

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Friday, February 17, 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 8:01 a.m.

RS 30235 RELATING TO TOBACCO PRODUCTS TAXES - Amends Section 63-2552, Idaho Code. **Senator Bjerke** summarized this legislation in support of small businesses that sold cigars. He said there was currently a 35 percent tax on the wholesale price of cigars. If passed, **RS 30235** would limit the fee under Idaho Code § 63-2552A to not more than fifty cents per cigar. He informed that Idaho received about 11.9 million dollars in revenue from tobacco product sales. He believed lowering the excise tax on cigars would result in increased sales, which would ultimately benefit the State. As cosponsor of **RS 30235**, **Senator Bernt** shared his firsthand knowledge of problems a small business in Meridian experienced with loss of sales to online cigar shops. He believed lowering the tax burden would enable small businesses to more fairly compete with internet sites.

MOTION: **Senator Anthon** moved to send **RS 30235** to print. **Senator Harris** seconded the motion. **Senator Anthon** commented that since the onset of the digital age, there were more tax issues appearing. The Wayfare Bill was an attempt to save small downtown businesses and small businesses in rural areas. He indicated Idaho disadvantaged them by not taking care of the tax issues. He welcomed more discussion on this proposal. The motion carried by **voice vote**.

S 1082 SHERIFFS - Amends existing law to provide qualifications for sheriff candidates. **Senator Hartgen** said Sheriff Kieran Donahue, of Canyon County, and Sheriff Andy Creech, of Payette County, were present and prepared to testify in support of **S 1082**. **Senator Hartgen** provided history about a man with a murder conviction in his past applying to become a sheriff in Idaho. She stated it was scary that he garnered several thousands of votes. **S 1082** would qualify applicants as being at least 21 years old, a citizen of the United States, never convicted of a crime that could have resulted in imprisonment in a federal or state penitentiary, resided within the county for one year prior to election, was never decertified by the Idaho Peace Officer Standards and Training (POST) council, and never resigned POST certification. She said the Sheriff's Association was supportive of **S 1082**.

Senator Winder asked if the 180 day rider program was considered prison. **Senator Hartgen** answered affirmatively. **Senator Lee** asked if there were current sheriffs who could not run based on this legislation. **Senator Hartgen** advised one sheriff recently left office due to a felony. She deferred to Sheriff Donahue for further responses. **Senator Anthon** expressed support for the concept of **S 1082**. He asked for clarification on the surrender of certification wording. He shared

knowing an individual accused, but never convicted of a crime who could not afford to hire a lawyer to fight for his certification. As a result, he lost his certification.

Senator Bernt noted the positive changes in text and declared his support for the bill. **Senator Toews** asked about the decertification process and for an example of what rose to that level. **Senator Hartgen** deferred to the guest sheriffs. **Senator Wintrow** asked for the commonality in this bill and Chief of Police positions which were appointments. She stated the positions did not have the same criteria.

Sheriff Kieren Donahue answered that the rider program was when a judge sentenced a felon to prison for a period of time and retained jurisdiction of him for 90 to 180 days. At the end of that time, the individual appeared before the judge again and the judge decided if all requirements were met during the rider. At that hearing the judge could place the person on probation or return him to prison to serve the indeterminate period of his sentence.

Sheriff Donahue stated some sitting sheriffs were protected by a grandfather clause for their position. He informed some sheriffs in Idaho were not certified and would not meet new certification requirements. He explained there was a plethora of reasons for decertification, such as commission of a crime, felonious activity like misuse of public funds, or untruthfulness (Brady Bill). He emphasized the importance of truthfulness for law enforcement. If the individual was found untruthful, he could not be trusted to testify on the stand and was of no use to the office. **Sheriff Donahue** said truth was a very serious matter to law enforcement and that law enforcement had to be certified to work in the industry. He explained how others could be transferred in from outside agencies and how prior training might allow them to challenge POST to receive Idaho certification. Regardless, the transfer had to pass the law aspect of POST for certification. He added that if an individual was not certified in Idaho, he could not carry a weapon to perform his duties. He acknowledged there had been sheriffs decertified by Idaho for primarily monetary issues.

TESTIMONY:

Sheriff Donahue declared sheriffs were entrusted by the people to hold the highest law enforcement positions in the State. They had to be able to be certified by POST to confirm they were capable of that trust. He believed **S 1082** was a step in the right direction to assure the individual seeking office was not a felon and that he could be certified by Idaho to serve.

Senator Anthon said Title 19 of the Idaho Code provided a mechanism whereby after a conviction a judge could dismiss charges. **Sheriff Donahue** agreed, but said the felony conviction was still a disqualifier. **Senator Toews** did not see where in Section 5 certification was required. **Sheriff Donahue** said he would review the text and deferred to Sheriff Creech.

Sheriff Creech explained if a law enforcement officer who was certified became decertified, he could not be sheriff. He said requirements to be sheriff had been lower than those required to be a deputy sheriffs. **S 1082** would bring the standards for sheriff to the same standards as required for other employees. He clarified that a felony conviction restricted a person's ability to access federal software systems like the National Crime Information Center (NCIC), which law enforcement used daily. He shared how in the past, people had voluntarily resigned their certification in order to stop an investigation POST was conducting to avoid having details come out. **Sheriff Creech** hoped the Committee would support **S 1082** because it increased the standards for applicants for a sheriff's position.

Senator Hartgen closed by saying **S 1082** would assure counties their sheriff was not a felon and had rights afforded to users of law enforcement software like NCIC. She agreed the legislation did not say the applicant must have certification

but noted a person could not be decertified if he was never certified. She asked for the Committee's support of **S 1082**.

MOTION:

Senator Harris moved to send **S 1082** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. **Senator Ruchti** opined that based on the language, a person did not have to have been certified to run for sheriff. But if decertification disqualified him under subparagraph five, once elected the sheriff had to go through POST and get certified. **Senator Toews** said he had questions about being elected without certification. He asked if a person was decertified, would he be eligible to be certified in the future. He thought the section stated the applicant had to be certified.

Sheriff Donahue did not recall anyone being decertified and then applying to be recertified. He thought several years ago the Legislature put in place a requirement for a sheriff to attend a 40-hours sheriff school. He said the language in **S 1082** was refined to make it as basic as possible knowing the future would bring amendment requests. He hoped in the future to see requirements like a person having to have five years experience in law enforcement to apply to be a sheriff.

Senator Lee recalled from serving on the Judiciary and Rules Committee that POST had specific rules about anyone who was decertified. She noted if a person was not willing to go through certification, they could not carry a weapon. That restriction would be incentive enough to go through certification. The motion carried by **voice vote**. **Senator Toews** requested to be recorded as voting no.

ADJOURNED:

Chairman Guthrie advised the next meeting would begin at 8:15 a.m. There being no further business at this time, **Chairman Guthrie** adjourned the meeting at 8:41 a.m.

Senator Guthrie
Chair

Joyce Brewer
Secretary