

MINUTES  
**HOUSE LOCAL GOVERNMENT COMMITTEE**

**DATE:** Tuesday, February 20, 2018  
**TIME:** 1:30 P.M.  
**PLACE:** Room EW05  
**MEMBERS:** Chairman Perry, Vice Chairman Redman, Representatives Luker, Barbieri, Clow, Collins, Giddings, Kingsley, Manwaring, Zollinger, Chew, McCrostie  
**ABSENT/  
EXCUSED:** None  
**GUESTS:**

Larry Maneely, Ada BOCC; Jerry Mason, Assn of ID Cities; Ax Yewer, Lorna Jorgensen, Nick Demetriades, Ada County; Brian Ertz, Dry Creek Valley Coalition; Doug Fowler, Lenir Ltd.; Jonathan Wardle, Brighton Corp; Dave Yorgason, BCA Southwest Idaho; Scott Gibson, Northwest Bank; Senator Kelly Anthon, Senate 27; Brian Billingsley, Caldwell Director of Planning and Zoning; Travis & James Hunter, Boise Hunter Homes; Ray Stark, Boise Metro Chamber of Commerce; Seth Grigg, Idaho Assn of Counties; Roger Wilson, Nampa Flooring and Interiors; Jared Doty, KD Roofing; Chris Atkinson, Aluma Glass Industries; Trent Wright, Idaho Bankers; Hethe Clark, BHH LLC; Russ Hendricks, Idaho Farm Bureau; Julie Delorenzo, Self; Elizabeth Roberts, Self; Jack Bynum, Self; Josh Cummings, Self; Katie Fife, Self; Maria Le, Self

**Chairman Perry** called the meeting to order at 1:31PM.

**Chairman Perry** introduced the new **Page, Joel Prigge**, to the committee.

**H 568:** **Rep. Clow** explained that currently in Idaho Code, counties have an open-ended time frame for a referendum to be brought forward on land use and zoning decisions. The legislation would change this and provide a deadline in line with City and State Code in a different section of Idaho Code that states a referendum must be brought forward within sixty days. He explained that currently the open-ended time line creates problems for business and land owners who have received the entitlements to do something with their property when, after 60 days have passed and the changes approved have begun, and a referendum may be brought forward that can disrupt business, construction, and contracts often negotiated well ahead of time. He also explained that the bill will not affect any current issues as it will not go into effect until July of 2018.

**Rep. Clow** yielded to **Mr. Ax Yewer**, Attorney, Ada County, for technical questions and gave testimony **in support** of the bill. He clarified that the bill is working to bring county regulations for these issues into alignment with city and state regulations. He also stated it will move code regarding this for counties from 31-717 to 34-18.

In response to committee questions, **Mr. Yewer** further explained that the provision for judicial review for land use planning decisions is a 28 day period to appeal a decision from the city council or board of county commissioners, I.C. 67-5279 defines this. If the council or board determines they are not going to reconsider the decision, then it would go to the courts, though in many situations it can be settled out of court.

**Mr. Brian Ertz**, representative for Dry Creek Valley Coalition, gave testimony **in opposition** to the bill citing current events regarding Dry Creek Valley property as an example for why the bill should not pass stating this would hurt the public's capabilities to use their right to due process to seek out review of decisions they feel are not in the communities best interest.

In response to committee questions, **Mr. Ertz** further explained an interpretation of where the line is between a legislative decision by a city council or a board of commissioners and a quasi-judicial decision. He cited comparisons with case law, *Gumprecht v. Coeur d'Alene*, 104 Idaho 615 (1983); *Burt v City of Idaho Falls*, 105 Idaho 65 (1983); and *Cooper v. Board of County Commissioners*, 101 Idaho 407, 614 P.2d 947 (1980) in support of the Coalition's position and understandings of the definitions relating to the bill.

**Mr. Jack Bynum**, representing himself, gave testimony **in opposition** to the bill explaining that he had been a part of the Dry Creek Valley process from the start in 2010. He felt that county officials did not have sincere interest in what the people at the hearings had to say if they were against the proposed zoning/land use decisions. He felt the right to use a referendum to overturn decisions that citizens felt had been made without regard to what was best for them would be infringed if the bill passed.

**Mr. Doug Fowler**, Owner, Lenir, Ltd, gave testimony **in support** of the bill. He gave examples of the a referendum process. He explained from a developer's standpoint the concerns they face may come forward years later to start a referendum to review decisions made on land that has already been developed.

**Mr. Joshua Cummings**, representing himself, gave testimony **in support** of the bill. He stated that he feels the bill will not infringe upon citizens rights.

**Mr. Jonathan Wardle**, Brighton Corp, gave testimony **in support** of the bill. He testified that while city councils and boards of commissioners do take public opinion into consideration, they also have regulations they have to adhere to in their decision making process. He further stated that property owners deserve to be able to rely on decisions made by their elected officials.

