

# CAPITOL REFLECTIONS



## Idaho Farm Bureau's Government Affairs Report

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Idaho Farm Bureau Federation Governmental Affairs Division

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### Immigration measure dies

Senate Bill 1303 was killed this week in the Senate State Affairs Committee on a 7-2 vote. Sponsored by Sen. Mike Jorgenson (R-Hayden Lake), the extremely broad scope immigration bill required employers to use the federal E-Verify system to determine authenticity of a new employee's information. This is extremely problematic as E-Verify cannot be used as a pre-hire screening tool. Federal law allows its use only after an individual is hired.

If the employee's information does not match the individual, an appeal process is set in motion and can take up to 5 or 6 weeks. Many times an employee will leave when the information cannot be verified. However, an employee could be employed for the entire appeals process. The employer will be responsible for wages and other expenses during this time period.

S1303 contained a number of other provisions: English-only driver's tests, sanctuary city penalties and felonies for harboring and trafficking illegal aliens.

Most significant were employer sanctions contained in the bill. S1303 prohibited employers from knowingly employing unauthorized aliens. It allowed for fines of up to \$50,000 and suspension of city, state or county business licenses. The first violation, as established by the court, would have resulted in a 15-day suspension; second, one year loss of license and third, permanent loss of business license. The local prosecutor and Attorney General were the enforcement entities.

Any enforcement that suspends a business license is problematic and unacceptable. There is no general business license in Idaho, and the penalty could not be uniformly applied. In the dairy industry, a 15-day milk permit suspension would result in the dairy's failure. With respect to agriculture, dairies can have milk permits suspended, while row crop operations have no license or permits and could continue operation.

Idaho Farm Bureau does not defend illegal or unauthorized aliens. Immigration reform is a federal issue. Farm Bureau does, however, support the ability of employers to hire a capable, reliable and legal

workforce.

Idaho Farm Bureau, Food Producers of Idaho, Milk Producers of Idaho, Idaho Dairywomen's Association, Idaho-Oregon Fruit and Vegetable Association, IACI, Idaho Retailer's Association, Idaho Lodging and Restaurant Association, Associated General Contractors of Idaho, Catholic Charities of Idaho, ACLU and others opposed S1303.

### Idaho Firearms Freedom Act

House Bill 589, the Idaho Firearms Freedom Act, sponsored by Rep. Dick Harwood (R-St. Maries), states that a personal firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in Idaho and that remains within the borders of Idaho is not subject to federal law or federal regulation, including registration. This bill is patterned after legislation that has already been signed into law in Montana and Tennessee and pending in several other states this year.

The Idaho Firearms Freedom Act passed the House this week on a party-line vote of 52-17 and will now move to the Senate.

The purpose of the bill is to declare to the federal government that it has overstepped its Constitutional authority and that Idaho will no longer recognize its attempts to regulate certain firearms under the commerce clause of the Constitution as the federal government has asserted.

It is probable that this bill, if enacted, would be challenged in court by the federal government. However, both Montana and Tennessee are already in court over this issue, and if they successfully defend their laws, it may be unnecessary for Idaho to defend this bill. Furthermore, the Goldwater Institute, a non-profit organization dedicated to enforcing constitutionally limited government through litigation, has already agreed to defend H589 for Idaho at no cost.

Idaho Farm Bureau supports H589.

### Tribal law enforcement

After a 3 ½ hour hearing, House Bill 500, the State and Indian Tribal Cooper-

ative Law Enforcement Act, was held for a time certain until Wednesday, March 17, by a vote of 10-5 in the House Judiciary, Rules and Administration Committee.

The committee was concerned about public safety issues raised by the bill's supporters and the inability of the Coeur d'Alene Tribe and the Benewah County Sheriff's Office to reach some sort of agreement. The period for holding the bill is intended to allow the two parties to further negotiate. Amendments clarifying insurance amounts, jurisdiction over infractions and assurances that non-tribal members will not be tried in tribal court for certain offenses are up for discussion.

