

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Monday, February 13, 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 8:02 a.m.

**PRESENTATION: HONORING THE PAGES:** Kamille Mirkin and Fernando Montelongo. **Chairman Guthrie** recognized the contributions of Kamille Mirkin, Jerome High School, and Fernando Montelongo, American Falls High School, made to the first half of the legislative session. As honor role students from their respective high schools, both are eligible to be candidates for Valedictorian. The Committee provided a letter of recommendation to each with its best wishes (Attachment 1).

**MINUTES APPROVAL:** **Senator Anthon** moved to approve the minutes of February 1, 2023. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

**MINUTES APPROVAL:** **Senator Ruchti** moved to approve the minutes of February 3, 2023. **Senator Bernt** seconded the motion. The motion carried by **voice vote**.

**RS 30281C1** **RELATING TO THE STATE DISASTER PREPAREDNESS ACT - Amends 46-1008, Idaho Code.** Senator Hart was not available. **RS 30281C1** will be considered February 15, 2023.

**RS 30312** **RELATING TO COUNTY SHERIFFS - Amends Section 34-618, Idaho Code.** **Senator Harris** informed **RS 30312** came from the Sheriff's Association. He explained this legislation would add requirements that the candidate for the office of Sheriff could never have been decertified from the Peace Officers Standards and Training (POST) academy or have had felony convictions.

**MOTION:** **Senator Anthon** moved to send **RS 30312** to print. **Senator Toews** seconded the motion. The motion carried by **voice vote**.

**RS 30346** **RELATING TO PURCHASE BY POLITICAL SUBDIVISION - Amends Section 67-2803, Idaho Code.** **Senator Anthon** stated that in light of recent inflation in the mountain states, which was higher than the national average, local government was struggling with the dollar limits placed on purchases. This legislation altered the personal property purchasing limits of local government to reflect increased allocations from \$50,000 to \$75,000, and from \$75,000 to a full competitive bid at \$150,000. He stated it had been a number of years since these figures were considered in the code.

**MOTION:** **Senator Harris** moved to send **RS 30346** to print. **Senator Winder** seconded the motion. The motion carried by **voice vote**.

**RS 30350**      **RELATING TO PROPERTY TAX REDUCTION - Amends Section 63-705, Idaho Code.** **Senator Anthon** explained this legislation adjusted the requirements of the circuit breaker program, or the property tax relief program that benefitted individuals on fixed incomes and the more vulnerable of our citizenry. He cited the restrictions added two years ago in H 389 that qualified individuals for the program may have inadvertently disqualified many Idahoans. **Senator Anthon** said **RS 30350** did two things, 1) It raised the qualification income level to \$37,000; and 2) it adjusted the homeowner's homestead value. While the legislation would not put all of the people previously disqualified back onto the program, it took appropriate steps forward for Idahoans.

**MOTION:**      **Senator Winder** moved to send **RS 30350** to print. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**S 1030**      **IMMIGRATION - Adds to existing law to provide for the enforcement of federal immigration law by governmental entities in this state.** This legislation was held by Committee on February 6, 2023 for **call of the chair**. **Murphy Olmstead**, Wittmeyer & Associates, informed that the Idaho Sheriff's Association (Association) voted to stay neutral on **S 1030** and requested to revoke its earlier letter in opposition. **Senator Foreman** noted this legislation was not about immigration, it was about continued respect for the process of the law. He added all the Sheriff's he talked with were fully supportive of **S 1030** and while the Association remained neutral on it, he understood the Association did not have problems with the legislation.

**MOTION:**      **Senator Anthon** moved to send **S 1030** to the Senate with a **do pass** recommendation. **Senator Toews** seconded the motion. **Senator Winder** stated he was in support of the motion but found it ironic that in some cases we told the Federal government we would not enforce the law, and in other cases we would enforce the law. **Senator Wintrow** declared she could not support the motion. In her opinion this was duplicating a process already in existence. She added all entities know they have to follow the laws. The motion carried by **voice vote**. **Senators Ruchti** and **Wintrow** requested to be recorded as voting no.

**S 1025**      **MARRIAGE - Amends and repeals existing law to revise certain requirements regarding marriage.** **Senator Herndon** said **S 1025** changed some existing statutes regarding marriage, identified as a civil contract between two qualified individuals. He said the marriage certificate was proof of a marriage, not the marriage license. He outlined the following five steps to getting married in Idaho: 1) Two qualified individuals decide to marry; 2) they go to the County Clerk's (Clerk) office, pay a fee, attest to their qualifications and identity, and receive a license; 3) they take the license to an officiant, who verifies their identity and qualification and performs the marriage solemnization or ceremony; 4) the officiant returns the marriage certificate to the County Recorder (Recorder) where it is filed; and 5) the Recorder sends a copy of the marriage certificate to the Department of Health and Welfare to be kept according to the Vital Statistics Act. If **S 1025** passed, step two would be eliminated and the officiant would be responsible to collect the fee to be paid to the Records office.

