

MINUTES
SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Tuesday, February 02, 2021

TIME: 1:15 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Patrick, Vice Chairman Souza, Senators Martin, Lakey, Guthrie, Agenbroad, Riggs, Ward-Engelking, and Burgoyne

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 Patrick** called the meeting of the Senate Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Lakey** moved to approve the Minutes of January 21, 2021. **Vice Chair Souza** seconded the motion. The motion carried by **voice vote**.

Senator Martin moved to approve the Minutes of January 26, 2021. **Senator Ward-Engelking** seconded the motion. The motion carried by **voice vote**.

RS 28297 **Relating to Banks. Trent Wright**, Idaho Bankers Association, reported the purpose of this legislation is to focus on three main areas: to provide regulatory relief for state-chartered banks; to bring bank management concerns into today's reality of remote meetings and distancing; and to update fees owed to banks over \$10 billion in asset size.

Mr. Wright said the amendments update the requirement to conduct regular or special meetings of stakeholders, boards of directors, board committees, or the executive committee by remote. The residency requirements are eliminated for a bank's board of directors, he said. **Mr. Wright** said the number of annual required bank board meetings are decreased from 10 to 6. The 20 percent write-down on bank-owned real estate during the Department of Finance (DOF) director-approved second five-year period is eliminated. Finally, he said, banks' fees for institutions with an excess of \$10 billion in total assets is updated.

Mr. Wright said this legislation will not impact the General Fund because it is administrative in nature. Idaho does not have any banks that are over the \$10 billion asset threshold. There will not be a positive or negative financial impact to the adjustments on the fees in either category.

MOTION: **Senator Guthrie** moved to send **RS 28297** to print. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Patrick passed the gavel to Vice Chair Souza.

DOCKET NO. 24-2101-2000F **Division of Occupational and Professional Licenses (DOPL) Omnibus Rulemaking. Dawn Hall**, Section Chief, DOPL, reported Chapter 24.2101.2000F - Rules of the Idaho State Contractors Board (ISCB), p. 137, were existing rules that were previously reviewed. She pointed out the only change was a fee for an inactive license in compliance with H 420. The inactive fee is \$25, which is half the regular fee of \$50.

DISCUSSION: **Senator Martin** asked if this was a new fee. **Ms. Hall** replied the fee was new but was allowed in H 420 last year.

Chairman Patrick queried if a licensee would have to reapply there was not an inactive fee in place. **Ms. Hall** pointed out a contractor can choose to be inactive, not carry insurance, but cannot work. Once a contractor decides to become active again, they will have to pay to activate their license and reinstate their insurance.

MOTION: **Senator Martin** moved to approve **Docket No. 24-2101-2000F, Chapter 24.2101.2000F**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chair Souza passed the gavel to Chairman Patrick.

S 1011

Relating to Land Surveying. **Michelle Bird**, Section Chief, DOPL, stated the purpose of this legislation is to improve the way Idaho adopts new datums and mapping projections defining State Plane Coordinates (SPC) and to align with modern uses of measurements and geographic data. She said the bill removes the requirement for an annual report as the performance report required of all agencies replaces the annual report. **Ms. Bird** remarked there is no fiscal impact to the amendment as this legislation replaces the prior SPC legislation.

Ms. Bird introduced Tom Judge, Deputy Director, Idaho Board of Professional Engineers and Professional Land Surveyors. **Mr. Judge** said the bill primarily addresses standards used to complete mapping with the latest technology and datums provided by the National Geodetic Survey. He explained mapping large portions of the round earth on flat pieces of paper is an age-old problem. He noted as the problem is studied and more is learned about the earth, the standard methods of mapping large areas improve. **Mr. Judge** explained one tool to come from these efforts is the system of SPC. These coordinates are a standardized way to describe and map specific points on the surface of the earth. **Mr. Judge** noted this proposal will incorporate the most recent advances in SPC systems and simplify adopting them in the future. Consistent units of measure will be established and the current related protections for buyers and lessees of real property will be retained.

DISCUSSION: **Senator Burgoyne** remarked whenever there is a new system, things change, and he asked for clarification. **Mr. Judge** noted that is part of what the bill is saying. The bill will not change what land someone owns. He said this legislation will give surveyors another tool.

Senator Agenbroad and **Mr. Judge** discussed the role of the landowner with respect to leasing land for a cell tower, for example.

MOTION: **Vice Chair Souza** moved to send **S 1011** to the floor with a **do pass** recommendation. **Senator Riggs** seconded the motion. The motion carried by **voice vote**.

Relating to Consumer Protection. Ken McClure, Idaho Petroleum Marketers, reported this legislation specifies that the statute prohibiting excessive pricing during a declared emergency applies to exorbitant or excessive increased prices to the consumer for food, water, fuel, and pharmaceuticals, rather than to the margin between wholesale and retail prices. **Mr. McClure** noted there is no fiscal impact to the General Fund because no additional personnel or administrative costs are required by this clarification to Idaho Code.

