

Senate Local Government & Taxation Committee

Minutes
2008



MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: January 9, 2008

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu

MEMBERS ABSENT/ EXCUSED: None

CONVENED: **Chairman Brent Hill** called the meeting to order at 3:04 p.m.. Roll call was taken and **Senator Hill** welcomed members of the committee and guests. He introduced Nicole Ball, Page, and Twyla Melton, Secretary, to the committee.

GUESTS: The sign-in sheet is attached to the original minutes on file in the Committee Office until the end of the 2008 legislative session after which it will be retained in the Legislative Library.

Chairman Hill reported that the Interim Committee, authorized by SCR119, met in August and October. Also, the Economic Outlook Committee met during the first week of January.

Report on Interim Committee - Chairman Hill

The Senate Concurrent Resolution (SCR) was originated by the Local Government and Taxation Committee during the 2007 legislative session. The main charge of the Interim Committee (Committee) was to "undertake and complete a study of the state's tax exemptions, deductions and credits in all of their aspects and to make recommendations for a strategy to statutorily limit exemptions, deductions and credits." The first three days of committee meetings were spent hearing from experts and gathering information as to what constitutes sound tax policy at the state level.

Some of the groups represented were: National Conference of State Legislatures (NCLS), Department of Agricultural Economics & Rural Sociology, University of Idaho, Associated Taxpayers of Idaho, The Idaho Association of Counties, City of Caldwell, City of Eagle, The Idaho Department of Commerce, The Boise Metro Chamber of Commerce, The Idaho Association of Commerce & Industry, The National Federation of Independent Business (NFIB), Ben Johnson & Associates, Buy Idaho, The Idaho Center for Budget and Tax Policy, The Common Interest, The Economic Analysis Bureau of the Division of Financial Management, and the State Tax Commission.

The Committee identified philosophies which were agreed to by the representatives from both houses on the Committee. The purpose was to look at exemptions, deductions and credits, which, in most cases, reduce taxes. The purpose of this study was not to raise taxes for the state. The purpose was to make the tax system more fair, more equitable and more sound. It was agreed to keep the rates low by broadening the tax base. The idea is to provide good, sound tax policy without unjustified privileges for certain special groups.

The October meetings were focused more on a decision making process to determine a strategy. The strategy was identified as "Principles for Evaluating Tax Deductions, Credits and Exemptions in the State of Idaho." Eight basic principles were identified to evaluate existing deductions, credits and exemptions on the books and, probably more importantly, to evaluate future requests to see that they are sound policy. These principles were a compilation of the opinions of experts that had commented in the earlier meetings. Some came from the American Institute of Certified Public Accountants, the NCSL, and the NFIB. **Chairman Hill** asked each committee member to discuss one of the principles.

Principles for Evaluating Tax Deductions, Credits and Exemptions in the State of Idaho

1. EQUITY AND FAIRNESS

- a. Is the benefit available to ALL organizations or individuals in similar industries or situations?
- b. Is the benefit BROAD (for virtually all classes of taxpayers) or NARROW (limited to a few)?
- c. Is the product or service, or its component parts, already taxed by the state or other government?

Senator Bilyeu: Equity and Fairness is the most important thing we can look at. At this point benefits do not meet the equitable or fairness standard for all organizations or individuals. It is important that benefits be broad.

Senator Langhorst commented that the statutes which grant exemptions are not broad and they specify a few people. There are some entities that may qualify for an exemption but do not have the resources to pursue those exemptions.

2. CERTAINTY

- a. Are rules clear about when and how tax is paid and amount due?

Senator Langhorst: It is apparent that this is important. Otherwise there would be non-compliance or a very high cost for compliance.

3. CONVENIENCE OF PAYMENT

- a. Is the tax payable at a time and in a manner convenient to taxpayers?

Senator McKague: Is the timing convenient? Some tax payments are due during a time when the taxpayer has higher than normal personal expenses or several types of taxes are due at the same time.

4. ECONOMY IN ADMINISTRATION

- a. Is the benefit easy to claim by the taxpayer?
- b. Is the benefit easy to administer by the government?

Senator Corder: These two questions were extremely important. There should not be administrative costs that exceed the tax that is being received. Tax exemptions are sometimes hard to define. An entity may not be exempt from sales tax, but have income tax exemptions. Benefits should be easily defined by both the administrators and the taxpayer.

5. SIMPLICITY

- a. Does the benefit simplify or clarify existing tax code rather than complicate it?
- b. Is the benefit easily calculated and accountability maintained with minimal record keeping?
- c. Does the benefit bring us in compliance with federal law rather than create another departure?
- d. Are unintended consequences unlikely (are ramifications well-understood)?

Chairman Hill: Studies that were shared with the Committee showed that the more complex the tax system becomes, the less compliant the taxpayers become. If it is harder to understand, it is harder to comply with it, and it is harder to do the record keeping. The more simple the statute, the easier it is to comply with the tax law.

6. BENEFIT OBJECTIVES

- a. How does the benefit influence the behavior of individual taxpayers or organizations?
- b. Are the objectives of the benefit clearly stated?
- c. To what extent does the tax benefit promote the public interest?
- d. Does the benefit serve to attract or stimulate the state's economic condition, particularly in areas in need of growth?
- e. Is the benefit needed in order to compete with similar benefits in surrounding states?

Senator McKenzie: This is an area where things are made simple and equal for everyone and then something in the law is changed to promote certain conduct and the exemption is adjusted. When this occurs, it may not be as beneficial today as it was when the bill was originated.

7. TRANSPARENCY AND VISIBILITY

- a. Can the public easily understand the benefit and/or consequence of any tax shift?

- b. Is the benefit better claimed as a tax break rather than through a budget appropriation?
- c. Would a sunset, clawback or cap provision be appropriate?

Senator Siddoway: It can be hard to sell some of the ideas for a tax shift, especially when it involves businesses. However, without the tax benefits, companies will not invest in Idaho. There was quite a bit of discussion on budget appropriation versus other benefit methods especially in light of discussions on the grocery tax credit during last session. If benefits are to be given to the disadvantaged, it may be better to do that through the Joint Finance Appropriations Committee (JFAC) or Health and Welfare (H&W) and make appropriations that would have to be reviewed on an annual basis to make sure the benefit is current and appropriate. Most exemptions should be reviewed and either include a sunset, clawback or cap provision.

8. APPROPRIATE GOVERNMENT REVENUES

- a. Does the tax break benefit an organization that provides goods or services that the government would otherwise provide?
- b. Is the fiscal impact of the tax benefit reasonably determinable with existing or readily developed data?
- c. Does the benefit have an acceptable impact on government revenues?

Senator Heinrich: Those entities that provide basic necessities to disenfranchised citizens such as charities, churches or youth ranches would be looked at to determine that, if those entities were not providing the services, H&W or another government entity would have to. It is appropriate to look at data to determine the fiscal impact of any tax benefit. Are we getting a product in return for granting that exemption or deduction?

Senator Hill went on to explain that the Committee decided to apply these principles to specific exemptions, deductions and credits. It became apparent that there were some differences in philosophy between the House and Senate members. To resolve the issues, the exemptions, deductions and credits were prioritized for re-evaluation. There are over 160 exemptions to look at so it will take quite a long time to cover them all. The committee developed tiers to identify the most important and set a time table to get through them all. This program has already been started with about ten RS's being presented to the House to repeal certain tax benefits. The purpose is to bring these items to the Committee for discussion and resolution in some form, i.e. a sunset instead of a repeal. Some of the RS's deal with sales tax and some with income tax deductions.

Senator Hill concluded his report on the Interim Committee by answering questions and comments concerning the process.

Senator Langhorst commented on his impressions of the accomplishments of the Interim Committee. There were several positive things that came out of this process. One was that the tax

committees from both the Senate and the House met and talked together and came to some agreement about recommendations and to review some of the tax benefits now on the books and come up with the principles that can be used as guidelines for future action. There is the hope that this process will open up a better line of communication between the two tax committees.

Chairman Hill expressed his appreciation to Representative Lake and the Committee for their time and efforts in serving on the Interim Committee.

Chairman Hill commented on the meeting of the Economic Outlook Committee. The Committee was presented with projections from a variety of economists, the State Tax Commission and others from around the state to get ideas as to what the economy is going to do so they could make a recommendation to the legislature regarding whether or not to accept the Governor's proposed budget or whether the legislature would initiate an alternate budget for the coming year. The Economic Outlook Committee will be meeting again on January 10 for further discussion.

Senator Corder went over the Rules Review Schedule and Assignments. The review will begin on Tuesday, January 15, 2008.

Rules review schedule and assignments:

35.01.01

Tuesday, January 15, 2008

35.02.01

Income Tax Administrative Rules
Docket No. 35-0101-0701 Page 2 Stegner/Corder
Tax Commission Administration and Enforcement Rules
Docket No. 35-0201-0701 Page 146 McKague

35.01.02

Wednesday, January 16

Sales Tax Administrative Rules
Docket No. 35-0102-0603 Page 43 Langhorst
Docket No. 35-0102-0701 Page 47 Heinrich

35.01.03

Thursday, January 17

Property Tax Administrative Rules
Docket No. 35-0103-0701 Page 77 Bilyeu/Mckenzie

35.01.03

Tuesday, January 22

Property Tax Administrative Rules

35.01.09

Wednesday, January 23

35.01.10

Idaho Kitchen and Table Wine Tax Administrative Rules
Docket No. 35-0109-0701 Page 135 Langhorst

35.01.11

Idaho Cigarette and Tobacco Tax Administrative Rules
Docket No. 35-0110-0701 Page 138 Heinrich

ADJOURN:

Idaho Unclaimed Property Administrative Rules
Docket No. 35-0111-0701 Page 143 Bilyeu

There being no further business, the meeting adjourned at
3:47 p.m. until Tuesday, January 15th at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: January 15, 2008

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu

**MEMBERS ABSENT/
EXCUSED:** None

CONVENED: **Chairman Hill** called the meeting to order at 3:00 p.m. Roll call was taken and members of the committee and guests were welcomed.

GUESTS: The sign-in sheet is attached to the original minutes on file in the Committee Office until the end of the 2008 legislative session after which time it will be retained in the Legislative Library.

MINUTES: **Senator McKenzie** moved to accept the January 9, 2008 minutes as written. **Senator Bilyeu** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Chairman Hill turned the gavel over to **Vice Chairman Corder** who will preside over the Pending Administrative Rules presented by members of the Idaho State Tax Commission.

Chairman Corder accepted the gavel. He introduced **Janice Boyd**, Idaho State Tax Commission, who will be presenting the Administrative Rules (Rules) on the agenda for this meeting.

Chairman Hill asked **Ms. Boyd** to give a brief outline of her background and experience. **Ms. Boyd** responded and then proceeded with the Rules.

35.01.01-INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. **35-0101-0701** **Rule 006 - INCORPORATION BY REFERENCE** is being amended to identify the Multistate Tax Commission (MTC) Web site as the location where the MTC regulations incorporated by reference for access to the information since the MTC document, "Model Regulations, Statutes and Guidelines, Uniformity Recommendations to the States," which had been referenced, can be difficult to locate and may no longer be available.

Ms. Boyd said that the information on the web site would be more up-to-date and a more reliable source than the current references to the regulations.

Rule 031 - ALIENS is being amended to include information on what federal forms must be included in the Idaho return filed by a nonresident

alien. These include Form 8843 (Statement for Exempt Individuals and Individuals with a Medical Condition) and Form 1042-S (Foreign Person's U.S. Source Income Subject to Withholding).

Ms. Boyd stated that nonresident aliens were required to file certain documents with their Idaho return and this rule includes the names of those forms.

Senator Bilyeu asked if an alien meant an undocumented person. **Ms. Boyd** responded that an alien is someone that is not a resident of the United States (US); they may be in the US as a student or may have a work visa but they are not considered residents of the US. **Chairman Corder** said that an alien can refer to either a documented or undocumented person. **Ms. Boyd** said the Federal Internal Revenue Code provides a definition of a resident alien and a nonresident alien. These are specific terms found in the Internal Revenue Code.

Rule 032 - MEMBERS OF THE UNIFORMED SERVICES addresses issues related to the taxation of members of the uniformed services. *Idaho Code § 63-3013* provides a safe harbor exception to being a resident in Idaho. This provision should not be applied to individuals covered by the federal law in the Service Members Civil Relief Act. Income Tax Rule 032 includes language that the safe harbor applies to a member of the armed forces so the rule is being amended to remove this information. To address questions regarding the commissioned corps of the National Oceanic and Atmospheric Administration and commissioned corps of the Public Health Service, the rule is being amended to discuss who qualifies as a service member under the federal law and who qualifies for the Idaho deduction in *Idaho Code 63-3022(h)*, because there are differences. The title of the rule was changed to be more inclusive since the uniformed services includes more individuals than just those in the armed forces.

Ms. Boyd stated that they get quite a few questions relating to this rule so the rule is being amended to provide more specifics about who qualifies for the Idaho deduction. Also, the definition of "resident" in federal law seemed to be in conflict with Idaho law. This rule clarifies that Idaho residents who are in the uniformed services are still domiciled in Idaho regardless of where they are stationed. **Senator Hill** requested an example and how it would affect the tax return. **Ms. Boyd** answered that, if an individual is in the military and is a resident of Idaho and then they are stationed out of the state or country for two years or more, they are still considered a resident. Currently, if they are out of the state for the required 445 days, they would file a non-resident return. They still get the Idaho deduction either way but as a resident, they will get the grocery tax credit as well.

Rule 075 - TAX ON INDIVIDUALS, ESTATES, AND TRUSTS, *Idaho Code § 63-3024*, is being amended (Paragraph 075.03,.1) to add the table for the income tax brackets and rates for taxable years beginning in 2007.

Ms. Boyd explained that this rule is published every year to add the tax brackets for the current year. **Chairman Corder** asked why the old tables

continue to remain with the rule. **Ms. Boyd** said it was just in case people were still filing for prior years. Consideration has been given to removing the old tables but this has not been initiated at this point in time.

Rule 108 - ADJUSTMENTS TO TAXABLE INCOME - ADDITIONS REQUIRED ONLY OF INDIVIDUALS, *Idaho Code § 63-3022*, is being amended to conform to 2007 HB 239, which amended *Idaho Code § 63-3022*. The bill requires a taxpayer to include in Idaho taxable income the amount transferred from an Idaho college savings account to a qualified tuition program operated by a state other than Idaho. A new paragraph is being added to Rule 208 to address this requirement.

Ms. Boyd explained that, due to a change in Idaho Code, if an individual who has a college savings account in Idaho rolled that account to a qualified program in another state, they would have to add back the amount of that withdrawal to their Idaho return as taxable income.

Senator McKenzie asked that if you transferred funds from an Idaho 529 to another 529, you will add that money transfer to Idaho income? **Ms.**

Boyd: that is correct. That is what the statute provides. **Senator**

McKenzie asked that if this occurs, could a person be double taxed?

Ms. Boyd: yes, to the extent the distribution was not tax deductible when contributed.

Senator Hill: Why was the legislation written that way? **Dan John**, Idaho State Tax Commission, responded that the legislation came from the State Treasurer's Office and was written by their Deputy Attorney General. **Senator McKenzie** questioned whether or not this is constitutionally correct since there are certain laws prohibiting a state from favoring itself over other states. Is the intention of the statute being met? We might want to look at this again. **Senator Stegner** requested that Mr. John find out more about this issue. **Mr. John** is meeting with the Treasurer's office January 16. Their office has had a number of complaints about this statute and the way it is written. There was some discussion about holding the rule. **Senator Hill** stated that the rule was consistent with the statute so we would not want to hold the rule but Mr. John should report back on his meeting and if the Treasurer does not want to make a change then maybe it could be opened up for discussion in this Committee. **Mr. John** thought there might be some other language available and he will provide the Committee with more information.

Rule 121 - ADJUSTMENTS TO TAXABLE INCOME-SUBTRACTIONS AVAILABLE ONLY TO INDIVIDUALS, *Idaho Code § 63-3022*, is being amended to better clarify the calculations related to the state tax add back that require rounding. The rule needs to be modified so that the text of the rule more clearly matches the calculations required.

Ms. Boyd: This amendment adjusts the calculations to compensate for rounding.

Rule 125 - ADJUSTMENTS TO TAXABLE INCOME-BONUS DEPRECIATION, *Idaho Code § 63-30220*, is a new rule being promulgated to address issues related to bonus depreciation. 2007 HB 13 amended *Idaho Code § 63-30220* to change the provisions regarding

bonus depreciation. The new rule helps to explain how the legislative changes are to be applied.

