp. v. Public Service Commission* (1980) used today as the standard to test protection for commercial speech.

MOTION: **Senator Heider** moved to send **S 1218** to the Senate floor with a **do pass** recommendation. **Senator Lee** seconded the motion.

Senator Burgoyne referenced page 1, lines 18-19 regarding the promotion and sale of a Schedule 1 controlled substance. He provided an example of advertising by the Ontario, Oregon Chamber of Commerce as an example. **Senator Burgoyne** stated his belief that there are substantial First Amendment issues in the draftsmanship of the legislation. He commented about the lateness and manner in the introduction of this legislation.

Senator Anthon spoke in favor of the motion. As a representative of his constituents, he is adamantly against advertising for alcohol and tobacco, so he will vote for this motion.

Senator Lee said some Payette County residents are concerned about bill boards advertising illegal drugs. She will support the motion. This bill is a way to be consistent with policy. Senator Lee stated her concern about the timing in the session this bill is coming to the Committee.

VOTE: The motion to send **S 1218** to the Senate floor with a **do pass** recommendation carried by **voice vote**. Senator Stennett and Senator Burgoyne were recorded as voting nay.

S 1217 **Relating to a State of Extreme Emergency to repeal and replace Idaho Code 46-601.**

Senator Anthon presented **S 1217** which is essentially a rewrite of legislation already seen this session. This is a rewrite of Idaho Code § 46-601 dealing with extreme emergencies and the powers the Legislature delegates to the Governor to equip him to manage those emergencies. He referred to Section 1, relating to Legislative Intent, that states the Legislative and Executive branches should work together to recognize that all Idahoans who work and provide for their families and pay taxes are essential and should be treated as such.

Senator Anthon emphasized that the bill prevents the delegation of government power to nonelected officials. This legislation is careful to protect the Governor's constitutional powers. This legislation applies to very particular, narrow circumstances the State has never seen: a breakdown of services, personnel, equipment, and resources in emergency situations in cities and counties. He referred to page 2, lines 29-31, which protects Idahoans' ability to work and provide for their families.

Senator Anthon explained new requirements included in this legislation limits the Governor's powers as outlined on page 2, lines 45-50 and page 3, lines 1-39. **S 1217** includes a 90-day provision that, if an extreme emergency continues, the Legislature would be called into session within a minimal time period to work with

the Governor to ensure protection for the people of Idaho. Page 3, lines 20-27, state that during the extreme emergency, the Governor cannot impose restrictions related to firearms, limit the right to peaceable assembly, and free exercise of religion. Page 3, line 28, says the Governor may not alter or suspend the provisions of Idaho Code.

DISCUSSION: **Senator Stennett** referred to the delegation of power to nonelected officials; does that also refer to the Director of the Office of Emergency Management where Federal Emergency Management Agency goes. **Senator Anthon** said this legislation is not mandatory, it is advisory and only applies to the Governor's powers which are delegated by the Legislature, and would include any agency underneath the Governor. **Senator Stennett** asked why has the Governor's ability to have an organized militia been removed. **Senator Anthon** replied that this is a repeal and replace bill and the Governor would have the ability to call out the Idaho National Guard in an extreme emergency. Under the Constitution, the governor also has the powers to order up militias. **Senator Stennett** read from the bill that such rules and orders must be "narrowly focused" ...; how is "narrowly focused" defined. **Senator Anthon** stated it was on lines 28-29, "narrowly focused without placing unnecessary restrictions on the ability for a person or persons..." **Senator Stennett** inquired about the 12 county requirement and the requirements to declare an extreme emergency. **Senator Anthon** said they arrived at the 12 counties after consulting with the Governor's Office and the exploration of the size of an emergency in terms of its affect on Idahoans.

MOTION: **Senator Harris** moved to send **S 1217** to the Senate floor with a **do pass** recommendation. **Senator Winder** seconded the motion.

Senator Winder said this bill will meet the needs of the Legislature and not unduly interfere with the rights and obligations of the Governor to respond to emergencies. He thanked those who worked on this bill and the cooperation of the Governor to get to this point.

Chairwoman Lodge reiterated those comments and thanked the leadership and the Governor for the work to bring this legislation together. She said this effort shows that all who are involved can work together for the benefit of Idaho's citizens.

Senator Burgoyne stated his concern with involving the Legislature in emergencies past the 90 days; the Legislature is not elected by the entire State as the Governor is. There is the potential for the Legislature to be influenced to pick and choose certain counties, and the degree it is willing to look out for the interests of those particular counties as well as particular parts of the State.

VOTE: The motion to send **S 1217** to the Senate floor with a **do pass** recommendation carried by **voice vote**. Senator Stennett and Senator Burgoyne were recorded as voting nay.

H 394 **Effective Dates to amend and add to existing law and to revise effective dates.**

Senator Winder explained that **H 394** deals with the fact that the Legislature has gone beyond May 2, which complicates the 60-day requirement that bills will not take effect until 60 days from the end of the Legislative session. This legislation ensures that all legislation passed and signed by the Governor, or allowed to become law by the Governor without his signature, or does not have an emergency clause, will become effective July 1, 2021.

MOTION: **Senator Anthon** moved to send **H 394** to the Senate floor with a **do pass** recommendation. **Senator Lee** seconded the motion.

Senator Burgoyne stated he cannot support the motion because this kind of legislation provides an incentive for the Legislature to stay in session longer.

VOTE: The motion to send **H 394** to the Senate floor with a **do pass** recommendation 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 12:15 p.m.

Senator Lodge
Chair

Twyla Melton
Secretary