

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Tuesday, March 21, 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** convened the meeting of the Senate State Affairs Committee (Committee) at 8:00 a.m. He stated that the order of the agenda would be modified due to technical difficulties.

**H 221** **Ethics in Government. Senator Ruchti** presented **H 221**. He explained that this bill prohibited electioneering messages on tax correspondence. **H 221** prohibited names of elected officials from appearing on tax correspondence with the exception of the State Controller whose name must appear on rebate checks. The bill applied to both the executive branch and county commissioners.

**MOTION:** **Senator Wintrow** moved to send **H 221** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion passed by **voice vote**.

**S 1186** **Relating to Elections. Senator Harris** presented **S 1186**. **S 1186** was a trailer bill to **H 138**. It made a change to the definition of "primary election" in Idaho Code § 34-102. Idaho Code § 34-606 was amended to establish a fee for filing for nomination for President of the United States and set a deadline for filing for nomination. Finally, it amended Idaho Code § 34-1214 relating to certification of nomination or election to federal, state, district or nonpartisan offices after primary.

**TESTIMONY:** **Saul Seyler**, Ada County Elections Director, spoke in support of **S 1186**. He noted the work that went into elections and thanked the Committee for their support.

**MOTION:** **Senator Winder** moved to send **S 1186** to the floor with a **do pass** recommendation. The motion was seconded by **Senator Anthon**. The motion passed by **voice vote**.

**H 206** **Administrative Rules. Representative Barbieri** presented **H 206**. He stated that the Idaho Constitution permitted the Legislature to review administrative rules. Current law required both houses to reject administrative rules. **H 206** attempted to clarify questions regarding the review of administrative rules. It clarified that a pending rule was not a final rule and not in effect. It required that when a pending rule was adopted by an agency it must contain a clear statement that the rule was not final until it was approved by both houses through a concurrent resolution. A specific statement regarding why the rule was rejected was required. **H 206** required the agency to be responsible for implementing legislative intent as expressed in the concurrent resolution. A pending rule that was not approved by concurrent resolution expired. Fee rules and non-fee rules must be approved by both houses. The bill required that beginning in 2026 all administrative rules expire based on a staggered schedule. The Legislature determined how they reviewed the rules before they expired. Finally, **H 206** deleted the reference in Idaho Code § 20-212 to Idaho Code § 67-5292 that was no longer necessary.

- DISCUSSION:** **Senator Wintrow** expressed concern for reviewing administrative rules every eight years. **Representative Barbieri** noted that it was the Legislature's duty to review administrative rules and they could determine how to accomplish the review.
- Chairman Guthrie** suggested replacing the term "expire" with the word "review." **Senator Barbieri** noted that a temporary rule could be used to reestablish a necessary rule that had expired.
- Senator Wintrow** commented that the fiscal note did not take into account all the time and expense required for the Legislature to review administrative rules every eight years. **Senator Barbieri** noted that the Legislature may review administrative rules.
- Senator Toews** asked what the workload change would be. **Representative Barbieri** pointed out that it was the Legislature's responsibility to review administrative rules and to determine how to do that.
- TESTIMONY:** **Representative Moyle** noted that the Legislature required both houses to approve legislation, but allowed administrative rules, which had the effect of law, to be approved by only one body. He argued that under current statute the Legislature was required to review rules annually. This bill reduced that and required a staggered review every eight years.
- DISCUSSION:** **Senator Winder** asked why the bill deleted Idaho Code § 67-5224(5). **Representative Moyle** explained that it was replaced by Idaho Code § 67-5291(3) and (4) that stated that fee and non-fee rules not approved as a concurrent resolution expired by its own terms or upon sine die. **Senator Winder** asked what specific language in **H 206** required a specific statement as to why the rule was rejected. **Senator Barbieri** responded that Idaho Code § 67-5291(1) stated that the Legislature may review rules to determine whether they were consistent with the legislative intent of the statute the rule was written to interpret, prescribe, implement or enforce. Idaho Code § 67-5291(2)(b) stated that the Legislature may reject a rule that was not consistent with legislative intent.
- Senator Winder** stated that a previous concern about requiring both houses to approve administrative rules was that there could be a difference in the interpretation of legislative intent. **Representative Moyle** responded that if there was a difference in legislative intent perhaps the statute should be amended to make it clear.
- TESTIMONY:** **Elizabeth Criner** testified on behalf of the JR Simplot Company. She expressed concerns regarding the eight year sunset clause. She felt that under that provision very important EPA rules and other rules risked expiration.
- DISCUSSION:** **Chairman Guthrie** asked Representative Moyle if he would consider replacing the term "expire" with "review." **Representative Moyle** replied that under current law the rules would expire every year if not approved. **H 206** provided that they would expire in eight years if not approved.
- MOTION:** **Senator Toews** moved to send **H 206** to the floor with a **do pass** recommendation. The motion failed for lack of a second.
- SUBSTITUTE MOTION:** **Senator Anthon** moved to send **H 206** to the 14th Order of Business for possible amendment. **Senator Winder** seconded the motion. The motion passed by **voice vote**.