Ms. Boyd: This rule clarifies how the legislative changes were to be applied and gave some examples.

Rule 255 - NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS-PRORATION OF EXEMPTIONS AND DEDUCTIONS, *Idaho Code § 63-3026A(4)*, is being amended to better clarify the calculations related to the proration of exemptions and deductions of part-year residents and nonresidents that require rounding. The rule needs to be modified so that the text of the rule more clearly matches the calculations required.

Ms. Boyd: This rule is for clarification.

Rule 275 - INVESTMENT INCOME FROM QUALIFIED INVESTMENT PARTNERSHIPS, *Idaho Code § 63-3026A(3)(c)*, is being amended consistent with 2007 HB 15, which amended *Idaho Code § 63-3026A*. The bill clarified when nonresident individuals are not required to pay Idaho income tax on investment income from Idaho investment partnerships. Changes to Rule 275 include replacing terms consistent with the statutory changes, identifying qualifying criteria, and removing subsection 275.03 since it addressed investment in securities, which is no longer relevant.

Ms. Boyd said that this rule modifies the statute to make it consistent with the 2007 amendment.

Rule 285-S CORPORATIONS, *Idaho Code §§ 63-3025 and 63-3025A*, is being promulgated in conformity with 2007 H 17, which amended Idaho Code sections 63-3025 and 63-3025A. The bill clarified the tax due by S corporations on built-in gains and excess net passive income. New Rule 285 addresses such issues as the tax on S corporations, when the minimum tax is due, the application of credit carryovers if an S corporation was previously a C corporation, the interaction between the tax on built-in gains/excess net passive income and the tax due by an S corporation when the election under Idaho Code section 63-3022L is made, and how Idaho treats qualified subchapter S subsidiaries (QSSSs).

Ms. Boyd explained that this bill stated if S corporations were subject to tax on built-in gains and excess net passive income on the federal level, they were also subject to Idaho tax on that income. This rule gives some general information on S corporations that was not covered anywhere else and moved some information from other places in the rules to this rule for clarity. **Chairman Corder** asked for an explanation of passive income and then how does one get net passive income. **Ms. Boyd** explained that passive income is a federal issue and relates to when an S corporation had previously been a C corporation and had accumulated earnings and profits at the end of the year when they had C corporation status. There are limits on how much passive income can be earned. Tax will be paid on any excess earnings.

Rule 286 - S CORPORATIONS OPERATING WITHIN AND WITHOUT IDAHO, *Idaho Code §§ 63-3027 and 63-3030(a)(4)*, is being promulgated

in conformity with 2007 H 17, which amended Idaho Code sections 63-3025 and 63-3025A. The bill clarified the tax due by S corporations on built-in gains and excess net passive income. New Rule 286 addresses multistate issues with regard to S corporations including the application of allocation and apportionment, exceptions to using the apportionment formula, information to provide to shareholders, protection under Public Law 86-272, and qualified subchapter S subsidiaries.

Ms. Boyd stated that this rule clarifies tax due by S corporations to conform to the 2007 legislation and adds language to treat S corporations, for Idaho tax purposes, the same as they would be treated at the federal level.

Rule 582 - SPECIAL RULES-FINANCIAL INSTITUTIONS, Idaho Code § 63-3027(s), is being amended consistent with 2007 H 141, which amended Idaho Code section 63-3023. The bill repealed Subsection (b), which provided an income tax exemption to banks and financial institutions that did not maintain an office in Idaho and conducted only limited activity in Idaho. Subsection 582.05 references Subsection 63-3023(b) and discusses the calculation of the apportionment factor attributes of such exempted taxpayers. Subsection 582.05 is no longer applicable and is being removed from the rule.

Ms. Boyd: This amendment removes language that is no longer pertinent to the rule.

Rule 641 - WATER'S EDGE-ELEMENTS OF A COMBINED REPORT, Idaho Code § 63-3027B, is being amended consistent with language in Rule 600 so that information related to intercompany eliminations for a water's edge combined report is consistent with the information related to intercompany eliminations for a worldwide combined report. (They are made to the extent necessary to properly reflect combined income and to properly compute the apportionment factors of the combined group.)

Ms. Boyd: This amendment to the rule removes language that is no longer necessary and adds the appropriate language to the rule to conform to the 2007 legislation.

Rule 700 - CREDIT FOR INCOME TAXES PAID ANOTHER STATE OR TERRITORY-IN GENERAL, Idaho Code § 63-3029, is being amended to better clarify the calculations related to the credit for tax paid to another state that require rounding. The rule needs to be modified so that the text of the rule more clearly matches the calculations required.

Ms. Boyd: The amendment modifies the text of the rule so that it clearly matches the calculations.

Rule 714 - IDAHO INVESTMENT TAX CREDIT-CREDIT EARNED ON PROPERTY USED BOTH IN AND OUTSIDE IDAHO IN TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 1995, Idaho Code § 63-3029B, is being amended to more clearly explain the options for computing Idaho Investment Tax Credit (ITC) on movable property. The changes clarify that a taxpayer can only claim ITC on the amount correctly included in his property factor numerator and that the taxpayer can not

claim ITC on an overstated value by using the ITC special industry regulations when the taxpayer does not qualify as a special industry.

Ms. Boyd: This rule addresses the investment tax credit for property both inside and outside of Idaho. Taxpayers have a choice between two methods of calculating the investment tax credit and must use the correct rules for whichever method they choose.

Rule 746 - CREDIT FOR QUALIFYING NEW EMPLOYEES- CALCULATIONS USED TO DETERMINE THE CREDIT AND CREDIT CARRYOVER, Idaho Code §§ 63-3029E and 63-3029F, is being amended to remove references to Paragraph 745.04.a, which was removed from Rule 745 in 2006 rulemaking.

Ms. Boyd: This amendment corrected an omission that occurred in removing a paragraph from this rule in 2006.

Rule 765 - BIOFUEL INFRASTRUCTURE INVESTMENT TAX CREDIT- IN GENERAL, Idaho Code § 63-3029M, is a new rule being promulgated due to 2007 H 177, which enacted Idaho Code section 63-3029M to allow a new income tax credit for capital investment in biofuel infrastructure. New Rule 765 addresses the tax years when the credit is allowed, when the qualified investment must be placed in service, what qualified investments include, limitations on claiming the credit, the carryover period, taxpayers entitled to the credit, a reference to Rule 785 which discusses how the credit passes through to owners of pass-through entities, and coordination with the ITC.

Ms. Boyd: This new rule gives general information about credits and puts it in a format that is easier for taxpayers to understand.

Rule 766 - BIOFUEL INFRASTRUCTURE INVESTMENT TAX CREDIT- RECAPTURE, Idaho Code § 63-3029M, is a new rule being promulgated due to 2007 H 177, which enacted Idaho Code section 63-3029M to allow a new income tax credit for capital investment in biofuel infrastructure. New Rule 766 addresses recapture.

Ms. Boyd: This is a new rule that covers the new income tax credit recapture.

Rule 767 - BIOFUEL INFRASTRUCTURE INVESTMENT CREDIT- RECORD-KEEPING, Idaho Code § 63-3029M, is a new rule being promulgated due to 2007 H 177, which enacted Idaho Code section 63-3029M to allow a new income tax credit for capital investment in biofuel infrastructure. New Rule 767 addresses record-keeping requirements.

Ms. Boyd: This is a new rule covering record keeping requirements.

Rule 799 - PRIORITY ORDER OF CREDITS AND ADJUSTMENTS TO CREDITS, Idaho Code § 63-3029P, is being amended due to 2007 H 177, which enacted Idaho Code section 63-3029M to allow a new income tax credit for capital investment in biofuel infrastructure. The changes to Rule 799 add the biofuel investment tax credit to the priority list of credits contained in this rule.

Ms. Boyd: This rule modifies Rule 799 to identify the priority order of credits and added a new credit describing how to claim the credit in case there is not enough tax to offset all the credits allowed.

Rule 800 - VALID INCOME TAX RETURNS, Idaho Code § 63-3030, is being amended to delete the information regarding Idaho Form 40EZ, which is no longer available to be used by individuals in filing their Idaho return. A subsection is being added to address verification of Idaho income tax withheld, which requires a taxpayer to attach appropriate Forms W-2 and 1099 and other information forms that verify the amount of the Idaho income tax withheld.

Ms. Boyd: This rule removes a tax form that has not been in use since 2005. A new subsection was added stating that taxpayers had to verify Idaho income tax withheld by attaching Forms W2 and 1099 to their Idaho return. **Senator Hill** asked how that would affect taxpayers who filed electronically. **Mr. John** stated that all the data entered is verified by the Internal Revenue Service (IRS) and the IRS verification would be considered the same as attaching the forms. **Senator McKenzie** stated that it might be useful in the future to reference electronically filed returns so that when taxes are prepared, there would be an explanation about this process for clarity. **Ms. Boyd** said that they could easily add that information.

Rule 880 - CREDITS AND REFUNDS, Idaho Code § 63-3072, is being amended to add capital losses and Idaho credits in the discussion of a timely claim for refund when an adjustment to the taxpayer's federal return affects the calculation or application of an Idaho net operating loss. A requirement is being added, which provides that before the Tax Commission can credit or refund an overpayment, the taxpayer making the claim must establish the basis for the credit or refund and the amount of the overpayment. This is provided in the Idaho Supreme Court decision in Baird Oil Company, Inc. V. The Idaho State Tax Commission.

Ms. Boyd: The amendment to the rule provides for the calculation of a capital loss and an Idaho credit in addition to a net operating loss when filing for a refund. Capital loss and the Idaho credit were not included in the current rule. This amendment also added a section that addresses the requirements of a valid refund claim in accordance with an Idaho 2007 Supreme Court decision.

Rule 946 - IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005, AS MODIFIED BY 2006 LEGISLATION-RECAPTURE, Idaho Code § 63-4407, is being amended due to 2007 H 12, which amended Idaho Code § 63-4407. The bill changed the threshold of employment that triggers recapture for purposes of the Idaho small employer new jobs tax credit. The rule is being modified consistent with the legislation to address when recapture is required.

Ms. Boyd: This amendment changes the rule to meet the requirements of legislation passed in 2007.

Senator Hill asked if there were any rule changes as a result of the legislation in 2007 regarding calculations for the credit on taxes paid to other states. **Ms. Boyd** said that they did not modify the rules since there was nothing that was in conflict with the statute.

MOTION:

Senator Heinrich moved to approve Docket No. 35-0101-0701. **Senator McKenzie** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

35.02.01-TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

**DOCKET NO.
35-0201-0701**

Rule 148 -TAX RETURNS AND OTHER DOCUMENTS FILED ELECTRONICALLY, *Idaho Code §§ 63-115, 63-3039 and 9-328* is being amended to remove references to code sections in the title of the rule that are no longer applicable.

Ms. Boyd: This amendment removed references to items that had not been in effect since 2003.

Rule 310 - INTEREST RATES, *Idaho Code §§ 63-3045 and 63-3073* is being amended to add the interest rate for calendar year 2008, which is 7%. The calculation of the rate is set by statute as 2% plus the annual midterm applicable federal rate that applies on September 15 of the immediately preceding calendar year rounded to the nearest whole number. (2%+4.79%=6.79%=7%)

Ms. Boyd: This rule updated the calculation for interest rates to the current year and added this year to the table.

Chairman Corder asked if the table contained in the rule must continue or can some of the years be dropped off? **Ms. Boyd** said they are open to suggestions about the number of years to leave on the table. **Senator Stegner** asked if there were situations when calculations would be needed for prior years? **Ms. Boyd** responded that they do have access to information for prior years at the tax commission. **Senator Hill** suggested that both the income tax rate tables and the interest rate tables be reviewed and that five years may be sufficient for both tables since historic resources are available. **Ms. Boyd** said they would address this issue in their committee meeting.

MOTION: **Senator McKague** moved to approve Docket No. 35-0201-0701. **Senator Siddoway** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Chairman Corder returned the gavel to Senator Hill.

ADJOURNED: **Chairman Hill** reviewed the January 16, 2008 agenda and adjourned the meeting at 3:38 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: January 16, 2008

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu

**MEMBERS ABSENT/
EXCUSED:** None

GUESTS: The sign-in sheet is attached to the original minutes on file in the Committee Office until the end of the 2008 legislative session after which it will be retained in the Legislative Library.

CONVENED: **Chairman Hill** called the meeting to order at 3:03 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.

Chairman Hill turned the gavel over to Vice Chairman Corder who will conduct the review of the Administrative Rules (Rules). **Vice Chairman Corder** introduced Jim Husted from the Idaho State Tax Commission. **Mr. Husted** will be presenting this segment of the Rules.

35.01.02 - IDAHO SALES TAX ADMINISTRATIVE RULES

**DOCKET NO.
35-0102-0603** **Rule 068**-COLLECTION OF TAX, *Idaho Code*, § 63-3619, requires the Idaho State Tax Commission (ITC) to publish schedules showing the amount of tax to be collected on sales involving fractions of a dollar. The dates for the schedules in sales tax rule 068 will be incorrect on October 1, 2006 because of the tax rate increase recently enacted by the legislature. This was promulgated as a temporary rule in 2007.

Mr. Husted: This docket was proposed as a temporary rule last year. It is now being proposed as a permanent rule. The amendment changes the sales tax rate to 6%.

MOTION: **Senator Langhorst** moved to approve Docket No. 35-0102-0603. **Senator McKenzie** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

**DOCKET NO.
35-0102-0701** **Rule 010 - DEFINITIONS**, is being amended to define "tax rate" as the current rate in effect and explain that references to the rate may not reflect the current rate; define "fleet" to be one or more vehicles registered under the International Registration Plan as required by *Idaho Code*, § 63-3622R; and to change the reference to the "Uniform Building Code" to the "International Building Code."

Mr. Husted: This amendment adds language to bring the rule into alignment with the statute. It also adds a new section for "Tax Rate" which means the current tax rate as defined in *Idaho Code*, §§ 63-3619 and 63-3621. References to the tax rate in these rules may not reflect the current rate in effect.

Senator Hill wanted confirmation that the rules affected are not rules that deal with amended sales tax returns or similar instances where the tax rate would be something other than the current tax rate. **Mr. Husted** stated that this language was added because of the fluctuation in the tax rates over the last few years. There are examples in the rules that refer to different rates which could not be resolved. The main purpose of this change was to show that statute takes precedence over the rule.

Vice Chairman Corder asked if there were systems other than the Internal Registration Plan? **Mr. Husted** said that he was not aware of any.

Rule 015 - WELL DRILLERS/PUMP INSTALLERS is being amended to state that pumps supplying water to land and buildings will generally be considered fixtures. The ITC has often treated pumps as personal property depending on where they are installed and how they are used. Pumps used in manufacturing and other industrial or commercial processes will generally be considered personal property and their use will therefore qualify for the production exemption, *Idaho Code*, § 63-36922D.

Vice Chairman Corder questioned whether paragraph 03., Rule 015, was really simplified by removing the words "pump installers" when the driller is not necessarily the pump installer. **Mr. Husted** responded that what prompted the ITC to make this change was to identify which pumps were real property and which ones were personal property. Pumps used in manufacturing and processing retain the characteristics of personal property. **Vice Chairman Corder** agreed that it was clear regarding which pumps were real property and which were personal property but why do we care who installed them? **Mr. Husted** responded that it really does not matter who put the pump in and striking out "pump installer" does not change the meaning of the rule.

Senator Langhorst asked if a pump was considered to be personal property, would it be included in a production exemption only because it was personal property? **Mr. Husted** said that there are certain items that are excluded from the production exemption no matter how they are used. If the pump becomes a fixture, it does not qualify for the production exemption but if it remains personal property it will qualify.

Rule 041 - FOOD, MEALS OR DRINK includes examples that calculate sales tax due using the 5% tax rate. The rule is being amended to eliminate references to a specific rate.

Mr. Husted: This rule is amended because of the rate change and it is designed to eliminate reference to a specific tax rate.

Rule 058 - SALES THROUGH VENDING MACHINES includes examples that calculate sales tax due using the 5% tax rate. The rule is being amended to reflect the current tax rate and to change the words “gross receipts” to “total sales.”

Mr. Husted: Changes are being made because of the change in the sales tax rate. The goal is to strike out references to an actual rate. There is also a change replacing the wording “gross receipts” with “total sales” to comply with current statute.

Rule 063 - BAD DEBTS AND REPOSSESSIONS amends examples to change the 5% to 6%.

Mr. Husted: Changes are being made due to rate change. **Senator Hill** observed that the 5% rate had not been changed to 6% on one of the examples. However, the calculations reflected 6%. Mr. Husted will check into this so it can be changed next year.

