

MINUTES
SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE

DATE: Wednesday, March 07, 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 3:01 p.m.

H 624 **Relating to Taxes, Trailer Bill. Tom Shaner**, Tax Policy Manager, Idaho State Tax Commission (Commission), presented **H 624**. This is a trailer bill to 2018 HB 355, which conforms Idaho income tax code to the Internal Revenue Code (IRC). Idaho income tax code is currently aligned with the IRC as of December 21, 2017, for tax year 2017.

H 624 will conform the Idaho income tax code to changes made to the IRC, resulting from the Bipartisan Budget Act of 2018, which was enacted in February 2018.

Mr. Shaner explained this bill seeks to amend Idaho Code § 63-3004 to extend the sunset dates of 11 deductions to which Idaho has previously conformed. The estimated fiscal impact is a \$4.2 million reduction in General Fund revenue that affects tax year 2017 only. He briefly described three deductions that constitute the majority of the fiscal note.

DISCUSSION: **Senator Hill** asked Mr. Shaner to provide a description of each deduction that will be amended, and to delineate the fiscal impact of each. **Mr. Shaner** assured the Committee he would provide that information prior to floor debate.

MOTION: **Vice Chairman Bayer** moved to send **H 624** to the floor with a **do pass** recommendation. **Senator Siddoway** seconded the motion. The motion carried by **voice vote**.

H 568 **Relating to Initiatives and Referendum Procedures. Senator Anthon** presented **H 568**. **Senator Anthon** stated this legislation will address the protection of property rights in land use decisions. City councils and county commissions make decisions regarding land use decisions; such authority is mandated by the Local Land Use Planning Act (LLUPA). **Senator Anthon** explained when a city council or county commission makes a general rule that is widely applicable, it serves as a legislative function. When a land use decision has specific applicability, it serves as a quasi-judicial function. In this role, cities and counties must meet specific requirements set forth in statute.

Senator Anthon noted the courts have held that land use decisions cannot be determined through initiative or referendum. **Senator Anthon** referenced *Gumprecht v. City of Coeur d'Alene*, in which the Idaho Supreme Court held that local zoning ordinances cannot be amended through initiative, and by extension, referendum elections; such action would be incompatible with statutory procedures mandated by LLUPA.

Senator Anthon stated current county statute is ambiguous in terms of when an initiative or referendum process can be brought forth; city statute is clear on this issue. **H 568** proposes the following: 1.) to repeal Idaho Code § 31-717, the current state law governing the county initiative and referendum process; 2.) to align the county initiative and referendum process with current State and city processes found in Idaho Code, Title 18, Chapter 34; 3.) to codify *Gumprecht v. City of Coeur d'Alene* in sections of Idaho Code pertaining to city and county initiative and referendum law; and 4.) to amend Idaho Code § 34-106 to clarify the dates of certain city and county initiative and referendum elections.

DISCUSSION: **Chairman Johnson** asked Senator Anthon how planning and zoning decisions may be challenged, if not through initiative or referendum. **Senator Anthon** replied there are remedies for quasi-judicial decisions through the judicial system. These matters may also be reconsidered by local units of government. **Chairman Johnson** sought clarification regarding dates of city and county referendum elections. **Senator Anthon** suggested this is a statutory clarification.

Senator Burgoyne asked Senator Anthon to discuss the scope of proposed language on page 4, lines 16-18. **Senator Anthon** stated it will apply to any land use decision of a quasi-judicial nature. **Senator Burgoyne** acknowledged the problematic nature of referenda initiated after a project has been approved. However, he expressed concern this legislation will undermine the ability of citizens to challenge general ordinances that are not quasi-judicial in nature. **Senator Anthon** replied the intent is not to limit a citizen's right to challenge an ordinance with general applicability through referendum.

Senator Hill asked for the rationale behind **H 568**. **Senator Anthon** referenced a zoning dispute in Ada County that brought these issues to light. However, he stated this legislation will not affect the case in question because the bill will not have retroactive application.

Senator Burgoyne referenced the proposed repeal of Idaho Code § 31-717, the current state law governing the county initiative and referendum process. If this legislation is approved, he asked what statute will govern the county referendum process. **Senator Anthon** responded this legislation, if approved, will not take away the ability to advance a referendum; it affects when a referendum is allowed to take place.

TESTIMONY: The following individuals spoke in support of **H 568**: **Cameron McFadden, John Wardle, Jared Doty, Ben Kalkman, Josh Cummings, Quint Whitman, Russ Hendricks, Bob Ginkel, James Hunter, Ax Yewer, David Yorgason, David Paul, Scott Gibson, Julie DeLorenzo, Mike Kane, Hethe Clark, John Eaton, and Trent Wright.**

The following individuals spoke in opposition to **H 568**: **Leslie Nona, Eric Lecht, Richard Llewellyn, Stephanie Rael, Kris Grimshaw, Keith Walklet, Brian Ertz, Katie Fife, and Lori Dicaire.**

Stephanie Rael, representing the Dry Creek Valley Coalition, spoke in opposition to **H 568**. She described the Dry Creek Valley referendum and her organization's efforts to challenge a zoning ordinance in Ada County. **Ms. Rael** commented the referendum process provides citizens with a voice in the land planning process; in her opinion, **H 568** will prevent citizen participation in this regard.

