

MINUTES
Approved by the Committee
Committee on Federalism
Thursday, August 24, 2023
10:00 A.M.
Lincoln Auditorium - WW02
Boise, Idaho

Members in attendance (*via remote): Cochair Senator Burtenshaw and Senators Lakey, Harris, Carlson, and Just; Cochair Representative Boyle and Representatives Horman, Dixon (1), and Monks; Legislative Services Office staff Kristin Ford and Grace King. Absent and excused: Representative Mathias.

Other attendees: Kirk and Allis Chandler - Washington County Republicans; Steve and Margie Keyser; Steve Moore, Betty Jean Mollenkopf (sic) - Boise County Republicans.

NOTE: Presentations and handouts provided by the presenters/speakers are posted to the Idaho Legislature's website <https://legislature.idaho.gov/sessioninfo/2023/interim> and copies of those items are on file at the Legislative Services Office in the State Capitol. Recordings of the meeting may be available under the committee's listing on the website.

OPENING REMARKS / APPROVAL OF MINUTES

Cochair Burtenshaw called the meeting to order at 10:01 a.m. He asked for a motion regarding the minutes of the May 9, 2023, meeting. **Senator Harris made a motion to approve the minutes, seconded by Representative Horman; with no objections, the minutes were approved.**

NATIONAL EXPERT BORDER PANEL

At 10:03 a.m., Cochair Burtenshaw called upon **Michael Yon**, an author and researcher, to provide his comments via video conference from Texas. Mr. Yon spoke of his experiences along the U.S./Mexico border (Texas, Arizona, New Mexico, California) and also his international experiences in Morocco, Columbia, Panama, southern Mexico, Georgia, Armenia, and Japan. He reported of an abandoned Walmart supercenter in Brownsville, Texas, believed to be used for harboring missing children who are shipped around the states for labor. He cited an overwhelming number of migrants braving the geographic terrain of the Darién Gap (the isthmus region between Panama and Columbia) in an attempt to reach North America and expressed concerns of the Panama Canal and its security. He noted that this influx of individuals could also threaten to introduce geographically isolated infections and diseases to previously protected populations and livestock.

- Representative Monks requested that Mr. Yon expand more on the issue of children being taken for labor usage and whether that included Idaho. Mr. Yon responded how he was researching approximately 8,600 addresses where children were believed to be held for transit for forced labor.
- Cochair Burtenshaw next called upon **Chris Russo**, president of Texans for Strong Borders. Mr. Russo explained that his organization was a nonprofit that sought to educate the public and policyholders about solutions to border security and immigration policy. He noted that these policies were appropriate to all states since migrants moved beyond the Texas border. He discussed the professional organization of the border-controlling cartels that have created a \$20 billion economy of human smuggling, which was more lucrative than drug smuggling. Mr. Russo contends that the states' responsibility, in light of the federal government's lack of action on this issue, was to defend itself against this 'invasion' pursuant to Article I, Section 10, Clause 3 of the U.S. Constitution. Mr. Russo imparted on the committee the history preceding the litigated case between the state of Texas and the U.S. Department of Justice regarding a floating barrier (Operation Lone Star) that

was designed to prevent migrants crossing the U.S.-Mexico border via the Rio Grande near Eagle Pass, Texas. He reported that Idaho's involvement on the border issue included state troopers being assigned to assist with Operation Lone Star in the capacity as brush teams, those who 'beat-the-brush' in search of migrants not detained by the U.S. border patrol. Considering that many migrants end up in Idaho affecting taxes, employment, and health services, he proposed an interstate compact to assist with the deterrence of migrants in Texas.

-- Cochair Burtenshaw then called upon **Joe Edlow**, The Edlow Group LLC founder. Mr. Edlow summarized his extensive experience on immigration and border security with the federal government (Congress, ICE, DOJ, and CIS). He reported on the disproportional number of immigrants detained versus those deported. He encouraged the state of Idaho to remain actively engaged in immigrant policy regarding public safety, public health, education, and employment and labor laws. Mr. Edlow echoed previous presenters in that all states have become border states as all states were affected by illegal immigrants.

- Representative Horman inquired whether other states had pursued similar remedies as he suggested. Mr. Edlow responded in the affirmative, citing South Carolina as an example to review.
- Senator Lakey asked whether the federal system was fixable. Mr. Edlow stated that it was and that the first step was to enforce the current laws.
- Senator Harris asked whether there was any way to combat the effectiveness of the cartels regarding immigration. Mr. Russo suggested a full-scale counter-insurgent operation to eliminate the cartel influence. He also echoed Mr. Edlow's enforcement of current law and promotion of a no-guarantee of entry.
- Senator Lakey inquired about the interstate compact suggestion and whether Texas currently had any agreements with other states. Mr. Russo reported that Operation Lone Star was essentially an invitation for other states to assist. He was not aware of other states' repellent methods.