**Mr. Dave Yorgason**, BCA Southwest Idaho, gave testimony **in support** of the bill. He gave examples of challenges that his company had faced with a referendum and court actions. He explained he supported the people's right to pursue initiatives and referenda and the changes this bill would make would not infringe upon their rights or ability to do so.

**Mr. Scott Gibson**, Idaho President of Northwest Bank, gave testimony **in support** of the bill. He explained how zoning affects the lending process in banking and how "perfection of collateral" becomes difficult to achieve when the zoning decisions are left open to change in the way the current Code allows.

**Mr. Travis Hunter**, Co-owner of Boise Hunter Homes, gave testimony **in support** of the bill. He stated that every single development proposed is opposed from different angles and explained these angles. He also explained that if the growth and development in the area stops, then the market will become dominated by equity buyers taking over the real estate market, and as a result working class families in Idaho will be priced out of the market.

**Ms. Katie Fite**, representing herself, **in opposition** to the bill. She stated the county commissioners were not listening to the public in regards to the Dry Creek development and that they had their decision made before the hearings started and that as a biologist she felt there were too many loose ends. She felt the bill would limit citizens' ability to speak out about zoning decisions.

**Ms. Elizabeth Roberts**, representing herself, gave testimony **in opposition** to the bill.

**Mr. Seth Grigg**, Idaho Assn. of Counties, gave testimony **in support** of the bill. He stated that the Idaho Association of Counties supports this bill because Counties are the only organizations within the state that have their own separate section of Code regarding the referendum and initiative processes. They felt it would be best to have it moved to the section of Code where the state and cities have theirs, and the changes in Code would be best for handling the quasi-judicial land use zoning decisions.

**Ms. Julie Delorenzo**, representing herself, gave testimony **in support** of the bill. She explained the process works and the changes this bill would make to put a deadline on the referendum process would not harm citizen's rights and would protect Idaho from issues being faced in other states that had not done this.

**Mr. James Hunter**, Co-owner of Boise Hunter Homes, gave testimony **in support** of the bill and explained the damages, personal and professional, that have resulted from an existing petition and referendum campaign against decisions made regarding his property in the Dry Creek Valley area. He expressed his support for the bill to protect other developers and land owners from these same damages.

**MOTION:**

**Rep. Redman** made a motion to send **H 568** to the floor with a **DO PASS** recommendation.

**Mr. John Eaton**, Idaho Assn. of Commerce and Industry, gave testimony **in support** of the bill. He explained that not making the changes in this bill would discourage businesses from expanding into Idaho, hurting the economy.

**Mr. Roger Wilson**, representing himself and his business, Nampa Flooring and Interiors, gave testimony **in support** of the bill. He stated that not making these changes would hurt businesses and investors' abilities to plan effectively and would hurt business growth.

**Mr. Jared Doty**, representing himself and his family's business, KD Roofing, gave testimony **in support** of the bill. He explained the economy in Idaho is hugely based on construction and in construction industries, investing has to be done early. Not having the confidence of their lenders creates problems for businesses. He felt they should be able to rely on decisions made by the elected officials.

**Mr. Chris Atkinson**, representing himself and his business, Atkinson's Mirror and Glass Industries, gave testimony **in support** of the bill. He stated when businesses like his are negotiating contracts they have to be done early and if they have to back out later, the damage to their relationships with vendors and other businesses can't be undone.

**Mr. Trent Wright**, President and CEO Idaho Bankers Assn, gave testimony **in support** of the bill on behalf of the association.

**Mr. Hethe Clark**, Land Use Attorney, Boise Hunter Homes, LLC, gave testimony **in support** of the bill. He gave a brief summary of quasi-judicial versus legislative actions and how they play out referencing the Dry Creek situation for examples.

In response to committee questions, **Mr. Clark** referred to *Burt v City of Idaho Falls*, 105 Idaho 65 (1983) and *Gumprecht v. Coeur d'Alene*, 104 Idaho 615 (1983); for specific definitions of a referendum and initiatives and how they apply to local land use zoning decisions. He also referenced them to explain the appeal processes and regulations for land use and planning decisions.

**SUBSTITUTE MOTION:**

**Rep. Luker** made a substitute motion to **HOLD H 568** for time certain, February 26, 2018.

**Mr. Russ Hendricks**, Idaho Farm Bureau, gave testimony stating that they are **in support** of the bill.

**Rep. Clow** and **Mr. Yewer** gave brief closing testimony for the bill.

**ROLL CALL  
VOTE ON  
SUBSTITUTE  
MOTION:**

**Chairman Perry** requested a roll call vote on the substitute motion to **HOLD H 568** in committee for time certain, February 26, 2018. **Motion failed by a vote of 5 AYE, 6 NAY, 1 ABSENT/EXCUSED. Voting in favor** of the substitute motion: **Reps. Luker, Giddings, Manwaring, Zollinger, and McCrostie. Voting in opposition** to the substitute motion: **Reps. Redman, Barbieri, Clow, Collins, Kingsley, and Chairman Perry. Rep. Chew** was absent/excused.