**DISCUSSION:** **Senator Wintrow** questioned why eight code sections in Idaho Code § 31-3205 were repealed. She noted those sections included such things as perjury, age requirements, ensuring a person was in the country legally, Social Security number, and proof of age. **Senator Herndon** summarized changes related to administering oaths, checking competency and identities of participants, penalties for violations of oaths, recording documents, and fees involved. He clarified that records were electronically filed as opposed to handwritten ledgers that dated back to the 1890s. **Senator Anthon** favored the concept of **S 1025** and questioned the necessity for a license to marry since the State never created marriage. He asked for assurance the recording system would be followed and for clarification about perjury for lying and the penalty for false information on the form or made to an officiant. **Senator Herndon** stated if people entered into the contract on false pretenses, the judiciary would determine the contract to be invalid and therefore the marriage would not exist. Those making false statements, or failing to comply with any of the marriage laws, could be charged with a misdemeanor. **Senator Lee** asked where on the certificate it captured things like age or marital status for purposes of preventing bigamy or underage individuals being coerced. **Senator Herndon** referred the Committee to the Vital Statistic Act and what information was collected for its purposes. He repeated falsification of documents could result in the individual being criminally charged.

**Senator Ruchti** asked who, under **S 1025**, was responsible to ensure there were no marriages by proxy, a 14-year-old marrying a 32-year-old, child trafficking, or polygamy situations. **Senator Herndon** admitted no one at this time ensured any of those situation. He understood officiants, Recorders, and Clerks were taking peoples' word that their qualifications were true. He added, if people entered into a marriage contract under false pretenses, the marriage contract was invalid in the State and the judiciary. **Senator Ruchti** stated his concern was focused on the validity or enforceability of the marriage. His focus was on the situation where a 32-year-old whose 28-year-old drinking buddy helped him marry a 14-year-old. Or the human traffickers that would use Idaho's law and an obscure officiant to do what they wanted for money to marry off women against their will. He asked how **S 1025** made Idaho safer in those regards. **Senator Herndon** noted Senator Ruchti was referring to criminal behavior. He stated there was no way Idaho could preempt criminal acts. **Senator Ruchti** posited that if an underage individual showed up at a Clerk's office, or a person under duress appeared, it was of value to have to appear before a Clerk, sign a document, and look someone in the eyes to get into the system. **Senator Herndon** responded that Recorders and Clerks were not necessarily trained to recognize or discern those situations.

**TESTIMONY:** **Michael Rosedale**, Bonner County Clerk, testified virtually in support of **S 1025**. He said he did not want to think his marriage license could be revoked by the State. He believed a marriage certificate was more valid than a license. **Senator Lee** asked why not just change the terminology from license to certificate. **Mr. Rosedale** responded his marriage was not determined valid or invalid by the State and he would hate to think another party would have the ability to say it was being revoked.

**Heather Luther** testified in opposition to **S 1025**. She presented two points to consider: 1) When the applicants went to the Clerk's office, valid identification had to be provided; and 2) there were no standard qualifications for an officiant. She shared that during the hearing while she was waiting to testify she went online and became an officiant within minutes by answering two questions. She asked how Idaho would address standardization for officiants and requirements to follow code. **Senator Wintrow** asked to readdress the Social Security number issue and why it was important. **Ms. Luther** responded that she had extensive knowledge of the back-end process. She emphasized the importance of a checks and balances process. At a Clerk's office there was a check of valid identification and a way to make sure the parties were actually present in the State. If that step was omitted, parties could marry by proxy through video or telephone. Physically appearing before the Clerk would alert someone to an underage individual being manipulated, or those with language barriers. She felt including the Clerk's and Recorder's offices provided a layer of protection for citizens to ensure rights were not being infringed and that they understood what they were entering into. **Senator Wintrow** asked of other entities that relied on the valid issuance of a marriage license. **Ms. Luther** recalled being contacted multiple times by consulates of foreign countries, such as Italy, for verification and proof of marriage licenses for parties applying for dual citizenship. She added it was problematic that an officiant completed random forms as opposed to there being a standardized form to solemnize a marriage.

**Cindy Thorngren**, President of the Southwest Idaho National Organization for Women, opined if divorce were only as easy as getting married this would be a different issue. She commented on State and Federal benefits dependent on the validity of a marriage. For instance, married and filing jointly for taxes gives a different tax rate. Other issues might be raised with spousal Individual Retirement Arrangements (IRA), survivor benefits, healthcare rules, the Affordable Care Act (ACA), health savings accounts, Medicare, and Medicaid. Some benefits qualify dependent on marriage. She asked the Committee to vote against **S 1025**.