The bill allows tribal law enforcement agencies and county sheriffs to enter into cooperative agreements that will allow tribal officers to enforce Idaho law within the exterior boundaries of Indian reservations throughout Idaho.

If a tribe elects to enforce Idaho law within the reservation it must give written notice to the sheriff, county commissioners, county prosecutor and Idaho State Police 180 days prior to the intended date of enforcement. If no agreement is reached after 180 days, the Tribe can still take jurisdiction and enforce Idaho law if certain requirements of the legislation are met.

To enforce Idaho law under the legislation, tribal law enforcement officers must attend and be certified through the Idaho POST (Peace Officer Standards Training) Academy and carry a prescribed level of liability insurance. The tribe also must waive sovereign immunity. There is no requirement for a sheriff to cross-deputize tribal officers in the bill.

Any arrests by tribal officers for violations of Idaho law would be made according to Idaho Law, the sheriff notified and the arrested individual transported to a place designated by the sheriff. All enforcement of state law by tribal peace officers would be processed through Idaho state courts. Tribal officers who enforce state law would be accountable to the POST Council and could be decertified by the Council for violations.

Supporters of H500 maintain the bill closes gaps in law enforcement that make tribal

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reservations safe havens for criminals. Opponents contend the legislation creates a law enforcement entity that is not accountable to a state or local political entity. Opponents also are highly concerned that tribes could enforce Idaho law without a cooperative agreement in place if no agreement is reached during the 180-day negotiation period.

Many non-tribal members living on reservations are concerned about dispute resolution. In the event of dispute, those individuals would appeal to the Tribal Council, the policy-setting body for the tribal law enforcement agency. Non-tribal members, however, do not get to vote for, and elect the Tribal Council.

In some parts of Idaho, tribes and local law enforcement have cooperative agreements in place. Opponents said a local law enforcement entity should have the final say to the terms of any agreement and that power should not be overridden.

Idaho Farm Bureau, Idaho Association of Counties, Idaho Sheriff's Association, Idaho Prosecuting Attorneys Association and others opposed H500.

## Drug testing welfare recipients

A resolution requesting a study on the cost of randomly drug testing adults who receive public assistance was approved this week by the Idaho House of Representatives by a vote of 55-11.

House Concurrent Resolution 55, sponsored by Rep. Rich Wills (R-Glenns Ferry), now heads to the Senate.

The study, to be conducted by the Idaho Department of Health and Welfare, will specifically examine whether the drug-testing program can become self-funded through savings generated by terminating, from public assistance programs, adults who continue to test positive for controlled substances after 90 days. The department is requested to report the findings of the study before the 2011 legislative session.

Idaho Farm Bureau supports HCR55

## Beef CAFOs and confidentiality

This week the Senate Agricultural Affairs Committee held a hearing on Senate Bill 1346, which deals with administration of water quality protection within the confines of a beef cattle animal feeding operation (CAFO). One year ago the U.S. Environmental Protection Agency (EPA) terminated its memorandum of understanding with the

Idaho Department of Agriculture (ISDA) regarding regulation of beef CAFOs.

The bill makes it clear that the Idaho State Department of Agriculture has the authority to regulate water quality within the confines of a beef CAFO that is not under a permit issued by the EPA. This eliminates a double layer of government regulation.

The bill also protects the confidentiality of the CAFO's nutrient management plan filed with the state and all information generated as a result of that plan. That information is confidential because it deals with trade secrets, production records or other proprietary information. The confidentiality extends to inspection reports prepared by ISDA.

Opponents of the bill want the inspection reports to be made public. If made public, the inspection reports would be available to EPA. There is currently a good level of cooperation between ISDA and CAFO operators. The inspections are used to help operators comply with the law and ultimately make their operations better. Several of those operators testified in favor of the bill.

The committee sent S1346 to the Senate's amending order.

Idaho Farm Bureau supports S1346 and opposes any efforts to weaken its confidentiality provisions.

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