IDAHO LAW ENFORCEMENT PANEL

At 10:45 a.m., Cochair Burtenshaw called upon the first presenter of the Idaho law enforcement panel.

-- Lt. Colonel **Sheldon Kelley**, Idaho State Police (ISP), reported that members of ISP (criminal interdiction and SWAT) participated in Operation Lone Star. He visited Texas to supervise staff and witnessed the floating barrier discussed in recent news. Lt. Colonel Kelley reported witnessing illegal border crossings as well as illegal drug trafficking.

-- **Kieran Donahue**, Canyon County Sheriff, spoke on his visit(s) to the border. He noted influences to Idaho due to human and drug trafficking effects from Texas. Sheriff Donahue reported that the Jalisco New Generation and the Sinaloa cartels were operating in Idaho. He explained how the cartels pushed drugs laced with fentanyl, methamphetamine, and other deadly drugs. He shared how the cartels control the crossings — permitting transit only after being paid exorbitant fees or by signing individuals into servitude to pay off the transit debt. He cautioned against those "got aways" who evaded law enforcement and who entered the country with malicious intent.

-- **Rex Ingram**, Caldwell Chief of Police, spoke next. Chief Ingram recounted how his family lived south of the Texas border and was forced from the country when he was five years old. He also shared his personal experiences as a Los Angeles police department officer. He applauded Idaho's law enforcement cooperative efforts on crime. He requested stronger sentencing for offenders.

- Senator Just asked how law enforcement identified the cartel's existence in Idaho. Sheriff Donahue responded that law enforcement officers have a history of the players by way of other investigations. He explained how information was shared among the U.S. Attorney's Office, the Department of Justice, the FBI, and neighboring states' law enforcement. He noted that Boise

was known as a HIDA — high intensity drug trafficking area; and he said the fact that there were only 29 identified HIDAs should be alarming.

- Senator Lakey asked the sheriff to comment on the effectiveness of mandatory minimums. Sheriff Donahue opined that mandatory minimums were effective. As an example, he shared that when working undercover operations, he has had drug dealers request to make deals across the border in Oregon. Chief Ingram supported mandatory minimums and, additionally, the need to get people the help they need when requested. Senator Lakey asked how the Legislature could help. Sheriff Donahue encouraged assisting the border states with manpower and nationwide legislation to curtail the initial surge of immigrants. Chief Ingram supported those efforts and imparted the need for urgency.
- Representative Dixon asked the presenters to speak to the frustrations and ramifications of judicial leniency. Chief Ingram found some judges being too lenient and, even though they have that discretion, it undermined the effectiveness of the system.
- Cochair Boyle requested further explanation of the 4th amendment waiver. Chief Ingram explained that the 4th amendment protected citizens from unreasonable search and seizure by law enforcement. Current law allows only a probation or parole officer to search a parolee or individual on probation; he explained that a waiver would allow any law enforcement officer to perform such a search.

LEGISLATOR BORDER REPORTS

At 11:32 a.m., Cochair Burtenshaw explained that the next segment would be presentations from legislative members' personal visits to the southern border with Mexico.

-- **Senator Phil Hart** summarized that the activity at the border was not sustainable and threatened the existence of the nation. His [report](#) may be found on the website under the committee's listing.

-- **Senator Tammy Nichols** provided pictures of her visit. Her [report](#) may be found on the website under the committee's listing.

-- **Representative Jacyn Gallagher** emphasized that her visit was not funded by taxpayer dollars. Her [report](#) may be found on the website under the committee's listing.

-- **Senator Ted Hill** was scheduled to visit the border the week following the meeting. His [report](#) was submitted after the meeting and may be found on the website under the committee's listing.

- Senator Lakey inquired how the Legislature could support law enforcement at the border and in dealing with consequences here in Idaho. Senator Hart proposed reintroduction of his past legislation to require Idaho employers to use the E-Verify system. Senator Nichols supported efforts to de-incentivise immigrants' attempts to enter the country. Senator Hill supported tougher legislation for anyone associated with the fentanyl and human trafficking trades.

The committee recessed at noon.