DISCUSSION: A discussion ensued regarding the Dry Creek Valley Coalition's petition for referendum. **Ms. Rael** spoke about administrative time extensions provided by Ada County during the course of this process. She indicated after Ada County initially approved the project, a significant amount of time lapsed before a different developer used the initial application to put forth a different plan.

Chairman Johnson asked if mediation with Ada County was considered. **Ms. Rael** stated a mediation request was submitted by the Dry Creek Valley Coalition and subsequently denied by Ada County.

Senator Burgoyne asked if the Dry Creek Valley Coalition is currently involved in litigation. **Ms. Rael** affirmed. She outlined the actions of her organization in this regard.

TESTIMONY: **James Hunter**, representing Boise Hunter Homes, spoke in support of **H 568**. He stated Boise Hunter Homes followed county zoning procedures, which included public hearings, and received county approval for their development project, the Dry Creek Ranch subdivision. **Mr. Hunter** asserted the Dry Creek Valley referendum has specific applicability, thus making it a quasi-judicial matter that should be appealed through the courts.

DISCUSSION: **Senator Burgoyne** asked if Boise Hunter Homes is currently involved in litigation. **Mr. Hunter** affirmed. **Senator Burgoyne** asked Mr. Hunter what he hopes this legislation will achieve. **Mr. Hunter** was unsure how this legislation will impact the project in question. He supports this legislation because it will provide overall stability and predictability within the real estate development industry.

Chairman Johnson asked the significance of 20 signatures on a petition for referendum. **Mr. Hunter** stated, in Ada County, a ballot initiative may begin after 20 signatures are collected.

TESTIMONY: **Ax Yewer**, Ada County Deputy Prosecuting Attorney, spoke in support of **H 568**. **Mr. Yewer** explained the significance of the *Gumprecht* case as it applies to this bill. He emphasized the provisions of this legislation will not be retroactive. **Mr. Yewer** also commented on the application of this legislation to ongoing litigation. He said the court has determined that new laws cannot be applied that will affect the vested rights established by statute at the start of the litigation.

DISCUSSION: **Senator Burgoyne** asked a series of questions regarding the scope of **H 568**. **Mr. Yewer** stated legislative ordinances have general applicability to all properties within a specified area; quasi-judicial ordinances have applicability to a specific property within a specified area. The new language proposed on page 4, lines 16-18, applies to both types of ordinances. **Senator Burgoyne** asked what statute will govern the referendum process if Idaho Code § 31-717 is repealed. **Mr. Yewer** replied the referendum process will not be affected because the new section being proposed references Title 34, Chapter 18, which governs these processes.

Senator Rice asked if the developer, who obtained project approval from a county, now has a vested right in the development of that project. **Mr. Yewer** affirmed. The Idaho Supreme Court held, when an application is approved for a development project, developers have a vested right to continue the project according to the zoning ordinance that is in place at the time of approval.

Chairman Johnson asked why the dates of city and county referendum elections are different. **Mr. Yewer** replied this was a statutory clarification.

TESTIMONY: **Hethe Clark**, an attorney representing Boise Hunter Homes, spoke in support of **H 568**. **Mr. Clark** asserted that a right to initiative or referendum, in the case of the Ada County land use dispute, does not exist for two reasons. First, most land use cases are quasi-judicial and do not fall within the bounds of Idaho Code § 31-717 or the Idaho Constitution. Second, the *Gumprecht* case held that direct legislation cannot satisfy the procedural requirements of LLUPA.

DISCUSSION: **Senator Rice** asked, because the *Gumprecht* case held that local initiatives are inconsistent with LLUPA, if a statewide initiative would be required to resolve a disagreement with LLUPA. **Mr. Clark** affirmed. A statewide initiative is required to modify state statute rather than a requirement of a local jurisdiction.

Senator Burgyone asked, in response to Mr. Clark's assertion there is no right to an initiative or referendum with respect to land use planning act issues, why this legislation is necessary. **Mr. Clark** replied the intent of this legislation is to confirm the legal precedent set by the *Gumprecht* case, which held that zoning ordinances may not be amended, modified, or repealed through referenda or initiatives.

ADJOURNED: **Chairman Johnson** stated the Committee will continue its consideration of **H 568** at the next meeting. There being no further business at this time, **Chairman Johnson** adjourned the meeting at 5:10 p.m.

Senator Johnson
Chairman

Jennifer Carr
Secretary