

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Monday, March 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 8:04 a.m.

RS 30551 **Relating to the Industrial Commission - Amends Section 72-503, Idaho Code.** **Senator Anthon** explained, this legislation would tie the annual salary of the Idaho Industrial Commission to the salary of a magistrate judge as provided in Section 59-502, Idaho Code.

MOTION: **Senator Harris** moved to send **RS 30551** to print. **Senator Bernt** seconded the motion. The motion carried by **voice vote**.

RS 30406 **Relating to the National Guard; Providing Legislative Intent - Amends Chapter 1, Title 46, Idaho Code.** **Senator Adams** cited historical records by the founding fathers as they related to war. He stated congress had the exclusive power to declare war and that a declaration of war must be enacted to call the National Guard into active-duty combat. Further, that the Governor must take all actions necessary to comply with the requirement before sending the Idaho National Guard into combat.

MOTION: **Senator Anthon** moved to send **RS 30406** to print. **Senator Harris** seconded the motion. **Senator Wintrow** asked what this legislation did that was not already in place and how did it help Idaho? **Senator Adams** explained it put legislative prohibitions on calling the National Guard into combat without congress declaring war. **Senator Winder** requested confirmation this was being presented for an informational hearing. **Senator Adams** confirmed. The motion carried by **voice vote**.

RS 30546 **Relating to Empowering Parents Program - Amends Section 33-1030, Idaho Code.** **Senator Den Hartog** explained this legislation expanded the Empowering Parents Program to add transportation to and from school as an allowable expense. It also created a five-year pilot program for up to 2,000 students to provide a tuition grant of \$6,000 per student. The tuition grant could be used for tuition or hiring of a certified teacher for a micro-school. **Senator Den Hartog** informed that if **RS 30546** was sent to print, it would probably be referred to the Education Committee for a full hearing.

MOTION: **Senator Winder** moved to send **RS 30546** to print. **Senator Anthon** seconded the motion. **Senator Wintrow** clarified the Empowering Parents Program was created to assist children after the pandemic. **Senator Den Hartog** confirmed it was and explained two different programs initiated to help children with learning losses due to the pandemic: 1) Strong Family Strong Student was issued in 2020 by Executive Order; and 2) Empowering Parents Program was put into code last year with a variety of uses. **Senator Wintrow** understood the current use of the bill was to help with books and computers. She questioned the inclusion of tuition and the doors it might open in the future for privately funding people's tuition. **Senator Den Hartog** agreed there would be more discussion on this if the RS was moved forward.

VOICE VOTE: The motion carried by **voice vote**. **Senators Wintrow** and **Ruchti** requested to be recorded as voting no.

PASSED THE GAVEL: Chairman Guthrie passed the gavel to Vice Chairman Bernt.

S 1120

Alcohol - Amends existing law to provide that retail liquor by the drink licenses issued on or after July 1, 2023, may not be sold, leased, or transferred and to provide that retail liquor by the drink licenses issued before July 1, 2023, may be sold or transferred only once. **Senator Guthrie** referenced Article 3, Section 24 of the Idaho Constitution. He said once a quota liquor license costing \$750 was taken off the list, and became eligible for sale, it could be valued at a quarter of a million dollars. He stated that was a terrible business model for the state to have become associated with because statute clearly stated the permit was never to be a property right. He cited Idaho Code § 23-514 and read that the license was a personal privilege, subject to denial or cancellation. Past inaction by the legislature allowed for the permit to become property. This bill declared any new license issued after July 1, 2023 would come off the list with an inability to be transferred. **Chairman Guthrie** anticipated speculators would then drop off the wait list for liquor licenses, which would create opportunities for individuals who truly wanted to be in business. Under current laws, quota license holders could sell, transfer, or lease the license in perpetuity, restricting new business opportunities. The solution to the problem was provided for in **S 1120** by allowing current quota license holders to transfer the existing license once. It would afford the owner a chance to recoup the value of the license, and through attrition it moved the state away from the speculative model. **Chairman Guthrie** highlighted exceptions outlined in the bill that demonstrated the state made efforts to consider the needs of business people.