Rule 073 - TANGIBLE PERSONAL PROPERTY BROUGHT OR SHIPPED TO IDAHO is being amended to change references to the tax rate in the examples to 6%.

Mr. Husted: Changes were made due to the rate change.

Rule 085 - SALES TO AND PURCHASES BY NONPROFIT ORGANIZATIONS adds statements to clarify that the primary purpose of organizations claiming the exemption must be the provision of free dental care to children; that the primary use of the items purchased must be for the provision of free dental care to children; that children are persons under the age of 18.

Mr. Husted: A new section is being added regarding dental clinics offering free dental services for children. It will be required that the primary purpose of the clinic and the organization that runs it, is to provide free dental care to children. The rule also added a definition of children as those persons under the age of 18. **Vice Chairman Corder** asked if the statute required that the organization be non-profit? **Mr. Husted** answered that it does.

Rule 106 - MOTOR VEHICLE SALES, RENTALS, AND LEASES changes the word “average” to “clean.” The National Automobile Dealers Association (NADA) now calls the “average retail price” the “clean retail price.”

Mr. Husted: This is a minor change because the NADA changed the wording from “average retail price” to “clean retail price.”

Rule 107 - VEHICLES AND VESSELS – GIFTS, MILITARY PERSONNEL, NONRESIDENT, NEW RESIDENT, TAX PAID TO ANOTHER STATE, SALES TO FAMILY MEMBERS, SALES TO AMERICAN INDIANS, AND OTHER EXEMPTIONS incorporates, by reference, the definition of “trailer” in the Motor Vehicle Code, *Idaho Code*, §§ 49-121 and 49-122.

Mr. Husted: The rule clarifies when an exemption applies to the

purchase of a motor vehicle outside the state. It also clarifies the calculations in the examples. A subsection was added in *Idaho Code*, §§ 49-121 and 49-122, providing for a definition of trailers.

Rule 109 - AMUSEMENT DEVICES adds a statement clarifying that an increase in the permit fee for amusement devices will be effective on the following July 1 if an increase in the tax rate takes place on a date other than July 1.

Mr. Husted: *Idaho Code*, § 63-3623B(c), says that, at a sales tax rate of 5%, the permit fee is \$35.00 for coin or currency operated amusement devices. The change in the rule clarifies that the fee could go up or down depending on the sales tax rate and that the fee will always change on July 1 or on July 1 following the change in the sales tax rate.

Rule 117 - REFUND CLAIMS adds language to clarify that refund claims must state the amount of the refund.

Mr. Husted: Last year a Supreme Court ruling in the Baird Oil case provided that there would be two requirements for refund claims: A claim must state the basis for the claim, and the amount must be included in the claim. The basis for the claim already existed in the rule but the requirement for the amount of the claim had to be added.

Rule 135 - SNOW GROOMING AND SNOW MAKING EQUIPMENT is a new rule to specify the exemption of sales of aerial tramways, snow making and snow grooming equipment applies to component parts of snow making and snow grooming equipment. The statute is unclear as to whether the exemption is intended to apply to sales of component parts for snow making and snow grooming equipment. The legislative history shows that the statute actually intended to include these component parts.

Mr. Husted: Component parts for snow making machines and snow grooming machines qualify for the sales tax exemption. However, fluids and lubricants do not qualify because they are not defined as an apparatus.

Rule 136 - REBATES PAID TO CERTAIN REAL ESTATE DEVELOPERS is a new rule to specify that retailers located in a qualifying shopping center must file a separate return for that location only, that sales information from retailers located in such shopping centers may not be released to the public, and that the developer must provide the names and tax identification numbers of the retailers located in a qualifying shopping center.

Mr. Husted: The statute that was enacted in 2007 allowed rebates to developers who built a shopping center and paid for freeway interchange improvements or transportation improvements. This rule provides clarifying language that the improvements must be certified by the Department of Transportation (DOT). The developer has to provide the ITC with the names of the retailers that are located in the shopping center and also when they cease doing business in the shopping center. The sales tax that is collected from those retailers is given to the

developer so it is necessary for those retailers to report sales separately. There is also a provision that the information is confidential.

Senator Heinrich asked if one merchant has several stores that report sales tax under one number, does the one store in the shopping center that falls under this statute have to report separately? **Mr. Husted** responded that the one store would have to report on a separate form. Each store in that center must fill out a separate form for that location.

Senator Heinrich said his interpretation of 136.01 is that a highway or freeway interchange would qualify if it was on an interstate highway. Would developers on Eagle Road qualify? **Mr. Husted** said that developers on Eagle Road could qualify because the statute states "highway interchange" which would not necessarily be an interstate freeway. **Senator Siddoway** gave an example of a Cabelas with a contract in the original negotiations and then a McDonalds coming along later; who would negotiate the 2nd contract so that McDonalds would help pay for the interchange or do they have to? **Mr. Husted** responded that if McDonalds is part of the shopping center, the sales from that McDonalds could be rebated back to the developer. The developer is the one that owns the shopping center and it is assumed that they will be the ones renting out the space and it would be up to them to report the new entity to the ITC. If it was across the street from the shopping center, it would not qualify.

MOTION: **Senator Heinrich** moved to adopt Docket No. 35-0102-0701. **Senator Siddoway** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

35.01.09 - IDAHO KITCHEN AND TABLE WINE TAX ADMINISTRATIVE RULES

**DOCKET NO.
35-0109-0701**

Rule 013 - BREAKAGE OR SPOILAGE changes the word "wholesaler" to the statutorily defined term "distributor" and the words "unfit for beverage purposes" to "unfit for sale."

Mr. Husted: The change in the rule allows the wording to conform with the wording in the statute.

MOTION: **Senator Langhorst** moved to adopt Docket No. 35-0109-0701. **Senator Heinrich** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

35.01.09 - IDAHO CIGARETTE AND TOBACCO TAX ADMINISTRATIVE RULES

**DOCKET NO.
35-0110-0701**

Rule 010 - DEFINITIONS adds a definition of "person" to the cigarette and tobacco tax rules that is similar to the definition in the Sales Tax Act in *Idaho Code*, § 63-3607.

Mr. Husted: The rule changes language in the Cigarette and Tobacco Tax Rules to match that in the Sales Tax Act.

Rule 013 - SHIPMENTS IN INTERSTATE COMMERCE and **Rule 014 - SHIPMENTS DELIVERED ON INDIAN RESERVATIONS** both use the word “indicia” in reference to “cigarette tax stamps.” This amendment changes the word “indicia” to “stamps.”

Mr. Husted: This action clarifies language in both rules.

Rule 022 - EXEMPTIONS should refer only to cigarettes for which a credit may be claimed. Paragraph 022.01.d. describes required documentation. The amendment reformats subsection 022.01.d. into a separate subsection 022.02.

Mr. Husted: The changes in this rule changes a reference to cigarette exemptions, adds a paragraph to describe documents, and adds a subsection.

MOTION: **Senator Langhorst** moved to accept Docket No. 35-0110-0701. **Senator Heinrich** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

35.01.11 - IDAHO UNCLAIMED PROPERTY ADMINISTRATIVE RULES

DOCKET NO. **35-0111-0701** **Rule 010 -DEFINITIONS** clarifies the words “tax” and “return” in the income tax statutes to mean “unclaimed property” and “report of unclaimed property.” The Unclaimed Property Act incorporates by reference, several administrative statutes from the Idaho Income Tax Act.

Mr. Husted: There are several administrative statutes that refer to “tax” and “returns.” Unclaimed Property is not a tax and unclaimed property holders do not file a return, they file a report. In order for the statutes to make sense, the word “return” shall mean “report.”

Senator Hill commented that it was an unusual way to approach the definition. **Mr. Husted** suggested a better way to go about this would be to draft a separate statute for unclaimed property.

MOTION: **Senator Bilyeu** moved to accept Docket No. 35-0111-0701. **Senator Siddoway** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Vice Chairman Corder returned the gavel to Senator Hill.

ADJOURNED: **Chairman Hill** thanked Jim Husted and adjourned the meeting at 3:40 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: January 17, 2008

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Corder, Senators McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu

**MEMBERS ABSENT/
EXCUSED:** Senator Stegner

GUESTS: The sign-in sheet is attached to the original minutes on file in the Committee Office until the end of the 2008 legislative session after which it will be retained in the Legislative Library.

CONVENED: **Chairman Hill** called the meeting to order at 3:00 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.

Chairman Hill introduced Randy Nelson, Legislative Advisor, Associated Taxpayers of Idaho. **Mr. Nelson** gave a brief synopsis of the House Revenue and Taxation Committee action on the ten potential exemptions considered by the Interim Committee.

Chairman Hill turned the gavel over to Vice Chairman Corder to continue with the Administrative Rules (Rules) review. **Vice Chairman Corder** introduced Alan Dornfest, Idaho State Tax Commission (ITC) who will present the final segment of the Rules covering property taxes.

35.01.03 IDAHO STATE PROPERTY TAX ADMINISTRATIVE RULES

**DOCKET NO.
35-0103-0701** **Rule 802 - BUDGET CERTIFICATION RELATING TO NEW CONSTRUCTION AND ANNEXATION** is a temporary rule to amend Rule 802 to be consistent with legislative changes. The changes implement H 79 providing a definition for incremental value and establishing a formula for calculating the amount of increment value to be added to the new construction roll once an intent to dissolve a revenue allocation area is received. The temporary rule does not include changes in the proposed rule which cannot be included in the temporary rule because they reflect changes unrelated to H 79.

The proposed version of this rule contains additional changes to update wording for consistency with other rules and cross reference in Paragraph 802.01.c. In addition, the proposed version of this rule contains a provision for listing new construction that has been missed on the current year's new construction roll, with separate identification so that the budget increase allowance is based on the levy rates for the year preceding the year in which the new construction should have been listed on the new construction roll.

Mr. Dornfest: These are amendments to the rule that are being created for consistency with legislative changes. The rule deals with taxing

district budgets in relationship to new construction. There was wording in the previous rules that was in opposition to the language of the new legislation. Also, the statute used a new term "incremental value" which the ITC determines as being the same as "increment value." This rule uses that definition.

Additional language was added to this rule to address the issue of new construction that had not been added to the tax roles. The taxing district has the burden of proving the new construction was omitted, the value of that property, and the year it should have been added to the roles. The taxing district will only get credit once the property has been added.

Senator Hill asked what would happen to those that had not been added to the property tax rolls and had not been assessed any property tax? **Mr. Dornfest** said they did not pay any property tax.

Senator Bilyeu asked for an explanation of what "immediate next new construction roll at the value proven by the taxing district" meant? How would a taxing district prove a value? **Mr. Dornfest** responded that the taxing district may come forward and say that the assessor failed to put the value on the new construction roll. The ITC is saying that this is not good enough, the taxing district has to prove it was missed to the satisfaction of the assessor and the county. The burden of proof is placed on the taxing district.

Mr. Dornfest explained that the last item on this section was to delete obsolete language relating to incremental values. **Vice Chairman Corder** asked for an explanation of incremental value. **Mr. Dornfest** explained that the incremental value is the difference between the base value in a revenue allocation area and the new value that has been added either through inflation of existing property values or any construction that may occur. **Senator Bilyeu** asked why the date of December 31, 2006 was set in the equation? **Mr. Dornfest** said the wording "incremental value as of December 31, 2006" was in the statute in H 79 which locks in the value at that date as the base for determining future values going on the construction roles.

Rule 803 - BUDGET CERTIFICATION - DOLLAR CERTIFICATION FORM (L-2 FORM) is a temporary rule needed to be consistent with legislative changes. The changes implement H 001 (8/2006) and H 197 providing directions for calculation of the maximum property tax funds for tort funds for school districts and directions related to interim mosquito abatement districts. These districts can be formed this year and can be funded by use of a county fund this year, but cannot levy independently until 2008. Once approved as permanent, subject to election requirements found in H 197 (corrected to be H 178), the districts are no longer considered new districts for budget purposes.

A temporary rule does not include changes in a proposed rule which cannot be included in the temporary rule because they reflect changes unrelated to the legislation.

The proposed version of this rule contains additional changes providing a definition for a new taxing district that is consistent with a prior court case and simplifies directions relating to documents to be submitted for budget certification.

Mr. Dornfest: Explained that there were actually three different changes to this rule that provided clarification and implemented 2007 legislation. There was also a new section added defining “New Taxing District.”

MOTION:

Senator Bilyeu moved to approve Docket No. 35-0103-0701. **Senator McKenzie** seconded the motion.

VOTE:

The motion carried by unanimous voice vote.

**DOCKET NO.
35-0103-0702**

Mr. Dornfest: Rules 205, 210 and 217 are mentioned in the overview from the ITC. However, those rules will not be discussed within the contents of the information provided to the Committee by the ITC. Rules 205 and 210 relate to definitions of personal property and the ITC decided not to go forward with a rule change. Rule 217 has to do with low income housing tax credits. The ITC pulled the rule.

Rule **006** - INCORPORATION BY REFERENCE is being amended to update references to appropriate and current editions of guides used to determine the values of recreational and certain other vehicles. Amendments also update the reference to the appropriate edition of the register used in the valuation of railcars.

Mr. Dornfest: This rule is updated annually to get the latest version of the guides that are used to determine the values of various vehicles.

Rule 131 - USE OF RATIO STUDY TO TEST FOR EQUALIZATION IN COUNTIES is being amended to provide follow-up procedures when categories in compliance in March final ratio study are discovered to be out of compliance following completion of county board of equalization action.

Mr. Dornfest: The ITC tests the counties on an annual basis to make sure the valuation of the properties are close to market value. If the test is good, then no other tests are made during the year. If something happens to cause a big disparity in the valuations in the annual study i.e., valuations are rolled back, and the Board of Equalization is informed of that disparity, then a follow-up ratio study will be conducted. **Senator Bilyeu** asked what exactly did “informed” mean? Was it a phone call from a citizen? Does it have to be in writing? **Mr. Dornfest** stated that there was not a specific definition.

Senator Hill stated that since the removal of the School Maintenance and Operations (M&O) from property taxes, there aren’t many rate based property taxes left, it is mostly budget based property taxes. Because of this change, with the exception of the Homeowners Exemption, if it is consistent, it really does not matter what the valuation rate is. Why is the ITC being so aggressive in insisting that all properties are valued so high? **Mr. Dornfest** stated that the laws require market value and most schools are still levying property taxes for bonds, overrides, and other different tax levies which constitute approximately 25-30 percent of the total tax. In most cases, school districts overlap between counties, so assessment values should be consistent. The same would apply to fire districts, highway districts and other types of taxing districts as well. It is important to prevent disparities between tax levies and also between categories, i.e. residential versus commercial. There are two issues: the joint taxing district issue and the inter-category issue. Both are a concern. **Senator Bilyeu** asked, as a follow-up to Senator Hill’s question, if the legislation

said all assessments would be at 80% of market value then would that not be the same thing as 100% of market value? **Mr. Dornfest** responded "yes," their position would be to make sure everyone was at 80% of market value. **Senator Hill:** Wouldn't you agree that the ITC has been much more aggressive on this during the last decade? **Mr. Dornfest** said that the current process has been in effect since about 1992 and that in the 1980s, the rules were much stricter. They were loosened up in the late '80s, tightened up in the early '90s, and then loosened up again. The basic rule is to stay in compliance and if the county is within 10% of the value then they are considered in compliance. None of that has changed.

Senator Langhorst stated that he has looked at residential, commercial, and land values in different counties throughout southern Idaho. It seems residential values are very close to 100% of market value but commercial and land are not. Can you comment on that? **Mr. Dornfest** said that, going back a year which is the most current information they have, will show both of those classes of property to be reasonably close to market. He added that information on the residential side is much better than it is on the commercial side. This could produce a weakness in the studies. **Senator Bilyeu** also agreed that residential information is better than commercial. Also, commercial sales information does not necessarily mean that it is what the property sold for because there are exemptions for things like good will or other intangibles that adjust the original sales price.

Rule 314 - COUNTY VALUATION PROGRAM TO BE CARRIED ON BY ASSESSOR is being amended to provide cross references and to provide for timely availability of income/expense data on income producing property for completion of appraisals for the property roll.

Mr. Dornfest: The primary change is one requested by the assessors. Information gathered for data banks from the taxpayer will be submitted by the first Monday in April to allow time for the assessors to work the information into the values for that year. There were also some cross reference changes related to the clarification on tax credits when valuing low-income housing properties receiving those credits. Reference to Rule 217 was eliminated. Rule 217 no longer exists although one reference to this rule still remains and will be taken care of next year.

