

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Monday, February 06, 2023

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Guthrie, Vice Chairman Bernt, Senators Winder, Anthon, Harris, Lee, Toews, Wintrow, and Ruchti

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: **Chairman Guthrie** called the meeting of the Senate State Affairs Committee (Committee) to order at 8:00 a.m.

S 1030 **IMMIGRATION - Adds to existing law to provide for the enforcement of federal immigration law by governmental entities in this state. Senator Foreman** explained **S 1030** would add a chapter about compliance with immigration law to Title 19, Idaho Code, in the Criminal Procedure section. This legislation would prohibit a state governmental agency from adopting, enforcing or endorsing a policy under which the entity prohibited or discouraged the enforcement of immigration laws. Further, the bill would prohibit governmental entities from restricting law enforcement personnel from cooperating with federal authorities conducting lawful investigations into illegal immigration.

Senator Lee expressed concern about the language in the bill and queried whether or not the same enforcement mechanism would be employed if the wording was changed to something like federal laws on guns. **Senator Foreman** asked if we wanted our government to order government employees to not cooperate with a lawful investigation. **Senator Lee** clarified she was struggling with inserting Federal government directives into this statute. **Senator Foreman** assured this bill would not give the Federal government any more leverage than currently existed.

Senator Winder admitted his struggle was trying to figure out the immigration laws and the unintended consequences. **Senator Ruchti** asked for an example in Idaho where a citizen was given the right to turn in another citizen for these types of violations. **Senator Foreman** perceived it was a citizen's duty to report if he saw something dangerous to others or potentially harmful and illegal. It was the court's job to dispose of that case. **Senator Ruchti** asked if the duty already existed, why it needed to be in statute. **Senator Foreman** deferred to his guest speaker, Mike Kane. **Senator Toews** asked if this legislation was reviewed by the Attorney General's (AG) office. **Senator Foreman** admitted it was not because he did not think there would be a difference of opinion.

TESTIMONY:

Michael Kane said for the last ten years he defended governmental entities in civil rights cases because those entities cooperated with ICE. His example was the arrest of a man who at a bond hearing was released on his own recognizance (ROR). During the process, law enforcement learned the defendant was undocumented and called Immigration and Custom Enforcement (ICE), who put a Detainer Request (Detainer) on him. The defendant was detained and released to ICE rather than ROR. The defendant spent the next several years in the Federal court process to determine whether or not he was removable. The defendant sued the Sheriff's office that arrested him claiming a violation of his Fourth Amendment rights and false arrest. According to **Mr. Kane**, the scenario played out across this country with Sheriff's offices losing and having to spend taxpayer money to settle lawsuits. If the defendant won the lawsuit, the attorney was fully reimbursed.

Mr. Kane cited a Minnesota case where the jury awarded a \$1 settlement and the Sheriff's office had to pay the attorneys a quarter of a million dollars. **Mr. Kane** suggested a solution was to file an Administrative Warrant with the Detainer. He continued, the importance of **S 1030** was to protect officers who cooperated with ICE under the equal protection clause. **Mr. Kane** stated state laws were important to those who defend governmental entities because courts often asked about the state's policies. Idaho was silent on this matter. He said the Idaho Counties Risk Management Program Board (ICRMP) voted unanimously to support **S 1030**.

Senator Lee posed a question about enforcement since Sheriff's, who are elected officials, do not report to local governmental entities. She asked why **S 1030** did not have language in it that supported enforcement of every Federal law. **Mr. Kane** explained local law enforcement did not enforce Federal law. He stressed the importance of getting Detainers and Administrative Warrants for protection of law enforcement. **Chairman Guthrie** asked about setting a precedence for Federal government overreach into State business. **Mr. Kane** said **S 1030** made it a law to cooperate with ICE when there was a Federal statute that encouraged law enforcement to cooperate.

Senator Ruchti noted that in Idaho Code § 19-6003 in the proposed legislation a complaint could be filed with the AG's Office against an individual who did not enforce the immigration laws. That would allow an investigation to take place and the AG to take action deemed appropriate. If a governmental entity, such as a Sheriff's office, adopted a policy of non-cooperation, a person could file a complaint with the AG. **Senator Ruchti** cited Idaho Code § 19-6002, subparagraph two, subparagraphs A, B, C, and D. He stated this bill went beyond whether a government could adopt, enforce, or endorse the policy; it also prevented a Sheriff from taking actions to maintain control of the office, to provide guidance or discipline, or to encourage the Sheriff's employees. **Mr. Kane** claimed a county could not set an ordinance that said employees could not cooperate with ICE. The cooperation could include sending information to the Federal government, maintaining that information, exchanging that information, and assisting and cooperating.