- H 25**                    **Capitol Building and Grounds. Senator Winder** reminded the Committee that they had a public hearing on this bill previously and had requested an Attorney General's opinion. Senator Wintrow also sought an opinion from Kolby Reddish, Legal Counsel for the Legislative Services Office. Attorneys disagreed on the constitutionality of **H 25**. **Senator Winder** felt it was important for the state to have some say on what goes on around the Capitol.
- DISCUSSION:**        **Senator Wintrow** cited Mr. Reddish's statements that the Attorney General's opinion had not taken into consideration the fact that some of the streets listed in **H 25** were owned by ACHD and not the state. Nor did the opinion address the constitutional provision which prohibited the passing of laws that infringed upon private property rights. **Senator Wintrow** did not feel they had the authority to do what **H 25** proposed and that it would invite litigation.
- MOTION:**            **Senator Wintrow** moved to hold **H 25** in committee. **Senator Ruchti** seconded the motion. The motion failed.
- SUBSTITUTE MOTION:**        **Senator Winder** moved to send **H 25** to the floor with a **do pass** recommendation. **Senator Anthon** seconded the motion.
- ROLL CALL:**        **Chairman Guthrie** called for a roll call vote. **Chairman Guthrie** and **Senators Winder, Anthon, Harris, and Lee** voted aye. **Senators Bernt, Toews, Wintrow, and Ruchti** voted nay. The motion passed.
- H 240**                    **Education. Representative Pickett** presented **H 240**. **H 240** provided that a duly elected school board trustee who no longer resided in that trustee zone as a result of changes in zone boundaries that occurred after they were elected may serve out the remainder of his or her term.
- TESTIMONY:**        **Hailie Johnson** testified on behalf of the Idaho Association of County Recorders and Clerks in support of **H 240**.
- MOTION:**            **Senator Anthon** moved to send **H 240** to the floor with a **do pass** recommendation. **Senator Toews** seconded the motion. The motion passed by **voice vote**.
- H 190**                    **Credit Unions and Banks. Representative Ehardt** stated that **H 190** addressed concerns regarding the consideration of Environmental, Social, and Governance (ESG) metrics to measure non-financial impacts of investments in companies when making investment decisions for the State of Idaho.
- TESTIMONY:**        **Julie Ellsworth**, State Treasurer, outlined **H 190**. She stated that **H 190** required banks and credit unions designated as a depositor of state funds to certify that they were not currently engaged in and would not, for the duration of their designation as a state depository, engage in a boycott of any individual or company for one or more of the reasons set forth in Idaho Code § 26-2155(2)(b)(i) and (ii). Idaho Code § 26-2155(4) allowed an exemption if the State Treasurer determined that adherence to those requirements was inconsistent with the constitutional or statutory duties of the State Treasurer or contrary to the business needs of the State of Idaho. This exemption was in recognition of the Prudent Investor's Act. **H 190** provided a process for banks and credit unions to appeal the decision of the State Treasurer. In determining whether a bank or credit union had engaged in activities prohibited by **H 190**, the State Treasurer shall only rely upon publicly available statements or information made by persons authorized to speak on behalf of the bank or credit union. Boycott was defined in Idaho Code § 26-2155(7).