Senator Wintrow asked, if she bought a liquor license for \$350,000, what would be her benefit? **Chairman Guthrie** provided that everything coming off the list was not transferable, which would increase her competitive edge because her license was transferable one-time. He believed the market would dictate attrition. The quota system would remain and there were still not enough licenses to meet demand. **Senator Ruchti** asked about the role of Idaho Code § 23-217, Subparagraph 2 as referenced in the bill. **Chairman Guthrie** responded that currently quota license holders received a discount, but if the license was sold, the new license holder would not be afforded the discount.

TESTIMONY: **August Christensen** electronically registered to testify in favor of **S 1120**. The following individuals electronically registered to testify in opposition to **S 1120**: Roger Batt, Ted Challenger, Whitney Hruza, Larry Jenkins, Susan Jenkins, Dave Krick, Lou Mallane, Morgan Powell, Daniel Rockrohr, Jake Schaefer, and Marc Trivelpiece. Donald Shaff submitted the appended comments (Attachment 1).

Ted Challenger, owner of Challenger Hospitality Group and operator of three licenses, called Title 23 a house of cards. He was 22 years old when he leased his first license. He struggled with whether it was better to lease the license to a new business or to sell it to a big corporation. He stated he bought into the system the state built and encouraged the creation of a commission to fix Title 23. **Senator Wintrow** asked what he perceived to be the consequences of this bill. **Mr. Challenger** said this bill did not take care of the small business owner. If his license was sought to avoid the wait line, the value would fluctuate and could be impacted by big corporations.

Whitney Hurza shared she was able to lease a license before she could afford to buy one for \$50,000. She talked about the location of her restaurant/bar, which no one wanted to purchase because she was in a tiny town in North Idaho. She believed she kept Harrison, Idaho alive because of the opportunity in a small town. She said the license was transferable once. She agreed the bill solved a problem about speculation, but worried about transferring a license. She advised North Idaho was never included in discussions about the licenses.

August Christensen, Mayor of Driggs, declared support for **S 1120**. She recalled this was a decade long struggle with existing liquor licenses. She believed liquor licenses became a financial investment instead of a way for an establishment to sell liquor. Passing this bill, would help her city (in five years or so) because when another license was available in Driggs, it would go to an actual restaurant rather than an out-of-state investor who would sell it to the highest bidder. She noted her resort community had a population of 2,000 and held two liquor licenses. She said this was a good first step to clear up an issue. She asked the legislators to review the way Wyoming and Utah dealt with the liquor license issues. **Ms. Christensen** claimed there was a waiting list for Driggs's liquor license and that the people on the list were not local restaurant owners in Teton Valley. She claimed many on the list were out of state.

Mark Trivelpiece, owner of the Corner Club, Moscow, said when he bought his business, he knew it would be eligible for a historic license. At this time, he did not know how the bill would effect everything so he would be hesitant to buy a license right now. He stated **S 1120** did not address all of the issues. He encouraged entities to sit down together to discuss problem solving once and for all to avoid repeating this matter in a couple of years.

Dave Krick, of Food Agriculture Restaurant Establishments Idaho (FARE), opposed the bill. As a nonprofit that worked with about 300 food and beverage businesses, FARE believed eliminating the transfer was a good idea. How existing licenses were treated needed more attention. He believed that by shutting down the market-driven license system, a bigger supply problem would materialize. He expressed concern about the bill's treatment of leased licenses, which was a low cost entry into a business. He encouraged advancement of a bill that ended transferability for new licenses. **Mr. Krick** believed speculative interests started with the waiting lists. He was more concerned about the rush to implement something for existing licenses. Limiting them to one future transfer would create problems. He felt because some people were hesitant to lease to someone they did not trust, they quickly sold a license. He suggested the need for a pathway to address lease/transfer of licenses. He stated leased licenses were not tracked so he did not know how many leases were out there but it was possible the licenses might be attached to out of state speculators.

Roger Batt testified for FARE Idaho. He reported there were 200 members statewide who were restaurant/beverage license holders in opposition to **S 1120**. The provision that an existing liquor license could only be sold one time would negatively impact businesses. He asked for more time to allow a larger group of stakeholders to be involved in writing the bill. He stated people made a huge capital investment in the current system and FARE was not at consensus yet. **Senator Lee** informed she was in the legislature for nine years and every year the license people asked for more time for a solution. **Mr. Batt** responded that former proposals did not contain the same language. He said FARE started with a different proposal and felt it was important to have more input from its members.