MOTION:

Senator Anthon moved to send **S 1030** to the floor with a **do pass** recommendation. **Senator Toews** seconded the motion. **Senator Anthon** commented that money, the legal cost involved in prosecution, could prevent a citizen from pursuing a Writ. He stated a concern about the culture's current lack of support for the enforcement of certain laws and not wanting to see that take hold in Idaho. **Senators Winder, Harris** and **Lee** spoke in support of the concept of this legislation, but suggested a hold to gather more information from law enforcement to avoid taking away some of its constitutional authority and discretion..

Senator Foreman stated this legislation would not hamper any law enforcement agency in the State. He repeated the bill stated Idaho would respect the process of the law and that no governmental entity could stop any government employee from working with a lawful investigation. He said he would not object to the bill being held for further information. **Senator Bernt** said the intent of this bill was spot on and he supported it 100 percent, but he too would like to hear from law enforcement directly since they would be the front line in dealing with any issues. **Senator Anthon** withdrew his motion.

Senator Winder moved to hold **S 1030**, subject to call of the Chair. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

H 1

ELECTIONS - Amends existing law to provide requirements for post election audits ordered by the Secretary of State. Representative Young and Senator Bernt co-sponsored this legislation. **Rep. Young** said in **H 1** the post election audit included a hand recount of the ballots subject to the audit, and a comparison of the results reported by the county for any precincts, days, batches, legislative districts, and tabulation machines selected for audit. The post election audit was not required by statute and this legislation would verify the accuracy of the electronic process.

Phil McGrane, Idaho Secretary of State, said there had been very minor discrepancies between the hand count and what was reported electronically. This legislation would affirm what was an issue in the past and the post election process was put in place to boost voter confidence in elections. **Senator Winder** said he thought electronic counting would be flawless. He asked for an example of a problem. **Mr. McGrane** cited a one-vote difference between the hand count that was conducted and the results that were posted on election night. He explained the difference was due to interpretation between the readers and what the machine was able to read. He noted the importance of following the directions on the ballot to fill in the bubble as opposed to just putting a check mark in the bubble.

MOTION:

Senator Bernt moved to send **H 1** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

RS 30070

Relating to Alcoholic Beverages; Amending Section 23-903, Idaho Code. Brody Aston, Westerberg and Associates, said he represented Michael Flynn, owner of the Bellevue State Bank Building (Bellevue). **Mr. Aston** identified the Bellevue as one of the oldest buildings in the Wood River Valley, a structure in existence for at least 110 years with a commercial kitchen, in a national historic district, and within the city limits of a resort city. **RS 30070** would create a historic food and beverage license for the Bellevue. It would be limited to one per resort city and would be nontransferable.

MOTION:

Senator Anthon moved to send **RS 30070** to print. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

RS 30109

Relating to Alcoholic Beverages; Amending Section 23-903, Idaho Code. Brody Aston, representing Kasey Suran and Coeur d'Alene (CDA) National golf course, said this proposal clarified that for the purpose of the sale of liquor by the drink a club house had to be considered contiguous to the golf course if it was located on a lake and within 0.5 miles of the course and connected by a public or private right of way. This was an issue CDA National ran into with its lake front club house being a different parcel than the golf course. This proposal did not create a new license, it allowed the use of the existing golf course license at the lake front club house.

MOTION:

Senator Lee moved to send **RS 30109** to print. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

RS 30214 **Relating to the Legislature; amending Section 67-465, Idaho Code. Senator Winder** described **RS 30214** as an update on previously passed legislation. **RS 30214** would clarify that the President Pro Tem and the Speaker of the House could actuate an intervention process in cases that impacted the Legislature in the State of Idaho.

MOTION: **Senator Harris** moved to send **RS 30214** to print. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

RS 30218 **Relating to Elections; Amending Section 34-1203A, Idaho Code. Senator Bernt** provided that **RS 30218** created an exemption from post election audits for precincts that had a close race within the legal margin for a free recount. He explained that following the completion of the first post election audits a conflict arose where ballots were handled as part of the audit even though it was already known the same ballots were needed to be preserved for a contested recount. This legislation would address the conflict and ensure the full number of ballots were audited to ensure voter confidence.

MOTION: **Senator Harris** moved to send **RS 30218** to print. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Guthrie** adjourned the meeting at 8:58 A.M.

Senator Guthrie
Chair

Joyce Brewer
Secretary