OVERVIEW OF FEDERAL PAYMENT IN LIEU OF TAXES (PILT)

At 1:31 p.m., Cochair Burtenshaw called upon former U.S. Congressman and Idaho State Senator **Larry Craig** for his overview of the Federal Payment In Lieu of Taxes (PILT) program. Mr. Craig provided a history of the program's inception in 1976, which was created to help local governments offset losses in property taxes due to the existence of nontaxable federal lands within their boundaries. He noted that the program had been revised many times to accommodate inflation, to adjust the payout formula, and to accommodate other types of land designation.

- Representative Dixon inquired whether the goal should be inflationary adjustment or real value. Mr. Craig encouraged the Legislature to go for full value knowing that everything is a negotiation. He also encouraged the Legislature to use the data that had been acquired from the [2022 Idaho study](#) produced by AEON.
- Senator Lakey inquired whether the inflationary adjustment made it mandatory. Mr. Craig responded that inflation was a reasonable request. Senator Lakey asked whether requests for reimbursement to cities/counties for search and rescue or firefighting efforts on federal lands had room for improvement. Mr. Craig noted that it was probably more of a case-by-case situation, but reasonable to request. If nothing else, it created awareness of the issues and the reality of the costs.

AEON EVALUATION PILOT PROJECT REVIEW, EXTENSION OF EVALUATION, AND DISCUSSION

At 1:50 p.m., Cochair Burtenshaw called upon **Mark Cressler**, CEO of AEON AI, for his presentation to the committee. He explained how AEON uses AI (artificial intelligence) to collect data for the purpose of economics. Mr. Cressler reviewed the findings of the [2022 Idaho Federal Land PILT Analysis Report](#), as well as the findings from the study AEON completed for the [State of Utah](#).

- Representative Dixon inquired whether the matrices used in the Utah report were also used in the Idaho study. Mr. Cressler acknowledged that they were.
- Representative Horman asked whether there was any action from other states on this issue since the studies for Utah and Idaho were conducted. Mr. Cressler reported that there was interest from other states: Arizona, California, Montana, Wyoming, and Nevada. He noted that it was a bipartisan interest issue and that there no longer was the issue of not being able to quantify the value of the land.

-- **Kristin Ford**, LSO Legislative Drafting Attorney and Division Manager - Research & Legislation, provided an overview of the original study contract and the amendment to the contract regarding usage and access of the AEON data study. **Senator Lakey made a motion to approve the first amendment to the agreement for the federal land AEON contract; Representative Dixon seconded the motion; the motion was approved by voice vote.**

ATTORNEY GENERAL PRESENTATION OF FEDERALISM LITIGATION

At 2:24 p.m., Cochair Burtenshaw invited **Raul Labrador**, Idaho Attorney General, to the podium for his comments to the committee on current federal litigation. Items discussed: Sackett v. EPA, joined Texas in a suit regarding waters of the U.S. (WOTUS), rebuked EPA rule on power plants, joined letter of 25-state coalition opposing the Biden administration's attack on gas-powered vehicles, joined 8-state letter to oppose new BLM conservation and landscape health rule, joined 23-state suit against the Biden administration for unlawful immigration policy, challenged proposal for expansion of the ACA to ineligible aliens, Office of Management and Budget's guidance to federal agencies on the development of regulatory analysis regarding the Loper Bright Enterprises v. Raimondo suit, and a letter opposing FDIC special fee on accounts based on risk assessment. He reported that his office had participated in more than 100 multi-state letters and led seven legal efforts fighting executive overreach.

- Representative Dixon asked whether state courts were pointing to the Chevron doctrine as precedence. Mr. Labrador responded that they had their own doctrine, which was similar to the Chevron case and gave undue deference to the administrative state.
- Cochair Boyle asked whether that should be included in each statute or whether there should be one statute summarizing the agencies' jurisdiction. Mr. Labrador suggested that it could be done either way.

- Senator Lakey inquired whether the challenges were against federal executive order or congressional action. Mr. Labrador responded that most often it was against executive order. Additionally, he felt that some opposition was toward states going beyond their 2nd amendment rights in an effort to correct inadequate action by the federal government.

STATE TREASURER UPDATE ON ESG AND OTHER FINANCIAL ISSUES

At 2:47 p.m., Cochair Burtenshaw invited **Julie Ellsworth**, Idaho State Treasurer, to the podium for her comments to the committee on current financial issues. Items discussed: application to become state depository, challenges to ESG legislation, and the Securities and Exchange Commission.

- Representative Dixon asked about the digital dollar and effects on Idaho. Ms. Ellsworth responded that she would have a presentation on that issue for the next meeting.

With no further business, the meeting was adjourned at 3:01 p.m.