Rule 315 - USE OF RATIO STUDY TO EQUALIZE - SCHOOL DISTRICTS is being amended to be consistent with legislative changes resulting from H 001 (8/2006). Proposed amendments restrict the Commission's responsibility to provide school district adjusted values to apply to the Boise School District only.

Mr. Dornfest: School equalization is no longer pertinent except for the Boise School District.

Rule 404 - OPERATOR'S STATEMENT - CONTENTS is being amended to provide cross references, clarify which property at thermal energy electricity generation facilities is situs property, move apportionment directions to Rule 405, and correct pipeline mileage reporting directions.

Mr. Dornfest: The changes moved and adjusted cross references. The changes also codifies current practice.

Rule 405 - ASSESSMENT OF OPERATING PROPERTY is being amended to provide cross references and directions relating to apportionment of property at thermal energy electricity generation facilities.

Mr. Dornfest: The changes here are the same as Rule 404.

Rule 415 - APPORTIONMENT OF RAILCAR FLEETS ASSESSED VALUES WITHIN THE STATE is being amended to change the date for county treasurers to submit property tax rate information that is used to calculate the tax rates applicable to railcar fleets under \$500,000 (change is from November 1 to November 15).

Mr. Dornfest: The rates were not available to the County Treasurers until the fourth week in October and there was not enough time to get that information to the ITC by November 1 so the date was changed to November 15.

Rule 509 - CITY, COUNTY, AND SCHOOL DISTRICT ABSTRACTS OF VALUE AND IDENTIFICATION OF URBAN RENEWAL INCREMENT AND PARTIAL EXEMPTION VALUES is being amended to provide a cross reference to rules and statutes that provide procedures for the correction of taxable values resulting from errors after county commissioners have taken action under *Idaho Code*, § 63-809, and to limit school district abstracts to the Boise School District to be consistent with H 001 (8/2006).

Mr. Dornfest: There is no reason to continue to receive the abstracts from school districts anymore with the exception of the Boise School District; they still have to equalize property by category. Also, a section was added to this rule that applies to the submittal of documents when boards of county commissioners correct levies. **Senator Langhorst** brought up a question regarding the four school districts that were different from all the rest (McCall, Blaine, Adrian, and Swan Valley) and yet only Boise has been mentioned in these rule changes. **Mr. Dornfest** stated that Boise is different from all school districts. Boise still retains a M&O authority. These four districts have budget stabilization funds which are locked in, set dollar amounts that are not rate driven but are frozen and must be levied each year.

Rule 510 - SECONDARY CATEGORIES FOR LAND-LISTING AND REPORTING is being amended to provide directions for assigning categories for homesites when property has multiple uses.

Mr. Dornfest: This rule applies to secondary categories for land and homesite properties that have multiple uses. Assessors must make sure those properties are categorized correctly using as many categories as necessary. **Senator Bilyeu** commented that the word "Secondary" was relatively new and asked why the ITC used the word "Secondary." **Mr. Dornfest** responded that the change was made in 2007 and all the categories were divided into primary and secondary categories to comply with that legislation.

Rule 511 - SECONDARY CATEGORIES FOR IMPROVEMENTS-LISTING AND REPORTING is being amended to provide directions for assigning categories for improvement categories with multiple uses.

Mr. Dornfest: The same changes are being made here that were applied in Rule 510. **Senator Bilyeu** asked if this change added to the number of categories. **Mr. Dornfest** responded that it did not.

Rule 603 - PROPERTY EXEMPT FROM TAXATION-RELIGIOUS CORPORATIONS OR SOCIETIES is being proposed to implement the requirements of H 69 to provide directions for calculating the value of the portion of property not permitted in the religious property exemption. This occurs whenever that portion equals more than 3% of the value of the entire property. Methods are to be comparable with those used to value the taxable portion of property otherwise exempt under *Idaho Code, § 63-602C*.

Mr. Dornfest: H 69 states that when there is a non-qualified use of the property, that is, the use would not qualify for a religious exemption, and exceeds more than 3% of the value of the entire property, that portion has to be assessed. In addition, the statute required the ITC to establish rules to assist the assessors in valuing that taxable portion of the property. The ITC worked with others to resolve the many issues related to this change to establish rules that would be workable for everyone.

Rule 609 - PROPERTY EXEMPT FROM TAXATION-HOMESTEAD is being amended to correct references and add examples for clarification of homeowner's exemption for partial ownership.

Mr. Dornfest: The main changes to this rule added examples of cases of partial ownership and partial occupancy.

Rule 610 - PROPERTY EXEMPT FROM TAXATION-HOMESTEAD-SPECIAL SITUATIONS is being amended to correct references to Rule 609.

Mr. Dornfest: This is a companion rule to Rule 609 and the changes update references to that rule.

Rule 645 - LAND ACTIVELY DEVOTED TO AGRICULTURE DEFINED is being amended to provide directions for assigning categories for homesites.

Mr. Dornfest: The changes in the rule made the categories consistent with changes made in other rules assigning secondary categories to homesites.

Rule 700 - DEFINITIONS FOR PROPERTY TAX REDUCTION BENEFIT is being amended to add cross references and examples for clarification of calculating benefits for partial ownership. References relate to public benefits in S 1157.

Mr. Dornfest: This rule relates to definitions for the property tax reduction program which is the circuit breaker program. Also, examples were adjusted to be consistent with the present statute.

Rule 701 - HOW TO VERIFY THAT CLAIMANTS ARE LAWFULLY PRESENT IN THE UNITED STATES is a new rule being promulgated to provide procedures for county officials and claimants to provide documentation necessary to verify or to facilitate subsequent electronic verification that claimants are lawfully present in the United States. Requirements are to comply with the provisions of S 1157.

Mr. Dornfest: This new rule provides procedures for ITC, taxpayers, and counties to verify that claimants for the circuit breaker exemption are lawfully present in the United States. This was required as a result of S 1157. The goal in writing this rule was to ask for the least invasive type of information possible and still meet the requirements of the statute. In addition, there is an attestation document to the application form that says that the claimant is lawfully present in the United States. Once this has been established, the claimant will only have to attest that “no change” has occurred in their status for each successive application.

Rule 717 - PROCEDURE AFTER CLAIMS APPROVAL is being amended to comply with the requirements of S 1157 and requires the claimant to present information enabling the ITC to prove that the claimant is lawfully present in the United States.

Mr. Dornfest: The amendment adds a subsection that says the assessor must provide proof that the claimant is lawfully present in the United States.

Rule 804 - TAX LEVY-CERTIFICATION-URBAN RENEWAL DISTRICTS is being amended to correct cross references and implement H 001 (8/2006), removing allocation of part of taxes levied on urban renewal district increments to school districts.

Mr. Dornfest: Prior to H 001, a part of the revenue collected for urban renewal districts was allocated to school districts. With the passage of this legislation, that was no longer appropriate so the reference to that allocation was deleted. **Senator Bilyeu:** Does the total value, all of those dollars, go to urban renewal? **Mr. Dornfest** responded that the entire tax on the increment goes to urban renewal. **Senator Bilyeu:** So the urban renewal agency actually picked up dollars with the passage of that bill? **Mr. Dornfest** said that the urban renewal districts tended to pick up about 1 mil.

Rule 805 - PENALTY FOR FAILURE TO PROVIDE NOTICE OF BUDGET HEARING is being amended to implement H 001 (8/2006), restricting the budget increase penalty for school districts so that it applies only to their tort funds.

Mr. Dornfest: This rule relates to penalties to taxing districts who fail to provide notice that is required by April 30 for budget hearings. The rule was amended because it included penalties applied to school districts and non-school districts separately which would no longer be appropriate because of H 001. School districts still must comply but they are lumped in with all others as far as penalties are concerned.

Rule 809 - CORRECTION OF ERRONEOUS LEVY is a new rule being proposed to provide a timeline for ITC review and approval, and procedures for correction of taxable values resulting from errors when county commissioners take action under *Idaho Code, § 63-809*.

Mr. Dornfest: This new rule provides a workable timeline that allows corrections to be made by the ITC whenever unintentional errors occur at the county level. Errors can be discovered up until January 30. When errors are discovered on or before the fourth Monday in October, they can be easily fixed because nothing has been sent out to the taxpayer. After the fourth Monday in October, it is more difficult to correct the error so the

ITC has allowed themselves one week to make the correction and approve the appropriate tax levy and respond to the county.

Rule 811 - COMPUTATION OF PROPERTY TAXES is a new rule being proposed to clarify the responsibilities of county auditors to compute the total tax charge by taxing district and the responsibilities of county treasurers to compute individual property tax due on each parcel of property.

Mr. Dornfest: The ITC was asked by county auditors and county treasurers to define their duties in terms of who computes tax charges and individual property taxes and how to communicate this information back and forth between the different entities. This rule addresses those issues.

Rule 966 - RECAPTURE OF DEFERRED TAXES ON LANDS DESIGNATED UNDER *IDAHO CODE*, § 63-1706 is being amended to correct a cross reference and wording to be consistent with other rules.

Mr. Dornfest: There are no substantive changes in this rule since it deals primarily with changes to be consistent with other rules.

Mr. Dornfest concluded his review of the Property Tax Administrative Rules.

Senator Heinrich referred to Rule 205 and asked how that rule could be fixed? Does it have to be done legislatively? **Mr. Dornfest** said that, at this point, the current rule functions, it just does not provide the definitional clarity that it should.

MOTION:

Senator Siddoway moved to approve Docket No. 35-0103-0702.
Senator McKague seconded the motion.

VOTE:

The motion carried by unanimous voice vote.

Vice Chairman Corder announced that all the rules have been completed and a letter will be prepared for signature. The gavel was returned to Chairman Hill.

Chairman Hill stated a note of appreciation to Vice Chairman Corder and all members of the Committee for their participation in studying the rules and their kind attention for the review of the Administrative Rules.

ADJOURNED:

Chairman Hill adjourned the meeting at 4:09 p.m. until Tuesday, January 22, 2008 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: January 22, 2008

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Corder, Senators McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu

**MEMBERS ABSENT/
EXCUSED:** Senator Stegner

GUESTS: The sign-in sheet is attached to the original minutes on file in the Committee Office until the end of the 2008 legislative session after which it will be retained in the Legislative Library.

CONVENED: **Chairman Hill** called the meeting to order at 3:00 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.

MINUTES: **Senator Heinrich** moved to accept the January 15, 2008 minutes as written. **Senator Siddoway** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

RS17564 Relating to Counties; Amending *Section 31-819, Idaho Code*, to provide for the publication of balance sheets and summaries of statements of revenues and expenditures by Boards of County Commissioners; and amending *Section 31-2307, Idaho Code*, to delete publication provisions relating to county annual audits.

Senator Heinrich explained that this bill doesn't really change the requirements of county commissioners to publish the summary of the balance sheet and summary statement of revenues and expenditures. It clarifies that the timing for publishing will be within thirty days and in accordance with the requirements of *chapter 1, title 60, Idaho Code*. This legislation also removes the publishing requirement for the Independent Auditors Report. **Senator Bilyeu:** What was the problem and what was being corrected? **Senator Heinrich** stated that it was confusing to the clerks as to exactly what portion of the balance sheet and the independent auditors report needed to be published. This legislation says that the balance sheet and a summary of the statement of revenues and expenditures will be published. There was some concern about how and where this information would be published. The change in wording says it must be published in the local newspaper.

Senator Bilyeu asked if this saved any money? **Senator Heinrich** responded that it did not. It just clarifies the process and combines it all into one code.

MOTION: **Senator McKenzie** moved to send RS17564 to print. **Senator Bilyeu** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Chairman Hill announced that there would not be a Committee meeting on January 23rd and on Thursday, January 24th, the Committee will tour the State Tax Commission facilities.

Chairman Hill introduced Keith Allred from The Common Interest (TCI). He will provide information about issues coming up in 2008.

Mr. Allred stated that the goal today is to provide an overview of the fairly thorough process used to pick the issues that TCI will work on during the 2008 session. He will provide some insights about the issues that were picked and what priorities have been identified by TCI members and others.

The process to pick the issues begins in the fall. Legislative leadership, members of the press, and the Governor's office are polled to identify what they see as the biggest issues coming before the legislature. Those issues that were nominated most frequently are ranked creating the top twenty five issues. This is called the "Pundits & Pols Top Twenty Five." A brief description for each of these issues is sent out to the TCI membership (258 members participated) and they, in turn, rate the importance of each of the issues. This group is called the "People's Choice Poll." The top three issues identified by the People's Choice group are: 1)Water; 2)Transportation; and 3)Growth Paying for Itself.

It was a surprise that water was rated No.1 since it had been in the middle of the ratings for the past four years. Property tax was the only other issue over that time period that had received such a large percentage of the votes by the People's Choice group. Historically, water issues were felt to be regional, but with water adjudication and irrigation concerns, it has become a statewide issue. The drought has also been a factor. Water was rated No. 8 by the Pundits & Pols group.

Both groups agreed that Transportation was important. People's Choice rated it No. 2; Pundits and Pols rated it No. 1. There are a number of dimensions to this issue: Funding for the backlog, GARVEE issues, local option sales tax, and others. Congestion has become an issue in the everyday life of Idaho citizens and could account for the increased interest.

Growing pains are becoming an issue throughout the state instead of being a regional issue. Paying for that growth is an area of concern for many Idahoans. There is a simple way of describing this years issues: Growth! Growth! and Growth!

Chairman Hill asked if the People's Choice respondents came up with their own list of issues? **Mr. Allred** responded that they were given the list of the Pundits and Pols Top Twenty Five. **Chairman Hill** asked how "growth paying for itself" was defined. **Mr. Allred** responded that leadership felt Idaho is growing fast but the state has fewer tools compared to other states. The question is "are we really making growth pay for itself?"

Mr. Allred gave an overview of the issues that were determined as Tier 1,2, and 3 in importance.

There are a few carryover issues such as election reform. A possible option for primary election reform is a modified closed format. It is expected that there may be some open discussions on this issue within

the next few weeks.

Overcrowded prisons is another carryover area of concern. Idaho inmates dealing with drug problems constitute 85% of the total prison population. The Governor's budget zeroed nearly all of community based drug-treatment programs. Beer and wine revenues are being looked at as a source for needed revenue as replacement funds for those programs.

In addition to being a source of revenue, increased beer and wine taxes will reduce domestic violence, child abuse, rape, and instances of binge drinking. **Vice Chairman Corder:** Where is the proof showing reduced binge drinking? **Mr. Allred** said that there are several charts in the "Factbook" relating to studies showing that increased tax reduces binge drinking.*

Idaho is behind other states in the amount of beer and wine tax paid by Idaho residents.

Beer:	State	National Average
	15¢ /gal	26¢/gal
Wine:	45¢/gal	79¢/gal

Beer tax hasn't been changed since 1961 and wine tax since 1971. If Idaho were to raise the tax to equal the national average, it is estimated it would raise \$4.8 million in revenue.

Mr. Allred had further comments regarding the GARVEE management contracts and how those fees were calculated. The TCI group raised the question of the fees level compared to other entities such as the Idaho Transportation Department. **Vice Chairman Corder** cautioned against comparing different entities unless there was a good understanding of how costs are allocated and controlled by different those businesses. There needs to be a good understanding of how net profit is determined by before trying to compare them. **Mr. Allred** responded that the best comparison would be another GARVEE state but he was not certain there was one that outsourced the total management responsibility since that is quite unusual.

Mr. Allred had a few more comments regarding growth paying for itself in relationship to state highways. There are some ideas that it costs about \$10,000 per home to cover the transportation costs when looking at a large development. There will be more discussions about this issue.

Chairman Hill thanked Mr. Allred for his presentation to the Committee.

ADJOURNED:

There being no further business, **Chairman Hill** adjourned the meeting at 4:20 p.m. until Thursday, January 24th at 3:00 p.m.

*NOTE: A copy of Mr. Allred's presentation is on file in the Committee Office until the end of the 2008 legislative session after which time it will be retained in the Legislative Library with the minutes.

**Factbook on State Beer Taxes published by The Center for Science in the Public Interest.*

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: January 23, 2008

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT:

**MEMBERS ABSENT/
EXCUSED:**

GUESTS:
No meeting held on this date.

CONVENED:

MINUTES:



MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: January 24, 2008
TIME: 3:00 p.m.
PLACE: Room 211
MEMBERS PRESENT: Vice Chairman Corder, Senators McKenzie, Heinrich, McKague, Langhorst, and Bilyeu
MEMBERS ABSENT/ EXCUSED: Chairman Hill, Senators Stegner and Siddoway
CONVENED: Members of the Committee met at 3:00 p.m. to take a tour of the State Tax Commission facility.