Mr. McClure pointed out that when supply is high and demand low, a price could not be considered exorbitant when it has not been increased. Price gouging is taking advantage of a supply or demand imbalance. In his opinion, he did not believe anyone was taking advantage of the consumer or an emergency. **Mr. McClure** noted last year the price of and the demand for gas was at historic lows. He explained the petroleum marketer or convenience store owner has to stay open whether or not they are selling any gas. If sales drop so does income. In order to keep a business operating, prices have to be adjusted. He explained demand was such the business owner could not make up in margin what was lost in volume, even when prices did not increase. Gasoline retailers were told they were taking advantage of the consumer. **Mr. McClure** stated that was not the case. If prices are exorbitant, something could be done. He noted today's prices are not exorbitant even though they are higher. If prices increase to an exorbitant amount, a business can be found liable for violating the Idaho Consumer Protection Act.

DISCUSSION:

Senator Martin and **Mr. McClure** discussed the proceeding against the three companies involved in the complaint and that were charged by the Attorney General's (AG)'s Office for exorbitant pricing and margins that were too high. They discussed the idea that because wholesale prices fell, prices did not fall or decrease as quickly as wholesale prices fell.

Senator Lakey mentioned this bill is making a change from scrutiny of margin to an increase in price analysis. He queried how the line was drawn in that process or if 21 cents on the dollar was appropriate. **Mr. McClure** stated he was not involved in the three complaints against those companies.

Senator Burgoyne commented facts and situations appear to be taken into consideration in existing law arriving as to what is exorbitant. The difference between the wholesale price and retail price may not be a good way to measure margin. **Mr. McClure** noted this bill was brought forward because there was something in the statute that should not be there and it would be appropriate to seek clarification.

Vice Chair Souza remarked it was her understanding that in the initial weeks of the pandemic, gas stations had a low volume and sold extremely lower amounts of gas than on an average day. She queried how many gallons a gas station sold at the beginning of the pandemic and how many they typically sell. **Mr. McClure** remarked there is one station that sold 29 gallons of gas on one day, which does not cover wages and the additional costs of operation. A gas station owner could not drop the margin far enough and still pay bills.

Senator Agenbroad queried why would there be a need to introduce something about price gouging. **Mr. McClure** explained the price paid by the seller and what the consumer is charged is taken into account. This is not about price gouging. It is about not dropping prices as fast as the business owner should.

TESTIMONY: **Charley Jones**, Owner and President, Stinker Stores, testified in support of this legislation. He gave a brief background of Stinker Stores. He noted he employs 650 workers in Idaho. There is a profit-sharing plan for employees who have been employed six months or more. He spoke about gas margins and that they were fair. **Mr. Jones** said the government should not regulate margins. His losses were in the 50 percent category. He explained he was required to respond to the AG's Office, which accused his company of price gouging. The AG's Office was aggressive. He incurred significant legal fees. Stinker Stores agreed to a settlement with the AG's Office, which was a business agreement to avoid a legal battle.

DISCUSSION: **Senator Burgoyne** remarked he was interested in what gas was selling for and how expensive it became, whether Mr. Jones made money, and if Stinker Stores suffered a loss despite pricing. **Mr. Jones** related gas prices in January were approximately \$2.70 to \$2.80 a gallon and at the low point gas was less than \$2 a gallon. He reported wholesale gas prices change routinely. He buys 10,000 gallons at a time. He noted the AG wanted them to lower their prices. He said the fuel industry did not lose money, but during the pandemic wholesale prices dropped quickly and gallons sold dropped by 50 percent. However, now Stinker Stores is selling as much fuel today as they did a year ago.

Senator Burgoyne queried if there were periods or days that there was not enough fuel being sold to cover the overhead. **Mr. Jones** remarked he was scared in March and April about the future of his company due to the pandemic and low sales.

Senator Lakey asked what Mr. Jones was told to be excessive or exorbitant. **Mr. Jones** said the AG is going to make a presentation with inaccurate data. He said the AG determined Stinker Stores' margins, and when he disclosed his margins, the AG's Office said the margins were exorbitant.

TESTIMONY: **Pam Eaton**, President and Chief Executive Officer, Idaho Retailers Association, testified in support of the bill. She stated the Stinker Stores were accused of engaging in price gouging. Some fuel retailers purchased fuel and stored it. During the beginning of the pandemic, prices were low across the state.

Brett DeLange, Deputy AG and Chief, Idaho AG's Consumer Protection Division, testified in opposition to the bill. He had a PowerPoint presentation which consisted of charts and graphs and other information about the three retailers charged by the AG's Office. He defined price gouging according to Idaho Code § 48-603(19), which prohibits "taking advantage of a disaster or emergency declared by the Governor, by selling or offering to sell to the ultimate consumer fuel, or food, pharmaceuticals, or water for human consumption at an exorbitant or excessive price; provided this subsection shall apply only to the location and for the duration of the declaration of emergency." He noted if this legislation is enacted, price gouging would be made easier and Idaho's consumers more vulnerable to price gouging during an emergency.

