

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Thursday, March 08, 2018

TIME: 3:00 P.M.

PLACE: Room WW53

MEMBERS PRESENT: Chairman Johnson, Vice Chairman Bayer, Senators Hill, Siddoway, Rice, Vick, Patrick, Burgoyne, and Nye

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 Johnson** called the meeting of the Local Government and Taxation Committee (Committee) to order at 3:00 p.m.

H 568 **Relating to Initiatives and Referendum Procedures.** **Senator Anthon** provided closing comments regarding **H 568**. He stated this legislation would apply to any Local Land Use Planning Act (LLUPA) proceeding which requires process, because a voter initiative or referendum cannot happen in those instances without circumventing statute that requires it. This is what the Supreme Court of Idaho held in *Grumpecht v. City of Coeur d'Alene* and what is being codified in this bill. By codifying these concepts, the Legislature will provide clarity of the law in this regard.

Senator Anthon responded to questions regarding the scope and applicability of **H 568**. He stated this legislation would not be retroactive; he referenced Idaho Code § 73-101, which holds that a statute is not retroactive unless explicitly written as such. In addition, **Senator Anthon** referenced case law which held the law in effect at the time of filing is the law applied to the case. For these reasons, he expressed confidence this bill would not affect ongoing litigation.

DISCUSSION: A discussion ensued regarding the Dry Creek Valley Coalition referendum petition (*Dry Creek Valley Coalition v. Rich.*) **Senator Burgoyne** noted the Ada County ordinance governing referenda does not include a provision that allows a county clerk to reject a referendum petition. This makes it a county issue, rather than a statewide problem. **Senator Burgoyne** asked why not change the county ordinance to grant a county clerk such authority, rather than amend State law. **Senator Anthon** responded the central issue, in his opinion, has broader applicability because of the ripeness issue. He questioned why an initiative or referendum should be allowed to repeal or amend a zoning designation that has already been approved.

Senator Rice commented the courts have held that local land use decisions cannot be challenged through initiative or referendum. Such prohibition does not prevent statewide initiatives, but local initiatives and referenda cannot override State law. **Senator Rice** said it is within the authority of the Legislature to codify legal precedent and provide clarity on this issue. This clarification will ensure citizens do not go through the expense of challenging this again in court.

MOTION: **Senator Rice** moved to send **H 568** to the floor with a **do pass** recommendation. **Senator Vick** seconded the motion.

DISCUSSION: **Senator Patrick** said he will support the motion. He commented, in his experience, uncertainty in the real estate development industry is a detriment to project funding and development.

Senator Burgoyne argued the issue addressed in this legislation is a local issue; it can be resolved if Ada County passes an ordinance that empowers a county clerk to reject petitions. **Senator Burgoyne** was uncertain of the motive behind this bill, citing inconsistent statements made during testimony regarding the Dry Creek Valley referendum petition.

SUBSTITUTE MOTION:

Senator Burgoyne moved that **H 568** be held in Committee. The motion failed due to lack of a second.

DISCUSSION:

Senator Hill stated support for the original motion. He acknowledged the efforts of citizens to use the referendum process to address a planning and zoning decision they felt strongly about. **Senator Hill** commented this legislation would codify legal precedent on this issue, and would provide clarity for citizens seeking similar redress.

Senator Rice recognized there are ambiguities within State law. He commented **H 568** seeks to address such ambiguity regarding the initiative and referendum processes, and would provide clarity for citizens in this regard.

Chairman Johnson asked Senator Anthon to distinguish between passing a zoning ordinance that restricts or eliminates a currently existing property right, and repealing a zoning ordinance that granted a new right or amended a preexisting right. **Senator Anthon** replied, in his opinion, it is difficult to make the distinction. For instance, the elimination of residential zoning of a property may subsequently result in zoning for commercial use. **Chairman Johnson** commented by enacting LLUPA, the Legislature removed from the people the ability to make zoning decisions. This is the central issue, not necessarily whether zoning ordinances can be challenged through initiative or referendum. **Chairman Johnson** acknowledged the people's efforts to challenge a land use decision, and recognized the broader significance of these issues.

ROLL CALL VOTE ON ORIGINAL MOTION:

A roll call vote was requested. **Vice Chairman Bayer, Senators Hill, Siddoway, Rice, Vick, Patrick and Nye** voted **aye**. **Chairman Johnson** and **Senator Burgoyne** voted **nay**. The motion carried.