**Chris Yamamoto**, Canyon County Clerk, spoke for himself in favor of changing a marriage license to a contractual certificate. He compared a liquor license and marriage license. He said the liquor license required permission, certain parameters to be met, and it could be revoked. He shared some Idaho history about legislation regarding marriage relative to mixed-race marriages. He said a contractual certificate did not require permission to marry. **Senator Lee** asked what was the problem changing the name from marriage license to marriage certificate and keeping the same process throughout the State. **Mr. Yamamoto** stated the process worked; he did not like the term license. He noted that as a Clerk, three times he saw what appeared to be underage females presenting to marry. He recalled all were of a religious affiliation that did not believe in Social Security cards, birth certificates, driver's licenses, or anything like those articles. They could not provide a date of birth and therefore were rejected in their marriage application. **Senator Ruchti** acknowledged Mr. Yamamoto's reference to Idaho having some draconian laws on the books about marriage. He asked if **S 1025** was law, could the officiant have ignored Idaho's draconian marriage laws. **Mr. Yamamoto** declined to address the comment saying he was not an attorney. He concluded what he saw was that a marriage contract did not require permission. He said he would like to see this called a contractual certificate as opposed to a license.

**Bessie Yeley** states she was a 100 percent permanently, totally disabled veteran. She was concerned about the impact **S 1025** might have on Veteran Administration (VA) benefits. As a VA healthcare recipient, her eligibility for the program required that her marriage be recognized by her State of residence. She worried changes to the law might mean by VA standards in the 14th Amendment (same sex couples) that her marriage would not meet criteria for benefits.

**Senator Herndon** stated that as long as Idaho had a legal process for marriage there was no impact for tax purposes or benefit purposes. He cited some changes to laws in Alabama and Texas in support of his legislation. He stated the United States did not have authority over marriage laws; those were the privileges of the states. He noted 10 states had common law marriages and those marriages qualified for tax, VA, and other benefits. He said **S 1025** removed the burden from participants of having to visit a County Clerk before going to an officiant to have the marriage solemnized. Currently, Idaho required the officiant to file a marriage certificate with the Recorder after the solemnization. When participants walk out with a license, the State does not know if they actually got married. He argued there was nothing in the legislation that would change the fact that people could lie about their identity or age. He stated the Social Security number was not documented on the certificate. He concluded **S 1025** was a reduction of regulations.

**Senator Anthon** stated he was in favor of getting rid of the license, but he was concerned about potential ripple effects like ascertaining community property, who inherits what, and how a judge looks at marriage to determine everything was done appropriately. **Senator Herndon** repeated that in Idaho it was presumed people entered a marriage contract in good faith. He reminded the Committee that the judiciary was the trier of facts, not county clerks. He said Clerks as well as officiants took attestations that the people party to the contract were telling the truth, were qualified, and were in compliance with Idaho law. He said the parties getting married could be charged with presenting the marriage certificate and paying the fee at the Recorder's office. Whatever option the Committee chose, whether the officiant filed the certificate at the Recorder's office or the participants filed their certificate would be a simple change to the legislation. **Senator Herndon** added there were two states, Colorado and possibly Pennsylvania, that allowed self-solemnization that did not place any significant burden on people entering into a contract.

**Senator Anthon** agreed the judiciary was the trier of facts. When looking at Idaho Code § 32-306, he noted it did not require a signature of someone who married other than that of the officiant who conducted the ceremony. It appeared to him the certificate was executed by the officiant and two witnesses. He said he would feel better seeing proof that the participant signed something to show a certificate as proof of marriage. **Senator Herndon** advised there was no signature of the parties to the marriage on either the marriage license or the marriage certificate. He saw the two options for consideration were: 1) Require the parties to take documentation to the Recorder, or 2) require the participants' signatures on the marriage certificate. That would be a simple amendment to **S 1025**. **Senator Lee** expressed support for removing the word license. She noted the two-step process was to physically go and show information to get the certificate, and then get the ceremony solemnized. She asked why not change the language from license to certificate. **Senator Herndon** believed that was what he accomplished. He added the word license was littered throughout Idaho Code so he attempted to eliminate the reference to license. He said a signature line could easily be added on the marriage certificate form and the requirement to have the parties present their certificate themselves to the Recorder could be added. The marriage would be invalid unless all steps were completed by the participants to the marriage.

**MOTION:** **Senator Harris** moved to send **S 1025** to the **14th Order of Business** for possible amendment. **Senator Toews** seconded the motion. **Senator Anthon** suggested improving the wording in **S 1025** to document the party's willingness to enter into a marriage contract and address the penalty portion of the bill. **Senator Winder** asserted the issue with the VA benefits raised concerns for him. He asked that the bill's sponsor take a closer look at that to avoid adverse impact to beneficiaries. **Senator Wintrow** recognized a concern with verifying identities and issues involving vulnerable individuals or minors. **Vice Chairman Bernt** indicated support for deregulation but concern about the responsibilities of the officiants. He hoped the **14th Order** would address some of that. **Senator Ruchti** asked why this legislation was being presented at all. He knew of no concerns about a marriage license versus marriage certificate in Bannock County. He asked for evidence this needed to be changed and cautioned if the State got it wrong, there could be serious ramifications. He said he would vote against moving **S 1025** forward. The motion carried by **voice vote**. **Senators Ruchti** and **Wintrow** were recorded as voting no.

**ADJOURNED:** There being no further business at this time, **Chairman Guthrie** adjourned the meeting at 9:40 a.m..

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Senator Guthrie  
Chair

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Joyce Brewer  
Secretary