Mr. DeLange gave an overview of what the AG's Office considered price gouging. He indicated the AG's Office investigated Maverik, Jacksons, and Stinker Stores, the three largest retailers of gasoline. He noted the purpose in investigating was to obtain and review evidence relating to these companies' fuel pricing during the emergency declaration and to more fully analyze the prices being charged both before and after the emergency declaration. The AG's Office determined the prices being charged were exorbitant or excessive in violation of Idaho's price gouging law.

Mr. DeLange noted that while wholesale prices were plummeting, what did not change significantly was a corresponding drop in retail fuel prices. As a result the margins grew, and by April, they were more than six times the historic Idaho average. After presenting analysis and results to Maverik, Jacksons, and Stinker

Stores, they were ultimately able to reach a settlement. Included in the settlement is \$1.5 million in credits that will go back to Idaho consumers over the course of this year.

Mr. DeLange reported the AG thinks the legislation is a bad policy for the State, citizens, and businesses. Putting aside the challenge of determining whether a price increase is due to a loss of sales or volume, a more central issue is that this amendment would turn the law of economics on its head. Prices do not generally go up when volume goes down. He said this legislation suggests that reduced sales volume, including those related to an emergency, are a justification for price increases. The result of that would be to emasculate the law, even for price gouging.

DISCUSSION:

Chairman Patrick queried about national companies that sell gas in Idaho and were not investigated. **Mr. DeLange** said the AG's Office examined the largest companies that sell gas in Idaho. Since the investigation, margins have stabilized.

Senator Agenbroad remarked he found it curious that the AG's Office only looked at half the income. One of the largest expenses is the real estate where the gas station is located, which is not factored into the margins. **Mr. DeLange** stated the statute tells the AG's Office to look at what the gas retailer paid for gas and sold the gas before or after the emergency declaration. He said the statute is directing the AG's Office.

Senator Agenbroad remarked, the statute says, "to include, but not limited to." He noted the AG's Office was only looking at half the figures of the difference between wholesale and retail prices. **Mr. DeLange** reported the AG's Office looked at prices every day and at every single wholesale purchase and costs attributable to the COVID-19 emergency to try to determine whether prices were excessive or exorbitant. **Senator Agenbroad** said he disagreed with the approach because the AG's Office was not looking at the whole picture. **Mr. DeLange** explained what the proposed language does in part is to state that a price increase is not price gouging.

Senator Riggs asked how many complaints were received about gas prices. **Mr. DeLange** reported most complaints were phone calls from around the state, and he did not have the information. **Senator Riggs** queried if, when looking at something dealing with numbers as complicated as this, did the AG's Office use large retailers or economists to help analyze whether there was malfeasance. **Mr. DeLange** said there was no malfeasance. The AG's Office did not consult with outside economists because the data received from the companies provided the necessary information.

Senator Riggs noted the current statute did not analyze whether a margin was too high. **Mr. DeLange** stated there was no lawsuit filed as they were able to settle this case pre-litigation. **Senator Riggs** asked how small of a margin would trigger an investigation. **Mr. DeLange** stated the statute does not say an exact number and what the AG's Office looked at was what was considered "normal."

Senator Burgoyne and **Mr. DeLange** discussed the analysis of margins for each gallon of gas by taking the retail price and matching it with the wholesale price.

Senator Guthrie commented he found it interesting there are gas stations all over the State and only three companies were targeted. Stations were charging approximately the same amount for gas and there was no consideration for inside sales. He noted that when the pandemic began, the gas retailers may have purchased gas at \$2.50, but market conditions dictated the retailers have to sell at or near a loss. He remarked he was in support of this legislation. **Mr. DeLange** reiterated when some businesses were called, they lowered their prices.

TESTIMONY: **Jeremy Chou**, Idaho Petroleum Marketers, remarked Stinker, Jacksons, and Maverik were not caught violating the price gouging law. He noted this was not the place to litigate the facts. The margins presented by the AG's Office were incorrect. He remarked the margin did not matter if the retailer was not making any money. There was too much supply and not enough demand. The AG's Office failed to consider there was no price increase. **Mr. Chou** pointed out the legislative intent of this law when it was created in 2002 was to address retailers taking unfair advantage of consumers by greatly increasing prices. He said this law should never be used to go after retailers that are lowering prices during an emergency.

DISCUSSION: **Vice Chair Souza** stated she was quizzical as to how the AG's Office could use what they did to determine what was "normal." She noted the pandemic was not normal and to compare this situation with normal expectations was wrong. Many factors have to be taken into consideration. She said these three companies had to pay fees for lawyers and give \$1.5 million back to consumers. That was a very bad intervention by the government. She pointed out this investigation has cost these businesses a great deal of money in the midst of a pandemic when those businesses were losing money.

Mr. Chou stated the law needs to be changed. No one has filed a complaint against Stinker Stores. Stinker Stores was chosen anyway by the AG's Office.

MOTION: **Senator Riggs** moved to send **S 1041** to the floor with a **do pass** recommendation. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

RS 28377 **Relating to Insurance.**

RS 28379 **Relating to the Personnel System.**

MOTION: **Senator Martin** moved to send **RS 28377** and **RS 28379** to print. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Patrick** adjourned the meeting at 3:32 p.m.

Senator Patrick
Chair

Linda Kambeitz
Secretary