The Committee arrived at the State Tax Commission facility and was greeted by Commissioners Sam Haws, Royce Chigbrow, Coleen Grant, and Tom Katsilometes.

Rod Shown guided the tour through the Taxpayers Services area. There are nine full time employees and two interns working in this area. They provide customer service assistance for walk-ins, telephone calls, and electronic inquiries. They also collect payments.

Steve Miller led the tour through the Revenue Operations Division. All remittance and return processing is handled in this area. Each piece of paper is scanned into the system and then the data base is maintained electronically. All taxpayer information is monitored and maintained here. This group accepts payments, issues refunds, handles any discrepancies, and notifies taxpayers of any changes in their returns. Sixty-two per cent of individuals e-file. All sorting for the various types of taxes is done online.

The Data Center was the next stop. Steve Wilson explained the functions of that area, how data is stored and the safeguards that are in place to protect taxpayer confidentiality. Also, most (95%) of the technical support for the field offices is provided by the Boise office. This area is heavily secured and there is constant surveillance not only within this department but throughout the system.

Steve Fiscus concluded the tour explaining the role of the State Tax Commission. They have a broad range of oversight responsibility as well as providing technical assistance in a number of ways such as training and education, certification, and research throughout the state. They are also responsible for developing administrative rules and have the oversight responsibilities for property tax issues.

The tour ended with the return to the Capital Annex.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** January 29, 2008
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu
- MEMBERS ABSENT/
EXCUSED:**
- GUESTS:** The sign-in sheet is attached to the original minutes on file in the Committee Office until the end of the 2008 legislative session after which it will be retained in the Legislative Library.
- CONVENED:** **Chairman Hill** called the meeting to order at 3:00 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.
- MINUTES:** **Senator McKague** moved to accept the minutes of *January 16, 2008* as written. **Senator Siddoway** seconded the motion.
- VOTE:** The motion carried by unanimous voice vote.
- Senator Siddoway** moved to accept the minutes of *January 17, 2008* as written. **Senator Heinrich** seconded the motion.
- VOTE:** The motion carried by unanimous voice vote.
- Vice Chairman Corder** moved to accept the minutes of *January 22, 2008* as written. **Senator Bilyeu** seconded the motion.
- VOTE:** The motion carried by unanimous voice vote.
- Senator McKague** moved to accept the minutes of *January 24, 2008* as written. **Senator McKenzie** seconded the motion.
- VOTE:** The motion carried by unanimous voice vote.
- Chairman Hill** welcomed Linda Pike who will give an overview of her qualifications for appointment to the Board of Tax Appeals (Board).
- Ms. Pike** stated that she has served on three previous, though not consecutive, terms as a member of the Board. She said she enjoyed being on the Board; it is very interesting to go out and conduct hearings and hear what the taxpayers and government have to say. She encouraged members of the Committee to attend a hearing in their district if the opportunity arises.
- Ms. Pike** explained that she has a varied background and experience and

understands the issues that are brought up in the hearings. Taxpayers do not understand the market value system, they aren't aware that taxation laws are not the same from state to state, and there are always appeals involving exemptions.

Senator Bilyeu stated that she is working on a committee that has a request for supplemental funds for tax appeals. Do you foresee a reduction in the number of appeals in the next few years? **Ms. Pike** responded that she did not expect to see much of a reduction because there are people moving here from other areas with money to spend and they pay higher prices for property. The local people can't understand why their assessed values are going up when they haven't made any improvements on their property. So both groups are appealing.

Senator Stegner questioned Ms. Pike about her current term and confirmed that she was filling in for someone else. Are you interested in being reappointed? **Ms. Pike** answered that she was.

Chairman Hill thanked Susan Renfro, Director, Board of Tax Appeals, for attending the meeting. He asked if there was a need for additional Board members? Do some of the members need to be full time? How can the lag time for an appeal to be heard (anytime from six months to a year) be reduced to a reasonable time period? **Ms. Renfro** answered that they are still trying to determine how to handle this issue. The time line for receiving and processing the appeals is too short for the number that are filed. They are trying to resolve this issue.

Chairman Hill requested that the Committee be kept advised about the resolution of this question.

Senator Siddoway asked Ms. Pike to explain the relationship between the Board, State Tax Commission (STC) employees, and the appeal process. **Ms. Pike** explained that the Board hears most types of state tax issues. For example, if an individual appeals to the Board on an income tax issue, a representative of STC will be representing the government. The Board is not part of STC in any way.

Chairman Hill welcomed David Kinghorn.

Mr. Kinghorn explained that this will be his fourth appointment to the Board and he is responsible for the eastern Idaho area. He enjoys being on the Board, has participated in local government as a County Assessor in Jefferson County for four terms, been President of the Idaho Association of Counties and the Idaho Association of Assessors, and has served on many committees. He is a servant, and he believes that if there is any benefit, it goes to the taxpayer.

Senator Bilyeu asked Mr. Kinghorn the same question—do you think the number of appeals will diminish? **Mr. Kinghorn** responded that he did not see that happening in the foreseeable future. There are several recreational properties in his service area which is bringing in out-of-state money. The local “ma and pa” owners lose their land because they cannot pay the taxes.

Senator Bilyeu asked Mr. Kinghorn to comment on why commercial properties are not being assessed according to the price they are selling for. **Mr. Kinghorn** explained that the main purpose of commercial property is to make money. There is not the value in the property until someone buys it and sets up a business and that business is successful. That success contributes to the value. It is a problem and it is not going to go away.

Senator Heinrich asked if assessors had price disclosure, would it reduce the number of appeals? **Mr. Kinghorn** said that question has been raised in nearly all of the appeals this last year. Boise appellants cannot believe that Idaho does not have a full disclosure law. **Mr. Kinghorn** raised the question--why are assessors given the duty to define market value when they are not given the tools to do so?

Senator McKenzie asked what time commitment did Mr. Kinghorn give for the number of appeals that he heard? **Mr. Kinghorn** responded that he spent well over 100 hours. This is due to an increase in numbers and appeals are more technical so it takes more time to come to a decision.

Chairman Hill excused Vice Chairman Corder and Senator Stegner at this time.

Chairman Hill asked Mr. Kinghorn if other financial options were offered during the course of the appeal process. **Mr. Kinghorn** answered "yes." **Chairman Hill:** Over the last three years, what percentage of the hearings were not actually attended by a Board member—they were handled by staff? **Mr. Kinghorn** responded that it would be about 50%.

Senator Bilyeu wanted to know if appeals had to be finalized in one year. **Mr. Kinghorn** said that, by statute, appeals have a deadline of May 1.

Senator Siddoway stated his appreciation for the outstanding service that Mr. Kinghorn has provided for that district.

Chairman Hill thanked Ms. Pike and Mr. Kinghorn for the time spent with the Committee and for the public service they provide. The Committee will vote on the Board appointments tomorrow, Wednesday, January 30, 2008.

S 1337

Senator Heinrich brought S 1337 before the Committee. This bill clarifies and simplifies the instructions to be used by county clerks and county commissioners in publication of the county's annual audits.

Senator Bilyeu asked if this bill had been seen by the clerk's association and county commissioners and did they approve it? **Senator Heinrich** said he was invited to the County Clerk's Association Annual Meeting to explain this bill—yes they did approve it.

MOTION:

Senator McKague moved to send S 1337 to the Senate floor with a do pass recommendation. **Senator McKenzie** seconded the motion.

VOTE:

The motion carried by unanimous voice vote.
Senator Heinrich will carry S 1337 on the Senate floor.

H 342

Dan John, Idaho State Tax Commission, explained the purpose of H 342. This is the annual update to the Internal Revenue Code by the Tax Commission to define "Taxable Income" as of January 1, 2008. This legislation adopts all the modifications made to the federal tax code by the U. S. Congress during 2007.

MOTION:

Senator Heinrich moved to send H 342 to the Senate floor with a do pass recommendation. **Senator Siddoway** seconded the motion.

VOTE:

The motion carried by unanimous voice vote.

Chairman Hill will carry H 342 on the Senate floor.

Chairman Hill introduced Brent Reinke, Director, Department of Corrections (Department). **Director Reinke** concentrated on information about violent sex offenders.

The Department has developed a program, Victim Information and Notification Everyday (IdahoVINE), that is a free, automated hotline that provides crime victims with vital information and notification 24 hours a day, 365 days a year. This is a lifeline for victims to keep them informed.

Director Reinke then discussed the Adam Walsh Act (AWA). This is a three tier sex management program that is being looked at by Steve Bywater, Attorney General's Office, and his committee. They are moving toward adopting various components of this act. Three pieces of legislation was introduced to the House last week: 1)Make it a felony to help a sex offender avoid registering. 2)Require electronic monitoring of all violent sexual predators on probation or parole. 3)Clarify law restricting sex offenders from living within 500 feet of an existing school.

Some issues that are being addressed legislatively in 2008 and 2009 are attempts to get them on the books; most of them are current practice.

Senator Langhorst asked why Idaho has not adopted Jessica's Law. **Director Reinke** answered that Jessica's Law was a Florida law. The fiscal impact of the Florida law in Idaho, because of the 25 year mandatory prison term, is estimated to be \$43.0 million to house offenders and \$236.0 million to build a facility within the next 25 years. **Senator Langhorst** wanted to know if there is a strategy to deal with this type of infraction that would not incur the high cost but would be satisfactory. **Director Reinke** stated that Idaho does not want to be looked at as a harbor state. They are trying to be as aggressive as they can be and yet not completely disassemble the way sex offenders are managed in the state. **Director Reinke** emphasized that the Idaho Criminal Justice Commission is the only place in state government where all three branches sit down once every 30 days throughout the year to try and solve criminal justice issues and try to develop a system that works.

Senator Siddoway expanded on the previous question of mandating 25 year prison terms for sex offenders in the state of Idaho. Is it a fair assessment that they are getting a lot less than the 25 years now?

Director Reinke agreed that is absolutely true. They are using other methods and programs within the system. The recidivism rates for sex

offenders are some of the lowest of any offenders in the state. They re-offend about 8% of the time.

Chairman Hill inquired if there were other motivators being considered for violent sex offenders such as sterilization, or at least voluntary chemical sterilization offered in treatment centers, as an alternative to incarceration. **Director Reinke** responded that at this time there is none. These options are under discussion. **Chairman Hill** asked if these methods are being used in other states? **Director Reinke** said that other states do but it is fraught with a tremendous amount of litigation.

Senator Bilyeu asked, of the felony sex offenders, how many are incarcerated? **Director Reinke** said there are 970 under community supervision, 980 in community corrections, and about 1450 incarcerated. **Senator Bilyeu** then asked, of that number, how many would be young men in their late teens, in or just out of high school, that had sex with a young woman under legal age which may be consensual, and, in those instances, could be considered a lesser offence with the attendant ramifications? **Director Reinke** said he did not have that information at his fingertips but would provide it to the Committee on Thursday. However, there is a very small group of teenagers in this category. The number of years difference between the offender and the victim is the challenge when determining when sex is consensual.

Senator McKenzie commented that he had confidence in the judiciary and that judges do a good job in sentencing. It is not good to tie their hands and that has been done in federal court. Best lawyers are made judges and then they are told they have no discretion on what to do. In this area, that recidivism is 8% on sex crimes is encouraging and indicates that they are doing a good job. There should be more discretion on things like the registry so that if the person is clearly not a threat, there is some mechanism for adjustment in the sentencing. Mandatory laws are not the best thing.

Chairman Hill thanked Director Reinke for bringing this information to the Committee and reviewed the agenda for Wednesday.

Chairman Hill adjourned the meeting at 4:07 p.m. until January 30, 2008 at 3:00 p.m.

NOTE: A copy of any presentation materials is on file in the Committee Office until the end of the 2008 legislative session after which time it will be retained in the Legislative Library with the minutes.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** January 30, 2008
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, and Bilyeu
- MEMBERS ABSENT/ EXCUSED:** Senator Langhorst
- NOTE:** The sign-in sheet, testimonies, and other related materials will be on file with the minutes in the committee's office until the end of the 2008 legislative session after which it will be retained with the minutes in the Legislative Library.
- CONVENED:** **Chairman Hill** called the meeting to order at 3:00 p.m.. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.
- MINUTES:** **Chairman Hill** asked for the will of the Committee on the appointments of Linda Pike and David Kinghorn to the Board of Tax Appeals.
- MOTION:** **Senator Bilyeu** moved to approve the appointment of Linda Pike to the Board of Tax Appeals. **Senator Siddoway** seconded the motion.
- VOTE:** The motion carried by unanimous voice vote.
- Senator Stegner will sponsor Ms. Pike on the Senate floor.
- MOTION:** **Senator Siddoway** moved to approve the appointment of David Kinghorn to the Board of Tax Appeals. **Senator Bilyeu** seconded the motion.
- VOTE:** The motion carried by unanimous voice vote.
- Senator Siddoway will sponsor Mr. Kinghorn on the Senate floor.
- H 340** **Dan John**, State Tax Commission (STC), introduced H 340 which amends *Idaho Code* § 63-218, to provide that the Tax Commission and political subdivisions may retain tax documents in a form or medium different from that in which it is received if the document may be accurately reproduced. It also provides for the admissibility of reproductions in judicial proceedings and makes corresponding amendments to 63-3071, *Idaho Code*. The amendments provide that the original documents may be destroyed upon successful reproduction of the document.
- MOTION:** **Senator Corder** moved to send H 340 to the Senate floor with a do pass recommendation. **Senator Bilyeu** seconded the motion.
- Senator McKenzie** observed that there was not a fiscal effect. There could be a savings if all those boxes could be destroyed. **Mr. John** responded that costs have come down because of changing from a six year retention to a one year retention.

But, what resources are saved, can be redirected to other activities connected with the new processes. **Chairman Hill** commented that there may be some immediate savings if the cost of storage offsite can be eliminated.

VOTE: The motion carried by unanimous voice vote.

Senator Bilyeu will sponsor H 340 on the Senate floor.

H 341

Ted Spangler, State Tax Commission, introduced H 341. This bill relates to property taxes. It amends the law requiring a taxing district that changes its boundaries to report the change to the County Assessor and the State Tax Commission by supplying an accurate legal description and map of the change. It also clarifies the State Tax Commission's authority to reject inadequate maps and legal descriptions thereby requiring submission of boundaries that comply with Idaho laws relating to boundaries.

Chairman Hill asked if the filing process is before the new taxing district is set up or before the annexation takes place? **Mr. Spangler** said that the legal description and the map must be submitted within 30 days after the effective date of the annexation.

Senator Heinrich stated that there is a limitation on when the legal description and maps must be submitted. Is there a limitation on curing the deficiency if that time frame is missed? **Mr. Spangler** responded that the deficiency must be cured before the tax code area maps are prepared for operating companies, i.e. utilities, railroads, etc., by March. Effective limitation is the date that accurate tax code area maps have to be available to the taxpayers.

Senator Stegner referred to lines 32-33 of the proposed bill where it says "the state tax commission may direct that the formation or change not be recognized." Wouldn't you rather have stronger language that would provide more authority? **Mr. Spangler** said that if they do not recognize the area then it will not appear on the tax code area maps and, therefore, the property the district thought they were annexing and would be subject to property tax, will not be subject to their tax base. **Senator Stegner**: Is that anywhere else in the codes? **Mr. Spangler** replied that the process for tax code area maps is spelled out in both statute and the tax commission rules.

Senator McKenzie asked if the STC would be a potential defendant in an action where someone is trying to avoid being annexed into the district. **Mr. Spangler** replied that is a remote possibility.

Senator Heinrich commented on the particular district that was used as an example (See Lake Cascade Map). They will not comply with providing an appropriate map because they do not care about the tax since their primary income comes from the number of hookups. **Mr. Spangler** explained that the bill has been worded to only address what the STC and county assessors are charged to administer which is property tax.

Senator Siddoway referred to the parts of the current statute that allocated the approval of the legal descriptions and maps to the counties and asked if, by adding the approval of the maps and legal descriptions to the STC, wouldn't that be transferring responsibility to STC from the counties? **Mr. Spangler** responded that the existing language being referred to relates only to the county's responsibility for fire districts.

MOTION: **Senator Heinrich** moved to send H 341 to the Senate floor with a do pass recommendation. **Senator Stegner** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Senator Heinrich will sponsor H 341 on the Senate floor.