**DISCUSSION:** **Senator Wintrow** expressed concern about whether banks and credit unions in other states would be discouraged from becoming a depository for the State of Idaho if this bill were to be enacted. **Ms. Ellsworth** responded that this bill simply allowed her to make decisions about who became depositories for the State of Idaho. **Senator Wintrow** asked why we should be concerned with whether a business was boycotting if they were making sound business investments. **Ms. Ellsworth** replied that Idaho should be able to choose not to do business with a bank or credit union that was boycotting an industry important to our state such as the gun and ammunitions industry. **Senator Wintrow** suggested that compliance with **H 190** required more oversight from staff. **Ms. Ellsworth** explained that she took the attestations of depositories at face value and did not investigate.

**Senator Ruchti** expressed concern regarding the definition of "boycott" which did not fit the dictionary definition. **Ms. Ellsworth** explained that the language mirrored that in legislation enacted several years ago. **Senator Ruchti** also felt that **H 190** was anti-capitalistic and expressed a concern that it gave the State Treasurer absolute discretion.

**TESTIMONY:** **David Taylor**, President of the Idaho State Rifle and Pistol Association, spoke in support of **H 190**. He was concerned about doing business with banks and credit unions that boycotted the firearms industry.

**Jonathan Oppenheimer**, External Communications Director for the Idaho Conservation League, testified against **H 190**. It significantly expanded the oversight enforcement powers of the State Treasurer. It required the State Treasurer to review all publicly available statements and external communications from depositories. He expressed concern that **H 190** invited litigation such as that in Kentucky (Attachment 1). **Mr. Oppenheimer** noted that ninety percent of the depositories for the State of Idaho were from out of state (Attachment 2) and was concerned this bill discouraged banks and credit unions from becoming depositories for our state. Finally, he stated that reducing free markets and competition had a negative fiscal impact on the State of Idaho as projected in similar Indiana legislation (Attachment 3).

**Braden Jensen**, on behalf of the Idaho Farm Bureau Federation, spoke in support of **H 190**. He stated that this bill ensured that the state depositories were not undermining the business sectors that made Idaho strong.

**DISCUSSION:** **Chairman Guthrie** asked Mr. Jensen to discuss any financial concerns, concerns regarding the exemptions or other concerns. **Mr. Jensen** responded that they appreciated the exemptions and the process set forth for challenging the decision of the State Treasurer.

**TESTIMONY:** **Aoibheann Cline**, State Director for the National Rifle Association, testified in support of **H 190**. Although they would have preferred that it include firearms, accessories, and ammunition, it protected the firearms industry and the Second Amendment.

**Senator Ricks** stated that **H 190** was about public trust in where the state deposited its money. It delegated to the State Treasurer the authority to decide with whom the State of Idaho deposited its money. Idaho should not do business with a bank or credit union that boycotted an industry important to Idaho. He challenged assertions that **H 190** required additional staff to monitor the communications of depositories.

**MOTION:** **Senator Anthon** moved to send **H 190** to the floor with a **do pass** recommendation. **Senator Bernt** seconded the motion. The motion passed by **voice vote**.

**ADJOURNED:** There being no further business at this time, **Chairman Guthrie** adjourned the meeting at 9:36 a.m.

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Senator Guthrie  
Chair

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Joyce Brewer  
Secretary

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Meg Lawless  
Assistant Secretary