

MINUTES  
**SENATE LOCAL GOVERNMENT & TAXATION COMMITTEE**

**DATE:** Tuesday, March 12, 2024

**TIME:** 2:00 P.M.

**PLACE:** Room WW53

**MEMBERS PRESENT:** Chairman Ricks, Vice Chairman Schroeder, Senators Grow, Cook, Adams, Bernt, Trakel, Rabe, and Just

**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 Ricks** convened the meeting of the Senate Local Government and Taxation Committee (Committee) at 2:03 p.m.

**H 608** **Representative Andrus** presented **H 608**. He explained that many agriculture commissions had expressed concern regarding disappearing agricultural land due to development. This bill sought to protect agricultural land by creating agricultural protection areas (APAs).

**Braden Jensen**, representing Idaho Farm Bureau Federation, outlined **H 608**. This bill was to protect agricultural land, but it was not intended to stop growth. Under current law, conservation easements were typically offered in perpetuity, but could also be for a specific term. **Mr. Jensen** stated that there were 18 land trusts in Idaho, but he was unaware of any that offered a term easement. A few states offered transfer of development rights programs (TDRs). **H 608** offered an additional tool to landowners who wanted to protect their agricultural land and remain in agricultural production.

First, this was a voluntary program. Second, there was no transfer of development rights as there was in a county TDR or conservation easement. The development rights stayed with the land. Third, the decision of whether land was designated as an APA was at the local level with the Board of County Commissioners (Board). Fourth, this bill added value to local land use planning through landowners stating their intent to continue in agricultural production.

The process for designating property as an APA was as follows: The landowner submitted an application to the Board requesting that a parcel of land be designated as an APA. That application was submitted to the Agriculture Protection Area Commission (Commission) which this bill established. The Commission reviewed the application and determined whether all the requirements were met and made a recommendation to the Board on whether to approve or reject the application. The Board then held a public hearing. If approved, the APA designation would remain for 20 years. If the landowner later wished to terminate the APA designation, he or she submitted a petition to the Board. The effective date of the removal of the parcel from an APA was ten years from the date of the petition. The delay in termination of the APA allowed counties to do long-term land use planning. There were exceptions for hardship.

There were four incentives for landowners to request an APA designation. First, it provided them with protection from any local ordinance that negatively affected agricultural production. Second, it ensured that the zoning classification would not

be changed without the landowner's permission. Third, there were protections against nuisance claims. Fourth, it limited the use of eminent domain.

**H 608** also provided benefits to local governments. It aided in their land use planning. It protected agricultural lands and open spaces for local communities. It preserved local food production.

The legislative intent language in Idaho Code § 67-9702 cited the benefits of working farms, ranches, and forests, and the importance of property rights in Idaho.

Page two, Idaho Code § 67-9703, contained definitions. Subsection (1) defined agricultural production. Subsection (5) defined hardship circumstances that allowed a landowner to remove a parcel from an APA. Idaho Code § 67-9704 required a Board to pass an ordinance prior to January 1, 2025 and set forth criteria for that ordinance. These requirements included establishing a process for placing a parcel in an APA, application requirements, objective standards for evaluating the applications, timelines for reviewing the application, and establishing an application fee.

Page three, Idaho Code § 67-9705, established the Commission and outlined their number, appointment by the Board, term of office, and duties. Idaho Code § 67-9706 set forth the process for review by the Board. The Board was required to hold a public hearing within 60 days of receipt of the decision by the Commission to accept or reject an APA application.

Page four, Idaho Code § 67-9707, established the requirements for recording the creation and dissolution of APAs. Idaho Code § 67-9708 provided for automatic renewal of the APA. However, a landowner could terminate the APA by written notice to the Board at least 90 days prior to the expiration of the APA. Idaho Code § 67-9709 provided that a landowner may add land to the APA by filing a new petition. A landowner may remove land from the APA by filing a petition with the Board. Subsection (3) required the Board to establish a process for a landowner to remove land from an APA due to hardship.

Page five, Idaho Code § 67-9710, set limitations on local regulation of APAs. A Board could not change the zoning designation for an APA or enact a local law, ordinance or regulation that negatively impacted agricultural production within an APA. Idaho Code § 67-9711 heightened protections from nuisance claims.

Page six, Idaho Code § 67-9712, provided, "A political subdivision having or exercising eminent domain powers may not condemn for any purpose any land within an APA that is being used for production agriculture except for as granted in Section 14, Article 1 and Section 8, Article XI of the Constitution of the State of Idaho."

**DISCUSSION:** **Senator Cook** asked if a landowner requested an APA for 50 to 60 years, whether there was a means by which the county could use eminent domain if it became necessary. **Mr. Jensen** stated that if the Board was concerned about planning that far in advance, they could take that into consideration in their decision on whether to approve the APA application.

**Senator Just** asked whether there was a cap on automatic renewals. **Mr. Jensen** replied there was no cap.

**TESTIMONY:** **George Crookham**, Crookham Company, testified in support of **H 608**. His fourth generation seed company sold seed all over the world and was having difficulty finding enough land on which to grow the seed. This bill protected agricultural land.