**ROLL CALL  
VOTE ON  
ORIGINAL  
MOTION:**

**Rep. McCrostie** requested a roll call vote on the original motion to send **H 568** to the floor with a **DO PASS** recommendation. **Motion carried by a vote of 10 AYE, 1 NAY, 1 ABSENT/EXCUSED. Voting in favor** of the original motion: **Reps. Redman, Luker, Barbieri, Clow, Collins, Kingsley, Manwaring, Zollinger, McCrostie, and Chairman Perry. Voting in opposition** to the original motion: **Rep. Giddings. Rep. Chew** was absent/excused. **Rep. Clow** will sponsor the bill on the floor.

**H 567:**

**Rep. Troy** explained that this bill would allow cemetery districts having less than 150 patrons to merge, and discusses how the boards would merge, how it would be decided whether to merge with another district or not, and how the necessary changes for merging would be directed.

In response to committee questions, **Rep. Troy** explained that changes to the bill requiring a majority vote by both counties in favor of the merge would be welcome, and how the county clerks would handle notification of constituents.

**MOTION:**

**Rep. Luker** made a motion to send **H 567** to General Orders. **Motion carried by voice vote. Rep. Troy** will sponsor the bill on the floor.

**H 604:**

**Rep. Moyle** explained this bill would require that in order for active agricultural land to be annexed into the city, the city must have the land owner's signature, giving permission for the annexation, thereby further protecting landowner's rights.

In response to committee questions, **Rep. Moyle** further explained that in order for this to apply, the landowners would need an active agricultural tax exemption for the entire prior year. He also explained that the emergency clause in the end of the bill is retroactively dating to January 1, 2016. This will to allow farmers in Boise that had been force-annexed to have the option to undo the forced annexation.

**Mr. Jerry Mason**, Attorney for Association of Idaho Cities, **in opposition** to the bill. He explained that annexation is hugely important to city growth, and there were already exemptions in existing Idaho Code via the courts for landowners to pursue. He also explained that there is potential conflict with another section of Code regarding the definition of agricultural land use and how this would apply to agricultural land being parcelled out and sold by the owner for urban development. He stated that for emergency services, the "swiss-cheese effect" that non-annexed agricultural farm land creates in city limits creates difficulties and additional problems in providing the correct services to people in agricultural areas.

In response to committee questions, **Mr. Mason** further explained that he had not heard of anyone using the existing Code exemption via the court process to be kept out of annexation. He also explained the existing code has been around since 1967, and has not been changed.

**Mr. Brian Billingsley**, Planning and Zoning Director, City of Caldwell, gave testimony **in opposition** to the bill. He stated he felt this wasn't a land use bill but an infrastructure bill, giving examples that if agricultural land is using city services, ie sewage, water services, it should be part of the city. Currently Caldwell City requires land owners who need to start using city services to sign agreements to be annexed into the city. He asked the committee to hold the bill and stated his willingness to further discuss potential solutions with **Rep. Moyle**.

**Mr. Russ Hendricks**, Idaho Farm Bureau, gave testimony **in support** of the bill. He stated that farmers who have had cities grow and develop around their property should not be force-annexed, as it adds unnecessary and unwanted burdens on the landowners. He also explained the reason the definition in this bill was chosen is it is a commonly used definition for county assessors' offices for tax purposes. He stated that he believes this is primarily a property rights issue, and asked for the committee's support of the bill.

**Rep. Moyle** gave closing testimony addressing the concerns and suggestions brought up by the opposition. He stated the court costs for existing provisions are expensive and often unrealistic for those who would seek to fight annexation. He also explained that he wasn't pushing a bill to abolish forced annexation altogether because the best route to do that is to start small with pieces like this bill.

**MOTION:** **Rep. Zollinger** made a motion to send **H 604** to the floor with a **DO PASS** recommendation.

The committee expressed concerns regarding the retroactivity and the sizes of small parcels that would fall under this bill.

**ROLL CALL VOTE:** **Rep. McCrostie** requested a roll call vote on **H 604**. **Motion failed on a tie of 5 AYE, 5 NAY, and 2 ABSENT/ EXCUSED.** Voting in favor of the motion: **Reps. Collins, Kingsley, Manwaring, Zollinger, Chairman Perry.** Voting in opposition to the motion: **Reps. Luker, Barbieri, Clow, Giddings, McCrostie.** **Reps. Chew and Redman** were absent/excused.

**MOTION:** **Rep. Luker** made a motion to send **H 604** to General Orders with an amendment to remove the emergency retroactivity clause. **Motion carried by voice vote.** **Rep. Moyle** will sponsor the bill on the floor.

**ADJOURN:** There being no further business to come before the committee, the meeting adjourned at 4:52PM.

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Representative Perry  
Chair

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Amie Taylor  
Secretary