H 343 **Mr. Spangler:** This bill relates to the \$10 “permanent building fund tax” collected in conjunction with Idaho income tax returns. It amends the section of Idaho Code that defines “person” for the purpose of identifying individuals and business entities that are required to pay the \$10 building fund tax. The section being amended contains language and provisions that have become outdated since the section was last amended in 1969 and does not adequately address treatment of “pass-through entities” such as partnerships, S-corporations, and limited liability companies electing to be taxed as partnerships. This bill coincides with current practice.

MOTION: **Senator Heinrich** moved to send H 343 to the Senate floor with a do pass recommendation. **Senator McKenzie** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Senator McKenzie will sponsor H 343 on the Senate floor.

H 344 **Mr. John** explained that H 344 simplifies the year-end income tax withholding reports employers now must file with the STC. Current law requires employers to transmit copies of the wage and tax statements (W-2 Forms) provided to employees. This transmittal must be filed by January 31st of each year. Employers must then file an annual reconciliation of the amounts of Idaho withholding reported on W-2s and the amount remitted on withholding returns filed during the year. The second report is due by the last day of February. This bill combines the two filings into a single return which is due on the last day of February.

Chairman Hill asked when the W-2s are due to the federal government? **Mr. John** answered that this bill corresponds with the date they are due. They do have until the end of March if they are filed electronically and there is a subsection referring to electronic filing.

MOTION: **Vice Chairman Corder** moved to send H 344 to the Senate floor with a do pass recommendation. **Senator McKenzie** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Senator Corder will sponsor H 344 on the Senate floor.

H 345 **Mr. John** said that H 345 corrects an erroneous cross reference between two sections of the Idaho Code. In 2006, the Legislature enacted H 433 which moved some text then in *section 63-3044, Idaho Code*, to *section 63-3045A, Idaho Code*, relating to the requirement that the Tax Commission make a record of assessments. The 2006 bill neglected to correct a cross reference to *section 63-3068, Idaho Code*. This legislation corrects the oversight.

MOTION: **Senator McKenzie** moved to send H 345 to the Senate floor with a do pass recommendation. **Senator Siddoway** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Senator McKague will sponsor H 345 on the Senate floor.

H 346

Mr. Spangler stated that this bill relates to unclaimed property. It amends the section of Idaho Code that provides the STC authority to administer the tax. It eliminates an inconsistency in the statute relating to interest rates. When the Uniform Unclaimed Property Act was adopted in 1983, it incorporated provisions of the Idaho Income Tax Act. That section is being amended by H 346.

When incorporating the income tax enforcement provisions, the section inadvertently included the subsection of the income tax law that provides an interest rate on delinquent payments. This created a duplication since the unclaimed property law already provided a different interest rate. This bill eliminates the duplicate interest rate by excluding reference to the rate in the Idaho Income Tax Act.

MOTION: **Senator Siddoway** moved to send H 346 to the Senate floor with a do pass recommendation. **Senator Stegner** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Senator Siddoway will sponsor H 346 on the Senate floor.

ADJOURNED: There being no further business, **Chairman Hill** adjourned the meeting at 3:45 p.m. until January 31, 2008 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** January 31, 2008
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu
- MEMBERS ABSENT/ EXCUSED:**
- NOTE:** The sign-in sheet, testimonies, and other related materials will be on file with the minutes in the committee's office until the end of the 2008 legislative session after which it will be retained with the minutes in the Legislative Library.
- CONVENED:** **Chairman Hill** called the meeting to order at 3:00 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.
- MINUTES:** **Chairman Hill** introduced Royce C. Chigbrow, Gubernatorial Appointee to the Idaho State Tax Commission (ITC). **Commissioner Chigbrow** introduced Sam Haws and Tom Katsilometes, both Idaho State Tax Commissioners.
- Commissioner Chigbrow** reviewed his personal history and professional qualifications. His experience lies both in the private and public sector. He served in a variety of city, county and state positions. He was a partner in a CPA firm until retirement in 2007 after actively participating in 43 tax seasons. **Commissioner Chigbrow** said he has found the last nine months serving on the ITC to be a very satisfying experience.
- Senator McKenzie** asked if the commissioners focus on a specific area of the tax law? Have you found the area you are interested in? **Commissioner Chigbrow** responded that each commissioner specializes in a certain area of the law: Commissioner Katsilometes in property tax and county support, Commissioner Haws is in charge of the sales tax, Commissioner Grant is in charge of individual income tax, and I am the commissioner in charge of corporate income tax and fuel tax.
- Senator McKenzie** asked, with respect to fuel tax, did you have any input into the agreement made with the tribes regarding their collection of fuel tax? Do you have an opinion about that issue? **Commissioner Chigbrow** replied that overall the ITC staff had input and they are very well qualified in that area. Personally, he was kept abreast throughout the process but the staff did the work.
- Senator Langhorst** stated that he appreciated Commissioner Chigbrow's service to the state. As you are probably aware, the ITC is required to be

balanced for political purposes. There should be no more than two members from the same party. Is it safe to assume that this is a Republican political affiliation? **Commissioner Chigbrow** answered that his affiliation is Republican.

Chairman Hill thanked Commissioner Chigbrow and Commissioners Haws and Katsilometes for coming to the Committee meeting. Voting will take place at the next meeting on February 5, 2008.

Chairman Hill introduced Julie Pipal, Idaho Transportation Department (ITD).

Ms. Pipal introduced Phil Demosthenes, a Senior Planner specializing in Access Management with Parametrix Consulting. Mr. Demosthenes has extensive experience in highway access design and research on an international basis.

Chairman Hill recognized that Representative King was in attendance.

Mr. Demosthenes opened his presentation by stating that Access Management is not just the preservation of highways but is a big issue from a safety standpoint. The problem facing Idaho and other states and municipalities is increasing growth which means more traffic volumes, congestion, delays, and less mobility. These issues are partially the result of increased highway construction costs, maintenance costs, decreasing buying power, and social, economic, and environmental impacts. **Mr. Demosthenes** stated that there is no such thing as a safe access. National statistics show that intersection crashes represent over 55% of all traffic crashes. The goal of Access Management is to:

- keep private access off arterial roadways
- separate turning vehicles from through traffic
- install good turn lanes
- reduce areas of expected conflict encounters (turn signals)

When access principles are applied to a specific corridor, crashes are reduced by 30-60 percent and capacity increases by 20-40 percent.

Most access programs have three major elements: 1) Access location and design standards, 2) Access categories, and 3) Access Management Plans. This results in fewer accidents, preserves highway function and performance, increases roadway life, maintains market area, provides reliable travel times and produces a smoother traffic flow. This all revolves around a partnership between developers, communities and transportation agencies. Access Management is about balance between land owners, developers, industry, retail outlets, and highway planners.

Senator Siddoway asked when there is a five-lane highway system with two outside lanes dedicated to moving traffic and the interior lane has a turn zone, although it facilitates the movement of traffic, does it increase or decrease the accident rate? **Mr. Demosthenes** said that left turn lanes decreased the accident rate but when traffic increases to 25,000-30,000 cars a day, those

rates increase dramatically.

Highway agencies react to whoever is making development decisions. It is all about land use. If the research and planning can be done early, it will prevent curing a deficiency in the future.

Representative King asked if Mr. Demosthenes had seen the new plans for the Vista and Orchard interchanges. Is the proposal for a light in the middle of the intersection. **Mr. Demosthenes** said it is a Single Point Interchange (SPIE)—meaning one signal.

Senator Bilyeu asked about the use of roundabouts. **Mr. Demosthenes** said that modern roundabouts, if designed correctly, can reduce injury accidents by 95%. This is a viable method to get rid of signals. If a roundabout is not built right, traffic cannot flow smoothly. If it is constructed correctly, traffic never stops. The main concern is with the blind and finding a way to move foot traffic across the street.

Senator Langhorst wanted to know if, when an area is developed such as State Street with all of its access points, can it be changed? **Mr. Demosthenes** said it can be changed but it means that the highway department has to develop a level of trust with the community that the improvements will be positive.

Senator Langhorst asked if these types of techniques are going to be used at the Life Style Center in Meridian? **Mr. Demosthenes** stated that part of the discussions with Meridian is how many access points they should have. Meridian was one of the first communities in Idaho to establish the ten mile spacing requirement.

Senator Heinrich asked what happens when a county ordinance prohibits shared driveways? **Mr. Demosthenes** responded that it was an educational process to update those ordinances. Practices that once worked do not work now.

Vice Chairman Corder asked how Idaho compared with other states in our eagerness to embrace new ideas and our willingness to make changes that seem extraordinary. **Mr. Demosthenes** said that about twelve states have access management systems—Idaho is one of them.

Senator Langhorst wanted to know if there was a need in state code to encourage local governments to implement access plans. Are there impediments to making statutory changes? **Mr. Demosthenes** responded that there probably are not any impediments but if there was no encouragement, then changing laws would not be productive. Transportation departments must have authority to enforce the statutes.

Ms. Pipal talked about what ITD is doing now and what they should be looking at for the future. ITD needs to address congestion and at this time they have no legislative authority to make changes.

Senator Langhorst asked about the routing of State Street through Eagle. **Ms. Pipal** responded that the bypass around Eagle was progress. However, leadership in Eagle changed and progress was reversed.

Representative King asked if the rumor was true that Chinden may become an arterial with access roads. **Ms. Pipal** answered “no.”

Mr. Demosthenes went on to explain that when an access management plan is developed correctly and ITD goes out to get the permits, they are dealing with property rights and need legislative authority to pursue the plan.

Senator McKenzie asked if ITD had a proposal to the legislature to obtain that kind of authority? **Ms. Pipal** stated that they have permission from the Governor’s office to work with legislators on this issue to develop a proposal. **Senator McKenzie** asked Ms. Pipal when this legislation might be ready. **Ms. Pipal** stated it may be possible to have it ready this year.

Senator Siddoway talked about the complexity of dealing with private property rights and access issues and how many people may be involved in putting together the alliances that would make the plan work. **Mr. Demosthenes** stated that the Colorado legislation was proposed in 1979 and did not pass until 1981. The legislation must be crafted to find a balance between all parties involved.

Representative King asked if the access plans included landscaped medians and landscaped areas in parking lots. **Mr. Demosthenes** said that landscaping was part of the plans.

Vice Chairman Corder thanked Mr. Demosthenes and Ms. Pipal for the information presented to the committee.

ADJOURNED:

There being no further business **Vice Chairman Corder** adjourned the meeting at 4:15 p.m. until Tuesday, February 5, 2008 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: February 5, 2008

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, and Bilyeu

**MEMBERS ABSENT/
EXCUSED:** Senator Langhorst

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 Hill** called the meeting to order at 3:05 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.

**GUBERNATORIAL
APPOINTMENT:** **Senator McKague** moved to accept the appointment of Royce C. Chigbrow to the State Tax Commission. **Senator Siddoway** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Senator McKague will sponsor Mr. Chigbrow.

H 349 ***Relating to Veteran Services: Requesting a check-off box on State Income Tax returns for donations to the Idaho Division of Veteran Services.***

Jim Adams, Administrative Support Manager, Division of Veteran Services, presented this legislation that would add a check off block on the Idaho State Income Tax forms to benefit Veteran Services. The funds from the check off would be used for veteran's programs that are either not funded or the need exceeds the funds available. This is also a good way for Idaho's citizens to show their support for veterans. **Mr. Adams** said he has talked with the Children's Alliance, another group that has a check off box, and they didn't see this as a conflict with their organization. There would be an advisory committee formed that would manage the funds and work with the Administrator of Veteran Services to determine where the funds will be spent.

Chairman Hill asked how much money would be raised? **Mr. Adams** responded that there were approximately 135,000 veterans in the state and they are expecting \$50,000-\$60,000 in the first year. **Chairman Hill** asked how the committee would determine how these funds would be

used? How will the services be chosen? Will the committee include representatives from across the state? **Mr. Adams** said that there would be representatives from service organizations, such as VFW and Civil Veterans Association. Also, there would be a financial advisor that would come from the Veteran Services office. **Chairman Hill** asked if the board would be compensated in any way or would it be all volunteer service? **Mr. Adams** answered that it would be volunteers.

MOTION:

Senator Bilyeu moved to send H 349 to the Senate floor with a do pass recommendation. **Senator Siddoway** seconded the motion.

Senator Stegner stated that he had nothing but the highest regard for the veterans. However, he cannot, in good conscience, vote for a continual list of special favors for special friends to be put on the Idaho Income Tax Form.

Dan John, State Tax Commission, stated that there are currently four that are operable. Others that have used the check off have not raised the required amount of funds to remain on the tax form. **Chairman Hill:** Do these go away permanently if they don't meet the criteria? **Mr. John** said that once they are removed they cannot get back on without going back to the legislature.

Senator Stegner said that he could see no end in sight for various worthwhile organizations to continue to come to the legislature and ask for this special treatment. It is impossible for the State of Idaho to consider all of these requests. The only possible solution would be to let everyone on or nobody on. He cannot support this bill.

VOTE:

The motion carried by a roll call vote.

Senator Bilyeu will sponsor this bill.

H 357

Relating to the Sales and Use Tax Exemption for Prescriptions: Updates and amends the Sales Tax Act to clarify exemptions.

Ted Spangler, State Tax Commission, stated that H 357 deals with sales tax and, specifically, it deals with prescription drugs and other medical related items that are made available only through a prescription. When this law was enacted, physician assistants were not included with the list of people authorized to write prescriptions. Since this bill was enacted, there have been changes in the law relating to that subject. Now, physicians' assistants are authorized to write prescriptions. The failure to address that in this code section creates a question as to whether those prescriptions are exempt from sales tax. This bill recognizes that licensed physicians assistants' are authorized to write prescriptions that are exempt from sales tax bringing the law into conformity with general understanding and practice.

The other change has to do with dental prostheses or orthodontic appliances. Fillings were specifically excluded. This has caused some problems in the application of this statute. The application is uneven. The Tax Commission is proposing that fillings, by definition, also be exempt under this statute.

Chairman Hill asked what other products or services would dentists collect sales tax on? **Mr. Spangler** said his only experience had been the purchase of an electric toothbrush.

Chairman Hill commented that, in the past, there was some trouble with dentists and orthodontists filing use tax returns. Maybe leaving the sales tax on fillings where they had to file a sales tax form would be a reminder that they also had to file a use tax form and, in addition, were liable for use tax on many of the products purchased from out of state. **Mr. Spangler** replied that the State Tax Commission put together a project to study dentists and dental labs and related activities. This was done to get general compliance in the industry. Mr. Spangler will have to get back to the Committee with the results of that study.

MOTION: **Senator McKenzie** moved to send H 357 to the Senate floor with a do pass recommendation. **Senator Siddoway** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Senator McKenzie will sponsor this bill.

H 358 ***Relating to Taxes on Cigarette and Tobacco Products: Updates items related to taxes on cigarettes and tobacco products.***

Dan John, State Tax Commission, brought H 358 before the Committee. This bill deals with the cigarette and tobacco taxes and other tobacco products (OTP) taxes that are collected by the State Tax Commission. There are three changes in this bill: 1) Changing the practice of reporting “no cigarette tax due” to “no cigarette activity reportable.” There are wholesalers who do not report any tax but have a large amount of cigarette activity, for instance, sales to a military facility. A cigarette stamp is required but tax is not collected. The statute says that if there was no tax reported for a period of 12 months or more, their permit would automatically expire. This change will show that there is permitted activity even though no tax is collected and the permit will stay in effect.

2) This change deals with OTPs. The tax on OTPs is based on the wholesale price, it is not a weight or unit tax like the cigarette tax. The current law opens an avenue for manufacturers to sell products to related parties for much less than the wholesale price thus driving the amount of tax down. This proposal to change the statute says that wholesale sales price means the established price for which a manufacturer sells tobacco products to a distributor that is a non related person as defined in *section 267, Internal Revenue Code*. This will keep the manufacturing company from setting up a subsidiary company in Idaho as a wholesaler and selling a product at much less than the normal wholesale price for the purpose of lowering the tax.

3) Deals with the OTP tax and will establish a use tax on persons who purchase and import these products into Idaho but have not paid the tax.

Senator Siddoway asked if tobacco products that are brought into the state of Idaho have to be stamped with federal and state stamps or do they have to be stamped at all? **Mr. John** stated that OTPs do not need a state

stamp.

Vice Chairman Corder: How will the use tax reporting be enforced? **Mr. John** said there were a couple of ways. One is concerned neighbors sometimes report to the Tax Commission. However, the main source of information is received through a federal law called the Jenkins Act. If cigarettes or tobacco products are sent across state lines, they are supposed to be reported to the states. The state gets some of those reports. It is not a perfect system.

