

MINUTES  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

**DATE:** Tuesday, February 20, 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 3:07 p.m.

**H 449** **Relating to Income Taxation of Bullion.** **Senator Vick** presented **H 449**, which proposes to exempt the sale of precious metal bullion from capital gains taxation.

**TESTIMONY:** **Stefan Gleason**, President, Money Metals Exchange, spoke in support of **H 449**. This legislation proposes that capital gains and losses of precious metal bullion and monetized bullion sales be added or subtracted from Idaho taxable income. **Mr. Gleason** discussed federal monetary policies regarding inflation, and how these policies have affected values of gold and silver over time. He remarked that the Internal Revenue Service (IRS) treats precious metals as property, rather than money, for taxation purposes. Precious metal bullion is taxed as a collectible at a rate of 28 percent. In his opinion, such practice does not comply with federal law.

**Senator Patrick** commented on inflation, in general, and the devaluation of gold over the past five years. He felt the proposed exemption will not provide a true offset to inflation. **Mr. Gleason** stated that inflation is more pervasive than simply affecting gold and silver values. Gold and silver are money, and its exchange should not be taxed.

**Lawrence Hilton**, General Counsel, United Precious Metals Association, spoke in support of **H 449**. **Mr. Hilton** provided an overview of U.S. monetary policy regarding precious metals. He said that Article 1, Section 10 of the United States Constitution mandates that gold and silver be treated as legal tender. He felt that the application of tax to precious metal bullion by the IRS does not comply with federal law in this regard. In his opinion, taxation destroys the monetary character of gold and silver.

**Senator Hill** asked Mr. Hilton a series of questions regarding litigation. His line of questioning emphasized whether the rationale used to prevent State taxation of precious metal bullion can be applied to the federal government. **Mr. Hilton** provided examples of federal court cases and instances of taxpayers challenging the IRS and prevailing. He commented that the courts have ruled both against and in favor of exempting precious metal bullion from taxation; these decisions vary by judicial district. **Mr. Hilton** expressed his opinion that the IRS, in its treatment of capital gains, does not comply with existing federal law, which is very clear on this issue.

**Senator Nye** asked Mr. Hilton if he is a registered Idaho lobbyist or if he is licensed to practice law in Idaho. **Mr. Hilton** stated no.

**Senator Siddoway** asked Mr. Hilton if he owns precious metal bullion, and if uses it to make routine purchases. **Mr. Hilton** stated he owns gold and silver. He treats it as a currency and uses it in some financial transactions.

**ORIGINAL MOTION:**

**Senator Rice** moved to table **H 449**. **Senator Siddoway** seconded the motion.

**DISCUSSION:**

**Vice Chairman Bayer** asked Senator Vick to comment on concerns regarding the discernment between forms of precious metals and their monetization. In response, **Senator Vick** asked the Committee members to articulate their concerns regarding **H 449**.

**Senator Rice** stated the values of precious metals do not fluctuate based on inflation; they fluctuate based on factors such as use and demand. In his opinion, gold and silver are commodities rather than currency, and this bill will simply exempt a commodity from taxation. **Senator Rice** felt the exemption is too broad because it exempts bullion and other precious metals that have never been used as currency.

**Senator Siddoway** referred to the statutory definitions of "precious metal bullion" and "monetized bullion." He raised the question, if a mining company refined metals in a manner as defined by statute, would these metals be considered monetized bullion and thus exempt from taxation.

**Senator Patrick** expressed concern about the legislation because, in practice, precious metal bullion is not treated or used like currency in routine transactions.

**Senator Vick** addressed these concerns and suggested amending **H 449** to narrow the definitions of "precious metal bullion" and "monetized bullion" in Idaho Code § 63-3622V.

**SUBSTITUTE MOTION:**

**Senator Vick** moved to send **H 449** to the 14th Order for amendment. **Vice Chairman Bayer** seconded the motion.

**Senator Burgoyne** stated he will not support the substitute motion. In his opinion, the proper forum for this issue is the judicial branch.

The substitute motion failed by **voice vote**.

**VOTE ON ORIGINAL MOTION:**

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

**S 1309**

**Relating to Fire Protection Districts.** **Senator Lee** presented **S 1309**. This legislation seeks to repeal Idaho Code § 31-1418, pertaining to temporary inability and replacement of a fire protection commissioner. In lieu of this statute, **S 1309** proposes language be added to Idaho Code § 31-1409, allowing a commissioner to nominate and appoint a temporary - rather than a permanent - vacancy. This bill also creates a mechanism to replace a fire protection district board that is completely vacant.

**Senator Lee** indicated that the proposed language does not address the issue of a board not having a quorum to conduct the business of replacing vacant seats. **Senator Lee** referenced suggested amended language to address this oversight. **S 1309** also seeks to amend Idaho Code § 56-1018B to authorize fire districts to license vehicles, acquired through grants from the Emergency Medical Service, in the fire district's name rather than the city or county. **Senator Lee** asked that **S 1309** be sent to the 14th Order for possible amendment.

**TESTIMONY:**

**Crystal Hinkle**, representing the Idaho State Fire Commissioners' Association (ISFCA), spoke in support of **S 1309**. **Ms. Hinkle** read correspondence from David "Rudy" Rudebaugh, President of the ISFCA (see attachment 1).

**MOTION:** **Vice Chairman Bayer** moved to send **S 1309** to the 14th Order for amendment. **Senator Rice** seconded the motion. The motion carried by **voice vote**.