**Bryan Reed**, farmer and county commissioner, spoke in support of **H 608**. He shared his own story about a developer who sought to purchase land near his property and develop it. The developer's plan included a road with access on part of his property. He told the developer that he would not sell his property and that stopped the development. **H 608** provided a mechanism for others to protect their agricultural land. It also allowed counties to do land use planning.

**Roger Batt**, representing the Idaho Eastern Oregon Seed Association, testified in favor of **H 608**. The seed industry produced about 50 species of seed crops and was valued at \$600 million annually. They had seen agricultural land disappear over many years. This bill protected property rights and agricultural land.

**Neil Durrant** spoke in support of **H 608**. It protected his family farm and allowed them to continue agricultural production. It also protected them against the use of eminent domain. He expressed concern that fair compensation was not given because the fair market value was based on the current land use.

**Doug Barrie**, was a fourth generation farmer and supported **H 608**. It protected property rights and protected agricultural land against growth and development.

**Zane Barckholtz** stated that this bill allowed him to continue to operate his family farm and continue agricultural production.

**Seth Grigg**, Executive Director, Idaho Association of Counties, testified that they supported most of the provisions of **H 608**, but had concerns regarding the prohibition against use of eminent domain. The use of eminent domain was necessary to expand rights of way for intersections and such. They were not seeking to use eminent domain to create new rights of way to build new roads. He suggested an amendment that would allow the use of eminent domain solely to expand existing rights of way, for example, to widen an intersection to allow for a traffic signal or to create an additional lane.

**DISCUSSION:** **Senator Grow** asked if the amendment he proposed would resolve the issue of payment of fair market value in eminent domain. **Mr. Grigg** explained that current law required payment of fair market value based on current use of the property. To resolve this issue required amendment of a separate statute.

**TESTIMONY:** **Representative Andrus** gave closing remarks and reiterated the benefits of this bill. Regarding the concern about payment of fair market value, he stated that under this bill the landowner would be able to negotiate a price for removing his land from an APA. Changing existing law with respect to eminent domain required an amendment of a separate statute.

**DISCUSSION:** **Chairman Ricks** asked how a developer would know whether property was in an APA. **Representative Andrus** answered that the bill required an APA to be included on the land use planning maps. **Chairman Ricks** expressed concern for the hardship provisions which allowed the counties to establish their own hardship conditions resulting in a variation between counties.

**Senator Just** asked whether there was a limit to how many times one could use automatic renewal. **Representative Andrus** replied one could continue to allow automatic renewal as often as they wished to negotiate.

**MOTION:** **Senator Grow** moved to send **H 608** to the floor with a **do pass** recommendation. **Senator Cook** seconded the motion.

**SUBSTITUTE MOTION:** **Vice Chairman Schroeder** moved to send **H 608** to the 14th Order of Business for possible amendment. **Senator Rabe** seconded the motion.

**DISCUSSION:** **Vice Chairman Schroeder** argued that amending this bill to allow eminent domain for purposes of expanding an existing highway and expanding rights of way to allow for traffic signals and so forth was reasonable. He had seen a draft of an amendment and felt it could be accomplished.

**Senator Cook** supported Senator Grow's original motion. He felt that amending the bill this late in the session would be difficult and he would rather pass the bill as is and amend it next session.

**Senator Grow** repeated Senator Cook's concern regarding amending this bill this late in the session.

**Vice Chairman Schroeder** argued that an amendment could be accomplished. He was also concerned that a county might be less likely to approve an APA if they were completely prohibited from using eminent domain.

**Senator Rabe** supported the substitute motion and felt an amendment could be accomplished.

**ROLL CALL VOTE:** **Chairman Ricks** called for a roll call vote on the substitute motion. **Chairman Ricks, Vice Chairman Schroeder, and Senators Bernt, Trakel, Rabe and Just** voted aye. **Senators Grow, Cook, and Adams** voted nay. The substitute motion prevailed.

**RS 31162** Relating to Income Tax. Unanimous Consent Request for Referral to a Privileged Committee for printing. **Senator Trakel** presented **RS 31162**. This bill would exempt military retirement pay from state income taxes. Currently 37 states exempted military retirement pay from state income taxes. Idaho was losing seven percent of veterans per year according to the Department of Labor due to the lack of veterans' benefits. Idaho was losing a skilled work force. Retired military generally earned about 10 percent more than civilian workers. This would help make up the loss of revenue from taxes on military retirement.

**DISCUSSION:** **Chairman Ricks** asked for clarification on whether income other than military retirement would still be taxed. **Senator Trakel** stated that it would be taxed.

**Senator Grow** asked whether, with the retroactive date of January 1, 2024, it was correct that there would be no fiscal impact until fiscal year 25. **Senator Trakel** affirmed that was correct.

**Vice Chairman Schroeder**, pursuant to Senate Rule 39 (H), declared a conflict of interest as a recipient of military retirement benefits.

**MOTION:** **Chairman Ricks** asked for unanimous consent to send **RS 31162** to a privileged committee for printing. There was no objection.

**ADJOURNED:** There being no further business at this time, **Chairman Ricks** adjourned the meeting at 3:17 p.m.

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Senator Ricks  
Chair

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Meg Lawless  
Secretary