H 453

Relating to Adoption Expenses. Representative Moyle presented **H 453**. This legislation proposes to amend Idaho Code § 63-3022I to increase the amount of adoption expenses which can be used as an income tax deduction, from \$3,000 to \$10,000. Such expenses may include legal fees, medical expenses, and other costs incurred through the adoption process; travel expenses are not included. **Representative Moyle** reported the bill caps the deduction at \$10,000.

DISCUSSION:

Senator Burgoyne asked when the \$3,000 tax deduction was added to statute. **Representative Moyle** reported the deduction was added in 1994.

MOTION:

Senator Vick moved to send **H 453** to the floor with a **do pass** recommendation. **Senator Rice** seconded the motion. The motion carried by **voice vote**.

H 559

Relating to Tax Exempt Property. Representative Moyle presented **H 559**. This legislation would provide for a provisional property tax exemption on property that is under construction for a tax-exempt purpose. **Representative Moyle** outlined how tax-exempt property is currently assessed, and how property taxes are applied to such property during and after construction. He stated the current process is not uniformly followed by county assessors and may result in a shift of property taxes to other taxpayers.

H 559 proposes to address these inconsistencies. **Representative Moyle** explained this legislation will allow a property owner to apply for a provisional tax exemption when they apply for a building permit. If approved, the property will not be included on the county assessor's new construction roll. Once construction is complete, the county will review the tax-exempt status of the property. If the property does not qualify for the tax exemption at that time, the property owner will be liable for back taxes that would have been due during construction.

DISCUSSION: **Vice Chairman Bayer** asked why a property's tax-exempt status is not clearly determined prior to construction. **Representative Moyle** explained there is inconsistency among counties in how this exemption is applied. For instance, a tax-exempt entity may not take ownership of the property until construction is completed. An assessor may assume, because the property is not yet being used for a tax-exempt purpose during construction, that its value should be added to the new construction roll. **Representative Moyle** indicated the issue was brought to light with Idaho Supreme Court's decisions regarding Jack's Urban Meeting Place (JUMP). The court held JUMP was not exempt from taxation during construction because it was not being used exclusively for charitable purposes during that time.

Senator Hill asked what the practical effect will be to Idaho counties by making this legislation retroactive to January 1, 2016. **Representative Moyle** replied the intent was to incorporate the 2016 Idaho Supreme Court decision regarding JUMP, and to provide consistency Statewide moving forward.

Senator Burgoyne asked for more clarification regarding potential refunds of property tax payments. **Representative Moyle** responded taxpayers may appeal to the county board of commissioners for a refund of property taxes imposed during construction of a tax-exempt property.

Senator Nye sought clarification of the fiscal note. **Representative Moyle** provided there may be a fiscal impact to local governments should a tax-exempt entity apply for a refund. However, he believes this will have future application. There will be no impact to General Fund revenue.

TESTIMONY: **John Eaton**, representing the Idaho Association of Commerce and Industry, spoke in support of **H 559**.

DISCUSSION: **Representative Moyle** provided closing comments. He emphasized this bill proposes to require the board of county commissioners to review the tax-exempt qualifications of a provisional property after construction is complete. Most counties already follow this procedure; this bill would provide Statewide clarity on this issue.

Vice Chairman Bayer commented there may be some discretion in regard to existing tax liability from these situations. He asked how this language may affect county budgeting. **Representative Moyle** surmised the budget implications will be minor because these incidences are infrequent. The implications to counties will not be fully realized until the legislation takes effect.

MOTION: **Senator Siddoway** moved to send **H 559** to the floor with a **do pass** recommendation. **Senator Hill** seconded the motion. The motion carried by **voice vote**.

H 578 **Relating to Sales and Use Tax.** **Representative Clow** presented **H 578**. This legislation seeks to amend Idaho Code § 63-3611, which pertains to retailers engaged in business in the State of Idaho. **Representative Clow** stated this legislation proposes to expand this definition to include out-of-state retailers engaged in business with one or more individuals in this State, and that generate at least \$10,000 annually in sales through Idaho-affiliated businesses. This legislation proposes to also provide a mechanism for a retailer to dispute their tax liability with the Idaho State Tax Commission (Commission).