MOTION:

Vice Chairman Corder moved to send H 358 to the Senate floor with a do pass recommendation. **Senator Heinrich** seconded the motion.

VOTE:

The motion carried by unanimous voice vote.

Senator Stegner will sponsor this bill.

Chairman Hill announced that the "Origination Clause" was not going to be discussed today but will be on the agenda for February 12. A copy of the Attorney General Opinion 99-2 was distributed to the Committee members for their information.

ADJOURNED:

Chairman Hill adjourned the meeting at 3:49 p.m. until February 6, 2008 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: February 6, 2008

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Corder, Senators Stegner, Siddoway, Heinrich, McKague, and Bilyeu

**MEMBERS ABSENT/
EXCUSED:** Senators Langhorst and McKenzie

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 Hill** called the meeting to order at 3:00 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.

MINUTES: January 30, 2008 and January 31, 2008

MOTION: **Senator Heinrich** moved to accept the minutes of January 30, 2008 as written. **Senator Bilyeu** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

MOTION: **Vice Chairman Corder** moved to accept the minutes of January 31, 2008 as written. **Senator Bilyeu** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

RS 17738C1 ***Relating to Disposal of County Property with intent to change the current tax deeding process.***

Senator Jorgenson introduced Representative Phil Hart and explained that they have been working very closely with Donna Peterson, Payette County Treasurer and Tony Poinelli, Idaho Association of Counties to develop this piece of legislation.

Representative Hart stated that he has been working on the tax deed issue for about four years. A tax deed is filed against a property when the taxes are three or more years delinquent. Once there is a tax deed, the property is sold at public auction. Current Idaho law says if a property is sold at public auction, any residual above the outstanding mortgage, liens, taxes, and expenses incurred to process the sale (i.e. auction, filings, etc) goes to the various taxing districts within the county. The owner gets nothing.

This bill would return any surplus funds that are left over, after the county has been made whole and any other liens or expenses have been paid, to the owner of the property.

The way Idaho Code is set up today, there is a constitutional issue involved concerning a "taking." Although the courts have upheld the current practice, this needs to be corrected.

Senator Bilyeu asked what the objections were last year?

Representative Hart said that he and the counties had not come to an agreement on this issue. However, they met during the summer and the counties are now co-sponsoring this bill. **Senator Bilyeu** repeated her question. **Representative Hart** said that they just hadn't come to a "meeting of the minds." What is new this year is to change the three year waiting time before the tax deed process starts to a two year waiting period. This was at the request of the counties.

Chairman Hill explained that this was a print hearing and there would not be any public testimony. **Chairman Hill** thanked Donna Peterson and Tony Poinelli for attending this hearing, and, Representative Hart and his colleagues for putting together this piece of legislation as requested by this Committee last session when a similar bill was presented.

MOTION:

Senator Heinrich moved to send RS 17738C1 to print. **Senator Bilyeu** seconded the motion.

VOTE:

The motion carried by unanimous voice vote.

H 359

Relating to Aircraft Engine Fuel Tax to increase tax on aviation gasoline and jet fuel.

John DeThomas, Administrator, Division of Aeronautics, Idaho Transportation Department, introduced H 359 amending Idaho Code to increase the excise tax on aviation gasoline and jet fuel. The Division of Aeronautics is a dedicated fund organization designed to foster and develop aviation in the state by providing funding grants to three levels of airports: (Federal Aeronautics Administration (FAA))

- Seven Large Primary Airports-Commercial Service
- Thirty-one General Aviation Airports-Eligible for FAA Grant Funding
- Twenty-eight Small Airports-Not Eligible for FAA Grant Funding

The Division directly operates and maintains thirty airstrips in remote areas.

About 80% of the revenue comes from aviation fuel tax which has not been increased since 1991. Inflation and increasing needs has forced a termination or reduction of programs. The small community airstrips that do not receive FAA monies are most in need of State funding.

By raising the excise tax on aviation gasoline to 7¢ and jet fuel tax to 6¢ per gallon, there would be a 14% increase in funding annually.

Chairman Hill asked if there was a reason for a different tax for the two fuels? **Mr. DeThomas** said that the original tax structure was set in 1974 and he couldn't answer that question but he would get that information

back to the Committee.

Mr. DeThomas said there has been concern voiced that the increased tax would cause customers to transport fuel into the State, reducing fuel sales. There would not be enough savings to make that cost effective.

The FAA program is dependent upon current proposed congressional action on the FAA Reauthorization Act. The local and state match for federal grants was 10% until 9/11 when the match was reduced to 5% which expires in 2007. If the act is passed, the match will go back to 10% requiring more State money to equally share that match with the local airport sponsors.

Senator Stegner received a communication from a person who urged voting against this legislation. Their argument was that some of this money would go to the State aviation aircraft pool and that would have State government aircrafts competing with private enterprises. Your presentation indicates that most, if not all, of this money is going to airports across the state in terms of assistance for maintenance. Is that correct? **Mr. DeThomas** answered not exactly. The three planes in the state pool are all old. These planes are paid for by funds transferred from other government organizations that use them. They provide emergency response services that cannot be provided by commercial carriers as well as transportation to other branches of State government.

Senator Bilyeu said she has also received letters of concern that the State is in competition with private carriers. **Mr. DeThomas** said that they can provide services to any State government agency, they don't compete with commercial airlines but they can provide cost effective services to smaller areas that do not have commercial airline service. In some cases, they can provide emergency transportation where a charter carrier could not. **Senator Bilyeu** asked for an instance where the state might provide services for the Department of Education. **Mr. DeThomas** gave an example of the most recent instance of a government agency using these aircraft -- the Public Utilities Commission. The Education Department has not been big users but they did provide transportation for the University of Idaho when the President of the University needed to go to an area where he was not able to get a charter flight. He normally uses a charter but could not get one this time.

Senator Bilyeu asked if a lesser rate was charged to use a State plane than would be charged by a private provider. **Mr. DeThomas** stated that they may charge slightly less than a commercial carrier because, for one reason, one plane came from the army for free and they don't have to recoup any money for a capital expenditure.

Senator Heinrich asked if any of the proposed increase in funding would go to the back country airstrips. **Mr. DeThomas** said a small amount of those funds would go towards back country airstrips. There are other efforts with The Idaho Airstrip Network made up of the US Forest Service, Idaho Aviation Association, and other government and non-government agencies to combine resources to maintain those airstrips. Currently those airstrips are being maintained by two employees and a significant number of volunteers.

Vice Chairman Corder asked if the State is exempt from tax on aviation fuel. **Mr. DeThomas** said he could not answer that. The fuels are applied to the distributor of bulk fuels and he suspects that they are paying those taxes.

Chairman Hill asked what other state and/or federal taxes are on these fuels? **Mr. DeThomas** the federal tax on avgas is 19¢ and jet fuel is 22¢ a gallon. Those are the only taxes applied in Idaho.

Testimony in Opposition of H 359.

John Blakley, Owner, Avcenter, Inc. Mr. Blakley is representing his business and the Idaho Business Aviation Association Board of Directors in opposition to the tax increase. There are several reasons, for one-gas is really expensive. We have historically high level prices for both avgas and jet fuel. His company's fuel sales are down. Partly because it is a harsher winter than usual but they were down before the cold weather hit. If they sell less fuel, all areas of the business suffer; maintenance, flight instruction, and the charter business. In light of the high cost of aviation fuels and the apparent economic downturn, there is a lot of opposition to this tax increase. Also, the FAA Reauthorization Project that was referred to has two schemes attached to it. 1) User fees where a per segment tax or fee is charged while earthbound, and 2) an increase in aviation fuel. The national aviation organizations are opposing user fees.

Mr. Blakley is concerned that the King Air plane the State owns is not funded at a breakeven level by the users. An aviation fuel tax will help to subsidize the current State aircrafts that compete with what private aircraft does. We think it is OK for the State of Idaho to have an airplane but it is not paying for itself at \$720/hour. All programs have scaled back since the budget has tightened but the State's fleet use of aircraft has stayed the same or probably increased as they see what a valuable tool an airplane can be. The perception is, whether it is true or not, a tax increase will subsidize the airplanes that compete with private business. The aviation community would probably support a tax increase if it could be assured that it is not a subsidy for competing aircraft. Mr. Blakley's business owns two King airplanes and it costs \$952/hour to operate that plane before they hire any pilots. He realizes they do have capital costs associated with their plane. The State needs to be very careful that they are charging real dollars for their airplane before they ask private businesses to pay more money into the fund.

Vice Chairman Corder asked Mr. Blakley if he would be more content with the tax increase if the State were charging \$875/hour. **Mr. Blakley** thought the tax increase could be sold that way. This issue has been building up for a long time since people lost business they used to do for the State of Idaho. However, most businesses can see the advantage to the State to have this service available. They just need to see that the State is charging what it actually costs to provide the service.

Vice Chairman Corder asked if there is another alternative for increasing revenues other than the gas tax. **Mr. Blakely** said they would prefer to have business and volumes improve. They would like to see the Division of Aeronautics help private business struggle out of the hole they are in.

The Division of Aeronautics is a partner with them and they are not comfortable being in an adversarial position because they work together on many issues.

Senator Siddoway referred to a chart that showed fuel prices in Denver were much higher than those in Idaho. Why is there such a big discrepancy between the states? Are Denver's taxes that much higher? **Mr. Blakley** stated that Denver Intl. prices are much higher because it is a high cost airport. The Idaho rate is much more in line with what fuel is costing right now.

Testimony in Support of H 359.

Bill Miller, Vice President Governmental Affairs, Idaho Aviation Association (IAA) commented in support of H 359. The IAA is a private organization. Membership is local and reached 1000 this last year. He gave a brief synopsis of his experience in the aviation field.

Mr. Miller stated that the reasonable construction cost index doubled between 1990 and 2007 while fuel tax has remained the same since 1991. Whatever the Division of Aeronautics is doing for airports throughout the State is getting smaller and smaller. This is the reason the State Finance Association Board of Directors voted unanimously to support H 359. The IAA membership feels that this is a tax they would be willing to pay so that aeronautics programs, which they see mainly as the airport improvement projects, would continue.

Mr. Miller touched on his experience while Administrator of the Division of Aeronautics with the "aviation pool." Although they didn't have the same plane, they went through the same process of doing interagency billings. They totaled up the costs and revenues and determined the flight charges and charged the amount that it cost to fly the aircraft. They were very sensitive to the argument about being in competition with the private sector.

If the FAA Reauthorization Project is passed with user fees, those fees will be onerous. There is an effort nationally to see to it that there will not be user fees on aviation. Small companies will be paying for services they never use. If those fees come into effect, there will not be any extra benefit to the aviation system as we know it here in Idaho. While, in comparison, this small fuel tax fee will come directly to Idaho airports. I sincerely and respectfully hope you will consider giving H 359 a do pass.

Chairman Hill asked when was the last time registration fees were raised? **Mr. Miller** said that was also in 1991—it was actually a realignment and changed the fee to 1¢/pound of maximum gross weight as opposed to a system called "useful load."

Testimony in Opposition of H 359.

Gordon Trounson, Fixed Based Operations Manager, Western Aircraft. **Mr. Trounson** stated that they are big advocates of the Division of Aeronautics. It just seems like this is a bad time to promote a tax increase. **Mr. Trounson** agrees that the fees being charged for chartering the State's King Air should be adjusted—they are well below what a comparable fee would be in the Boise area. As far as fuel prices are concerned, the bigger the metropolitan area, the higher the prices will be.

There would be more revenue generated by more flight hours rather than an increased tax rate.

NOTE: There was also a letter of testimony opposing H 359 from Melidee Wright, General Manager, Sun Valley Aviation, Sun Valley, Idaho

Julie Pipal, Idaho Transportation Department (ITD), stated that the dollars generated by the increased tax would be spent directly on second and third tier and back country airports. These funds are not used for the air pool. The air pool is funded primarily by interagency charges. **Ms. Pipal** did say that they should always be looking to see how their businesses could be run better. However, the upkeep, maintenance and service the Division of Aeronautics provides general aviation is not a detriment to the state.

Ms. Pipal said because we are unable to give grants, we are unable to provide tools and supplies that have been available in the past to all of the State's public airports. The increase in search and rescue training is really an important function for the State replenishing things like The Idaho Airport Facilities Directory and Idaho Aeronautical Chart which are critical to pilots who are out there flying. All of these things compliment the extensive volunteer effort that goes into maintaining the system. The fuel tax increase that is brought before you is for those things, not to manage the air pool.

Vice Chairman Corder asked Mr. DeThomas about the mission of the Aeronautics Board. Do you see your mission as working to increase the volume of the number of pilots using Idaho airports? **Mr. DeThomas** stated that their guidance is statutory. The Aeronautics Division is to foster, encourage, and develop aviation in the State. That means anything that encourages aviation such as training pilots, providing airports with financial and technical support, and focusing on helping aviation of all types in the state whether commercial, pilot aviation, or tourism.

Vice Chairman Corder stated that it might alleviate some concerns by trying to encourage aviation that come to Idaho—it has been a long time since there was any advertising about Idaho aviation. Also, regarding reimbursement cost fees, it would alleviate some fears if there was a confidence that an appropriate reimbursement fee was being charged when using the State's aviation pool. Would you be able to do that—to make those fees equitable? **Mr. DeThomas** replied that they could do that. They are currently in the process of reviewing the costs of their airplanes. He will get those numbers to the Committee.

Senator Bilyeu said she is still concerned about competition with private

charter services. Could you get a list of the state agencies that have used the State's services for the last two years, who they were and the reimbursement fee? **Mr. DeThomas** stated that they try to operate like a charter company but do not try to compete with the private charter companies. They have to have authorization to fly anyone on government business and they offer a cost effective service when there might not be another alternative available.

Senator Stegner clarified that there must be someone with authority set by the Senate to authorize expenditures for anyone to use the State air service. Not all people have that ability.

MOTION:

Senator Stegner moved to send H 359 to the Senate floor with a do pass recommendation. **Senator Siddoway** seconded the motion.

Senator Stegner said that he agreed the timing is not the best but there doesn't seem to be an opportunity in the future that would be a good time. Aviation is faced with the same situation as Idaho highways in supporting its infrastructure. It has been represented that this money is going to be used primarily for airport improvements and grants. This is our best effort to maintain a quality airport system in the State. The very small amount of this increase is justified at this time.

Chairman Hill stated that he will oppose this motion. No one is questioning the value of the organization. Even those opposing this increase are grateful for what it is doing and it is important to get the funding in order to do it. However, it is completely inappropriate for a state agency to compete with the very people that the statute says it is supposed to be helping. The agency should not go through a big analysis to see what the cost is, just go out to the market and see what is being charged and that would be appropriate. No matter how the vote goes, I would invite you back next year to let us know if any progress has been made. Also, this is the easy way out. Raising taxes is a way to get the most revenue. I still don't know why there is a higher rate for aviation fuel than for jet fuel. I don't know why they have to be different. We need to look at that and also at other ways to increase funds, i.e., registration fees. I do not question the need for the money but I do share some of the concerns that have been expressed.

VOTE:

The motion carried by a roll call vote.

Senator Stegner will sponsor this bill.

ADJOURNED:

Chairman Hill announced that Thursday, there will be bills regarding disclosure of real estate sale prices. The meeting was adjourned at 4:13 p.m. until Thursday, February 7, 2008 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** February 7, 2008
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu
- MEMBERS ABSENT/
EXCUSED:**
- 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 Hill** called the meeting to order at 3:02 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.
- MINUTES:** **Senator Heinrich** moved to accept the minutes of January 29, 2008 as written. **Senator Siddoway** seconded the motion.
- VOTE:** The motion carried by unanimous voice vote.
- Chairman Hill** announced that the first two bills are related and voting will be delayed until both have been heard. He welcomed Senator Keough.
- RS 17527** ***Relating to Transfer of Real Property and the disclosure of the sales price on some real estate transactions.***
- Senator Keough** reminded the Committed that two similar bills had been presented to them last year on the issue of sales price disclosure for certain real estate transactions. To start the process, the compromise bill was printed and posted on the internet so that, over the interim, interested parties could research and determine if alternatives might exist and then come back this session to address the problem. RS 17527 re-introduces the bill, word for word. Sales price information is still not available and, in fact, the availability has deteriorated. The Idaho Constitution requires that the property tax system will be based on market value. Assessors across the state have challenges trying to find out exactly what the market value is.
- Sales price disclosure is a tool that is used across the country to help assessors obtain market information that is combined with appraisal information to help in determining market value. In one county, the assessor had relied on the Multiple Listing Service (MLS) owned by local realtors. They were cut off from that service and now are missing a year of data. To rely on data from a private organization may make information

inconsistent. This legislation is an attempt to put the framework in place to allow the assessors to get consistent market value information so the taxpayer will be assured that there is fairness in how market value is determined. **Senator Keough** turned the podium over to Representative Wendy Jaquet.