**H 450** **Relating to Budgets of Taxing Districts.** **Representative Harris** presented **H 450**. He explained that 2017 HB 207 granted authority to taxing districts to disclaim any portion of their forgone balances for the current year. Statute currently requires a taxing district to adopt a resolution to disclaim any portion of its forgone balance at the annual budget hearing. **H 450** will amend Idaho Code § 63-802 to eliminate the requirement these decisions be made at the annual budget hearing. This bill will also require that the resolution be filed with the county clerk and the Idaho State Tax Commission. **Representative Harris** felt this will provide more flexibility as to when a taxing district may adopt such a resolution; this is imperative for taxing districts that do not conduct an annual budget hearing.

**Senator Siddoway** asked what taxing districts have disclaimed forgone balances. **Representative Harris** replied Kootenai County and one recreation district.

**Senator Nye** asked Representative Harris if he received negative feedback from his district regarding **H 450**. **Representative Harris** acknowledged opposition from counties, but none within his district.

**TESTIMONY:** **John Evans**, Mayor of Garden City, Idaho, and representing the Association of Idaho Cities (AIC), spoke in opposition to **H 450**. **Mayor Evans** expressed his opposition to eliminating the current requirement that decisions regarding forgone balances be made during the annual budget hearing. **Mayor Evans** felt that decisions regarding forgone balances are most appropriately made, by the current governing body and with public input, during the annual budgeting process. He noted that changes in the governing structure may render forgone balance decisions to be made by officials that were not involved in budgeting for the current year. In his opinion, it does not make sense to disclaim the right to recover a forgone increase after annual budgeting has occurred.

**DISCUSSION:** **Senator Rice** asked for clarification regarding Mayor Evans' opposition in relation to changes of a city's governing body. **Mayor Evans** stated that the composition of city councils may change in the interim period after the appropriations process; for instance, budgets are set in August and elections are held in November. He questioned why budgets should be changed mid-cycle by newly-elected officials.

**Senator Vick** asked if the annual budgeting meeting is the only opportunity to make appropriations at the city-level. **Mayor Evans** explained there is a provision to readjust budgets to address unforeseen revenues or expenditures; he provided the example of Greenbelt damage in Garden City last year due to flooding.

**Senator Hill** asked if the proposed changes to **H 450** will prevent a taxing district from adopting a resolution at the annual budgeting hearing. **Mayor Evans** stated no; however, historically, annual budgeting is conducted during the appropriations process. **Senator Hill** interpreted the bill to provide more flexibility and options to cities in this regard. **Mayor Evans** responded that local control is desirable. In this instance, however, it may create administrative problems and inconsistency with established protocol.

**Senator Rice** asked Mayor Evans to clarify his argument that this proposal will disrupt the budgeting process. **Mayor Evans** replied that decisions regarding forgone balances should be made once a year to provide stability and continuity of the budget process.

**Senator Patrick** asked Mayor Evans to distinguish between reserve funds and forgone balances. **Mayor Evans** stated, in his opinion, forgone balances act as insurance; ideally, they are never needed. Under the current system, a taxing district may elect to disclaim all of its forgone balances. Fund balances are reserves within a city budget that allow a city to function without having to borrow money between property tax collections.

**Representative Harris** returned to the podium to provide closing comments. He stated this legislation does not affect the annual budgeting processes. In response to specific concerns, **Representative Harris** questioned why the authority of newly-elected officials to make fiscal decisions, outside of the annual budgeting process, should be limited in any way. In his opinion, it is restrictive to limit when a taxing district makes a decision regarding its forgone balance.

**Senator Hill** asked Representative Harris to explain the underlying purpose of the bill. **Representative Harris** stated, in his opinion, **H 450** clarifies the original intent of 2017 HB 207. The changes proposed in this bill are intended to assist taxing districts that do not conduct budget hearings.

**MOTION:** **Senator Rice** moved to send **H 450** to the floor with a **do pass** recommendation. **Senator Vick** seconded the motion.

**DISCUSSION:** **Senator Hill** stated he will not support the motion. He commented that when stakeholders are not in agreement, work can be done during the interim to address concerns and craft better legislation.

**Senator Rice** stated this legislation clarifies that taxing districts, that do not have an annual budget meeting, may still elect to disclaim its forgone balance. It does not change the process, but provides flexibility for all taxing districts in this regard.

**ROLL CALL VOTE:** A roll call vote was requested. **Vice Chairman Bayer, Senators Rice and Vick** voted **aye**. **Chairman Johnson, Senators Hill, Siddoway, Patrick, Burgoyne,** and **Nye** voted **nay**. The motion failed.

**INTRODUCTION:** **Chairman Johnson** welcomed Committee Page, Paige Nelson, and asked her to provide a personal introduction.

**VOTE ON GUBERNATORIAL APPOINTMENT:** **Senator Siddoway** moved to send the Gubernatorial appointment of Ken Roberts to the Multistate Tax Commission to the floor with a recommendation that he be confirmed by the Senate. **Senator Nye** seconded the motion. The motion carried by **voice vote**.

**MINUTES APPROVAL:** **Senator Rice** moved to approve the Minutes of January 31, 2018. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

**Senator Nye** moved to approve the Minutes of February 6, 2018. **Senator Rice** seconded the motion. The motion carried by **voice vote**.

**Vice Chairman Bayer** moved to approve the Minutes of February 7, 2018. **Senator Patrick** seconded the motion. The motion carried by **voice vote**.

**ADJOURNED:** There being no further business at this time, **Chairman Johnson** adjourned the meeting at 4:36 p.m.

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Senator Johnson  
Chairman

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Jennifer Carr  
Secretary