Representative Clow explained a retailer, whether through online sales or in brick-and-mortar stores, must collect and remit tax on sales made through an affiliate to an Idaho consumer. Retailers who are not selling through affiliates will not be held to the same requirement. **Representative Clow** also discussed the difficulties of determining the fiscal impact of this legislation. He explained how the \$22 million to \$37 million range of potential impact to the State was determined.

DISCUSSION: **Senator Burgoyne** asked a series of questions regarding nexus and scope of this legislation. **Representative Clow** explained if a business in another state utilizes the services of an affiliate in selling its products, it creates a nexus through affiliation with a business in Idaho. He reported some online marketplaces already collect and remit sales tax on their own accord, and it is difficult to determine which retailers are doing so.

Senator Hill asked if other states have enacted similar legislation that was subsequently challenged in court. **Representative Clow** referenced court cases pertaining to this issue. Courts have held if a nexus is established, out-of-state retailers must collect sales and use tax on sales to customers in that state.

Senator Siddoway asked questions regarding affiliation as it pertains to this legislation. **Representative Clow** explained if an out-of-state retailer sells products to consumers in Idaho, but does not rely on an affiliate, the retailer will not be required to collect sales tax on those transactions. However, if an out-of-state retailer sells product in Idaho through an affiliated business in the State, and those transactions generate at least \$10,000, the retailer will be required to collect sales tax on those transactions.

Senator Vick asked how the \$10,000 threshold was determined. **Representative Clow** replied this threshold has been used by other states. **Senator Vick** asked for an example of an indirect retail agreement. **Representative Clow** said this was included to cover unexpected retail transactions. **Senator Vick** then asked how these provisions will be enforced. **Representative Clow** stated the legislation does not address enforcement; the Commission will handle these issues as part of their course of business.

TESTIMONY: **John Watts**, Idaho Chamber Alliance, **Pam Eaton**, Idaho Retailers Association, and **John Eaton**, Idaho Association of Commerce and Industry, spoke in support of **H 578**.

DISCUSSION: **Senator Vick** asked Tom Shaner, Tax Policy Manager with the Commission, to comment on enforcement of these provisions. **Mr. Shaner** stated the Commission has auditing and enforcement tools available, to the extent the Commission is able to identify retailers engaged in this activity. **Senator Vick** asked if the Commission expects voluntary compliance with these provisions. **Mr. Shaner** said the Commission can send an audit notice to an out-of-state business, but there are practical limitations to such a practice.

Vice Chairman Bayer asked how this legislation may affect subsequent rulemaking. **Mr. Shaner** did not foresee difficulties regarding implementation.

Representative Clow returned to the podium to provide closing comments. He commented this legislation requires a certain level of voluntary compliance, and predicted retailers will adapt accordingly to the law. **Representative Clow** concluded this legislation is timely and the appropriate way to address the changing nature of the Internet marketplaces.

MOTION: **Senator Nye** moved to send **H 578** to the floor with a **do pass** recommendation. **Senator Rice** seconded the motion. The motion carried by **voice vote**.

H 567aa **Relating to Cemetery Maintenance Districts.** **Representative Troy** presented **H 567aa**. This legislation seeks to amend sections of Idaho Code to allow for the merger of cemetery maintenance districts throughout the State. She stated there are 183 cemetery districts in Idaho. Some of these districts are quite small and often have difficulty maintaining local cemeteries due to funding challenges and demographics. **Representative Troy** outlined the provisions of **H 567aa** that govern the procedures for consolidation of cemetery maintenance districts.

DISCUSSION: **Vice Chairman Bayer** asked a series of questions regarding cemetery districts that fall within the parameters of this legislation. **Representative Troy** stated 21 cemetery districts in Idaho have annual budgets of less than \$2,500, and 31 cemetery districts have annual budgets of less than \$3,500. She explained cemetery districts must have a ten-mile proximity, and one district must have less than 150 patrons, to be eligible for consolidation.

Senator Burgoyne asked how this legislation would apply to cemetery districts residing in multiple counties. **Representative Troy** responded the bill will allow cemetery districts to merge across county lines.

MOTION: **Senator Nye** moved to send **H 567aa** to the floor with a **do pass** recommendation. **Vice Chairman Bayer** seconded the motion. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Nye** moved to approve the Minutes of February 22, 2018. **Senator Burgoyne** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Johnson** adjourned the meeting at 4:43 p.m.

Senator Johnson
Chairman

Jennifer Carr
Secretary