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Daniel Rockrohr, one of the owners of the Cactus Bar, shared his license was passed from generation to generation. He favored reform but did not think this was a good bill. He claimed the Cactus Bar name and license existed because it was transferable and had a discount. He planned to apply for a legacy license but that opportunity was unavailable now. He said this bill would make it hard to stay in business or to sell a business. The benefit to license holders was the liquor license.

Lou Mallane represented Louie's Pizza and Italian Restaurant and opposed **S 1120**. He said he had full/partial ownership of six liquor licenses that were purchased at fair market value. None of the licenses came from putting his name on a list and none were entitlements. He offered to work with the Committee to fine tune issues with the licenses.

Jeremy Pisca, representing Hagadone Hospitality and Idaho Beer and Wine Distributors Association, said the groups were neutral on this issue. In his 23 years involvement with license issues, this was the first time either of the groups were neutral. He disclosed his participation in helping write this bill. He suggested tying the density of liquor licenses to population was a reasonable way to control liquor outlets. As the economy grew, so too did the amount of licenses. With the speculative value, this was a decent solution. He referenced case law in *Weller v. Hopper* (1963) identifying the licenses as privileges, not property rights. He felt this should have been corrected years ago. This bill would allow current licensees the ability to recapture some value, which past proposals did not.

Jake Schaefer, Frosty Gator Tail Enterprises, agreed changes were needed but he did not support the bill as written. He obtained his liquor license in 2008 and he did not want to lose its value because the license could not be sold or transferred. He suggested omitting two issues—sale and transfer. He asked the Committee to consider what it would want done with their money.

Chairman Guthrie closed by repeating this matter was discussed for over the last 23 years. He shared a study was what committees did when they were not courageous enough to make a decision. In 23 years, this issue was delayed and delayed. He responded to comments made through testimony. Regarding the value of a license not being worth as much, he stated the owner did not pay as much because markets differed. The license value fluctuated depending on the area and some cities had no waiting list for licenses. In a city that experienced influxes of people, the specialty license was to help mitigate the problem with not having enough licenses. Regarding the lease issue, someone might pay \$750 a year for the license that the owner leased for \$3,000 to \$5,000 per month, or 60 to 70 times more than was paid per year. Plus, the owner still had the opportunity to sell the license. Consider whether or not that made sense. Interestingly enough, FARE Idaho found it fair to eliminate the transfer of those coming off a list, which eliminated competition. Of course the owner of a legacy license that could be resold and resold would not want more competition with that same ability. Business risk was not specific to the liquor industry. The license could be willed to heirs. **Chairman Guthrie** recognized all the help in drafting this bill. He noted several meetings with FARE Idaho since the beginning of this legislative session. FARE had input

and considerable concessions were made based on their input. Until last Friday afternoon, they were neutral. The abrupt change was disappointing. He reported most bankers were not considering the license an asset in terms of extending loans. He asked, What other licenses did the state issue that allowed them later to sell it for a windfall? **Chairman Guthrie** identified the liquor license as a peculiar thing that was created by the state and he felt it needed to be fixed. He referred to an email from someone who likened his license to a 401(k). **Chairman Guthrie** asked, Why should the state of Idaho be obligated to continue a retirement system from a \$750 liquor license? The irony was, the man could still sell his liquor license. The ability to sell it, was not omitted from the legacy license holders. He advised of three specialty licenses currently percolating in the system. Regarding temperance, this bill did not create more licenses, it created more opportunities. He concluded with a request to sent **S 1120** to the floor with a **do pass** recommendation.

Senator Anthon declared Rule 39(H) and shared he worked for an entity that owned a liquor license.

MOTION: **Senator Lee** moved to send **S 1120** to the floor with **do pass** recommendation. **Senator Harris** seconded the motion. The motion carried by **voice vote**. **Senator Wintrow** requested to be recorded as voting no.

ADJOURNED: There being no further business at this time, **Vice Chairman Bernt** adjourned the meeting at 9:09 a.m.

Senator Guthrie
Chair

Joyce Brewer
Secretary