Representative Jaquet stated that it is more important than ever to obtain sales price information because of the declining values. If the assessors do not have the reduced market values, they cannot lower the taxes. Because of inadequate information, there has been an increase in cost to the appeal process. One county had 3,000 appeals and actually addressed 2,500. Only 100 were upheld.

Representative Jaquet said that in her county they are seeing a trend of more reported sales on high dollar value property. The realtors say the high end homes are not appraised at the appropriate level and those homeowners are not paying their share of taxes while homeowners with homes that are more like each other, i.e., a subdivision, and have more reported sales are paying more than their share. Property taxes are supposed to be uniform. It is in the public interest to report sales. County commissioners across the State are saying this issue is a high priority.

Senator Stegner asked if a \$300 fine is going to be enough?

Representative Jaquet said that it would be a strong deterrent in most places.

Chairman Hill asked who is responsible for filing the property transfer certificate with the county assessor? **Representative Jaquet** responded that it is the realtor on behalf of the purchaser.

Chairman Hill stated that it appears this information is not going to be available to the public but only to the assessor. If that is the case, how is the problem reconciled if a taxpayer wants to dispute the value placed on his/her property and the assessor says they have "other" information that is not available to the general public? **Representative Jaquet** referred to the confidentiality portion of the bill. The idea is to keep this information confidential since that has been a big issue in the past.

Senator Siddoway asked if a developer purchases land with an old house on it and the development progresses, what happens to the value of the old original farm house? Is it protected from being compared to the value of the newer homes? **Representative Jaquet** responded that the land will increase in value but the house will probably remain the same. Uniform taxation demands that the land increase in value. This bill will not necessarily keep people in their homes, but it will help a little bit. It is designed to put everyone on an even playing field. The assessor will have good information and cannot make subjective determinations.

Vice Chairman Corder is curious about during a downturn in the economy and there are fewer sales, are we going to be able to "catch up" in reassessing property? **Representative Jaquet** said that they won't be able to catch up, but they will be able to assure the taxpayer they will be getting to that neighborhood to get current assessments.

There being no further questions, **Chairman Hill** welcomed John Eaton, Idaho Association of Realtors to present RS 17753.

RS 17753

Relating to Real Estate License Law-clarifies that sale prices are not confidential client information.

Mr. Eaton stated that mandatory sales price disclosures is an issue he has been working on for the last few years. His focus has been to find a private sector solution to the problem. A group of MLSs owned by realtor organizations exist throughout the State. The question posed to these groups was "what do you want us to do to fix this problem?" The problem is very real because we are not getting accurate data and it concerns everyone. It was decided to use a two prong approach to the problem.

The first is the RS you see before you. This legislation aims to attack the issue in areas like Blaine County where about 30%-40% of the actual sales price is lost. Not having accurate data is a problem for the MLS data collection system as well as the assessors. Although the current law states that this information can be generally disseminated in the marketplace, it has been interpreted to mean that the information can go to the MLS system but it must be kept confidential at that point. That probably is not the intent of the law but that is the way it is being read at the moment. This RS changes the current wording and adds that the "sold" price is not confidential client information. That clarifies the issue and allows the MLS to force its members to provide that sales information to them.

The second part of the approach is the private sector fix. The MLS members have, at times, been reluctant to give access to the local assessors. These MLS groups would have to make a change in their bylaws to give the assessors the sales information they need. At this time, most of the counties in the State have access to this information. There are some good contracts in place and the language in those contracts will be used for the MLS bylaw changes. If the counties have licensed appraisers on staff, they also have access to the MLS data system. This would provide access to a data system that the assessors would not have to pay for. MLS listings account for about 85-95 per cent of sales in a given county. This plan should pass the MLS Board at their meeting in April.

Vice Chairman Corder wanted clarification on the part of the agreement that would tell the assessors how they could use the information. How are you going to use a private document to tell a government employee how they can or cannot conduct their business? What kind of punishment is involved to a MLS member if they don't comply ?

Jeremy Pisca, Attorney, Evans Keane Law Firm, representing Idaho Association of Realtors, responded to these questions.

1) This would be a contract. Counties are no different than anybody else in that they agree to the provisions of the contract. These agreements identify that the MLS has a data base and establishes that the MLS will give information to the county assessor as long as the county assessor agrees to utilize it in a specific manner. The only requirement to the assessor is that it will not use the MLS information as the sole source of the assessment.

2) Punishment: In accordance with MLS rules, there could be fines. Also, in accordance with MLS rules, if those fines remain unpaid, there will be suspension or termination from the MLS. That is a major penalty.

That is why the private industry solution will achieve what everyone wants; to allow assessors some tools to better assess property.

Vice Chairman Corder – It is still a concern that the county would be put in a position of negotiating with a private entity in order for them to comply with the statute and they would not necessarily be negotiating from a position of strength. Why wasn't prong #1 completed before this RS was brought to the legislature? **Mr. Eaton** said that they meet twice a year and this legislation was not complete last September. They have been working with the Idaho Association of Counties to put some kind of form together with help from the Tax Commission.

Senator Bilyeu asked if this bill concerned MLS? **Mr. Eaton** said this bill concerns licensed real estate agents in Idaho who obtain sales price data. **Senator Bilyeu** asked how this would help counties who do not have MLS? **Mr. Eaton** said he didn't think there were any counties that are not covered one way or another by MLS. **Senator Bilyeu** asked how this helped the assessor get the information from spec builders and people who are not listing through MLS? That has been one of the problems with higher end properties. **Mr. Eaton** responded that the majority of the sales are going to be listed. You don't need 100% to be able to value houses at a market rate. A large number of comparables will allow the market values to be set. **Senator Bilyeu** commended Mr. Eaton for his efforts.

Senator Stegner stated that the Committee would soon be deciding whether to print this bill or the previous bill or both. If the previous bill is printed and goes before the legislature, is there any reason you would hesitate to send this bill forward? **Mr. Eaton** said they would still pursue this bill because there is still a concern about the previous bill and they could not support it.

MOTION RS 17527: **Senator Stegner** moved to send RS 17527 to print. **Senator Bilyeu** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

MOTION RS 17753: **Senator Stegner** moved to send RS 17753 to print. **Senator Corder** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

RS 17580 ***Relating to the Local Planning Act to provide for comments by affected persons on proposed confined animal feeding operations.***

Senator Langhorst explained that he was filling in for Senator Stennett. This is the same bill that was heard last year and was passed out of the Committee and the Senate but was held up in the body across the rotunda.

RS 17580 removes a citation from Idaho statute that looks at one area of public hearings and limits the testimony allowed in those public hearings to one mile. It is the only place in Idaho Code where this type of limitation is

placed on public testimony. By removing the one mile boundary, the county commissioners would have to hear people who were interested parties as defined in Idaho Code.

Chairman Hill asked if this bill is identical to the one heard last year. **Senator Langhorst** confirmed that it was. **Chairman Hill** questioned the reason for doing this again this year. **Senator Langhorst** said that this is a good piece of legislation. He believes the Senators were right in passing this bill and it should be pursued.

Senator Siddoway said he can't see where the bill will do what it is intended to do. Can you define *affected person*, as it appears in the bill, as opposed to *anyone* who wants to testify? **Senator Langhorst** said that the purpose is to make the definition for *affected person* the same as it is for other public hearings defined in Idaho Code.

Senator Siddoway said that an *affected person* must be someone with an interest in real property so it must be a land owner. If there is someone living in the area that would be adversely affected, would those people be denied the opportunity to testify if they do not own land? **Senator Langhorst** responded that there are many ways that a person can have an interest in real property, not just a land owner.

Senator McKenzie commented that the way the statute currently reads, at a minimum, people within the one mile limit must be heard. However, the county commissioners can hear from anyone as long as that group is included.

Senator Heinrich asked if Jerome County has changed the local land use ordinance? **Senator Langhorst** was not aware that it had been changed. If they had made changes, it still does not change the intent of this legislation.

Representative Jaquet said that Jerome County is considering changing their ordinance but they still have not voted on it. It is not just Jerome County, Ada County uses the same definition. **Senator Stegner** asked Representative Jaquet what is going to change in the body across the rotunda that would change the outcome of this bill. **Representative Jaquet** responded that with Jerome making a change, there will be a better chance of this bill getting through committee. **Chairman Hill** stated that, although this is an important issue, it is a concern that it would be a waste of the people's time if there was not some indication that the bill would pass both bodies. **Senator Langhorst** agreed with the validity of that point. We do have disagreements between the Chambers from time-to-time but this is a good, open government question. It doesn't set well that this restriction is in Idaho rules—this arbitrary limit where someone who lives 1.1 miles away from the affected area is excluded from testifying. It may not happen very often, but testimony is not allowed regardless of whether that person is affected or not.

Vice Chairman Corder commented that the first time this bill was presented four years ago, it opened up testimony to everyone and the legislation failed because it was too broad. This bill is a good compromise.

MOTION: **Vice Chairman Corder** moved to send RS 17580 to print. **Senator Bilyeu** seconded the motion.

Senator Siddoway does not agree with this bill. This is not an issue of fairness, it is an issue of the local board of commissioners being able to make decisions. They have the opportunity to allow testimony at hearings to be as narrow or as broad as they want to. This legislation takes away their authority. Everyone has to live within boundaries and many of those lines are arbitrary. Jerome County is working on this issue. The process works. To send this to the floor again is a waste of time.

SUBSTITUTE MOTION: **Senator Siddoway** made a substitute motion to return RS 17580 to the sponsor. **Senator Heinrich** seconded the motion.

VOTE ON SUBSTITUTE MOTION: The motion failed by roll call vote.

VOTE ON ORIGINAL MOTION: The motion carried by voice vote.

ADJOURNED: There being no further business the meeting was adjourned at 4:05 p. m until Tuesday, February 12, 2008 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** February 12, 2008
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Corder, Senators McKenzie, Heinrich, McKague, Langhorst, and Bilyeu
- MEMBERS ABSENT/ EXCUSED:** Senators Stegner and Siddoway
- 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 Hill** called the meeting to order at 3:10 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.
- H 387** ***Relating to Property Exempt from Taxation to clarify the exemptions for religious entities and extend that exemption to a religious LLC.***
- Chairman Hill** welcomed Senator Werk who presented this bill. **Senator Werk** explained that when Idaho Code was updated to include Limited Liability Companies (LLC) in 1994, not all areas of the Code were updated to allow entities to utilize LLCs. This bill addresses property tax exemptions that religious entities are allowed by applying to the assessor. The current law reads that religious organizations that would normally be exempt from property taxes in all other aspects are not allowed to use LLCs. Nothing is being changed as far as the structure of the requirements that a religious entity must meet, it is allowing the use of an LLC as well as a corporation.
- An LLC is flexible, is not as cumbersome as a corporation, cost less than a corporation to set up, and can be terminated at the end of its usefulness while a corporation lives on in perpetuity.
- Pastor Richard Demorest**, St. Michael's Episcopal Cathedral, spoke in favor of H 387. In October of 2006, St. Michael's Cathedral acquired a piece of property and applied for tax exemption as it had in the past and was summarily denied without consideration. The building was used for activities that qualified for the exemption but St. Michael's case was not heard because the building is owned by an LLC that St. Michael's created at the request of the lender expressly for the purpose of purchasing that building. The LLC was set up to keep it separate from other properties St. Michael's owns. The building has been used only for activities that would qualify for the tax exemption.
- Vice Chairman Corder** asked what assets were pledged for the loan? **Pastor**

Demorest responded that the collateral was the building itself.

Chairman Hill asked if an application under 501(C)(3) was filed so the entity could be treated as a charitable organization and contributions would be tax deductible by the Parish. **Pastor Demorest** said "correct."

Senator Bilyeu asked what the building had been used for by the previous owners. **Pastor Demorest** answered that it was the state library and then from 1978-2006 it was a law office.

MOTION: **Senator Heinrich** moved to send H 387 to the Senate floor with a do pass recommendation. **Senator Bilyeu** seconded the motion.

Senator Langhorst asked Ted Spangler, Idaho State Tax Commission, does this bill change the intention within Idaho Code of who should receive a tax exemption? **Mr. Spangler** stated that an LLC qualifying for tax exemptions would be required to meet exactly the same criteria as an individual or corporation. This bill extends the benefit to a newly created type of entity that wasn't recognized before. **Senator Langhorst** said this question was just for information for the committee and he favors this bill.

VOTE: The motion carried by unanimous voice vote.

Senator Werk will carry H 387 on the Senate floor.

H 360 ***Relating to Sales and Use Taxes to revise the definition of a "Retailer Engaged in Business in This State."***

Senator Little presented H 360. As a result of some Supreme Court decisions certain entities found a way to avoid collecting sales tax on goods that they sold in the state while not having a physical presence in the state. There is a "loophole" in Idaho law where an entity can set up double corporations for the sole purpose of avoiding the collection of sales tax on internet and catalog sales. Currently, there is no definition of nexus between retailers and on line sales venders. If those corporations have similar names and product lines, they accept returns, give refunds, and have similar ownership and control, then they are basically the same company. There are some corporations that have physical presence here but if you go to their website, they only collect sales tax in states where this nexus language exists.

John Watts, Idaho Chamber Alliance, testified in favor of this legislation stating that this bill will level the playing field.

Pam Eaton, President, Idaho Retailers Association (Assoc.), testified in support of H 360 stating that this is a fairness issue. The Assoc. agrees that this is good legislation and she would urge the passage of this bill.

MOTION: **Senator Langhorst** moved to send H 360 to the Senate floor with a do pass recommendation. **Senator Corder** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Senator Little will carry H 360 on the Senate floor.

Chairman Hill reviewed Wednesday's agenda and announced that there would

not be a meeting on Thursday. He introduced Ted Spangler, Idaho State Tax Commission, to talk about the "Origination Clause."

Mr. Spangler responded to a request to discuss the Attorney General's Opinion 99-2 written in 1999 by Alan Lance. The analysis for this document was done by Mr. Spangler. **Mr. Spangler** has updated this research to some extent, using more recent court cases.

Mr. Spangler observed, during his research, that there was very little jurisprudence across the country. There is an origination clause in the U. S. Constitution, and, because of that, many states have included such a clause in their state constitutions. **Mr. Spangler** reviewed a paper, written by Alexander Hamilton, that discusses the origination clause in the federal constitution and the reasons for that clause. Part of the reason dates back to English Common Law and the disputes that occurred between the King, The House of Parliament, and The House of Commons, who controlled the purse strings. These issues were reflected in the U. S. Constitution and the authority was put in the House of Representatives because they were the closest to the people.

Mr. Spangler went on to explain that Mr. Hamilton added another reason. Mr. Hamilton's paper said that this clause was also used as a method of balance. It offsets, for the House, some of the privileges of the Senate. Either body tends to get defensive if one or the other intrudes on its territory. Any differences of opinion that may occur tend to work themselves out in the inter-legislative relationships instead of going to court. This could be the reason that there is very little case law that can be used to set precedence and establish firm rules.

Mr. Spangler addressed the five questions that were addressed in the 1999 Opinion.

1) The language in the Idaho Constitution says that bills may originate in either house but may be amended or rejected in the other **except** bills for raising revenue shall originate in the House of Representatives. What is the consequence of violation? In 1922, in *Dumas v. Bryan*, the Idaho Supreme Court said "the violation of this section results in an invalid enactment." That is a strong consequence.

2) Can the Senate amend a House bill? The origination clause in the Idaho Constitution differs from the origination clause in the U. S. Constitution. The Federal Constitution says "all bills for raising revenue shall originate in the House of Representatives but the Senate may propose or concur with amendments as in other bills." Idaho's origination clause omits the words "the Senate may propose or concur with amendments as in other bills." That raises the question "Can the Senate amend a bill?" or must it simply vote the House bill up or down? The answer to that question appeared in a case from 1974 when it was determined that, yes, the Senate can amend a revenue bill. That was re-established in 2003 when a bill came out of the House raising the cigarette tax by ½% for one year but was amended in the Senate to raise the tax 1% for two years. The amendment was sent back to the House and the bill was enacted. **Mr. Spangler** went on to explain other methods whereby the Senate can initiate revenue raising bills. One of these, called a "Radiator Cap," was used by the Senate to raise the sales tax from 5% to 6% in 2003. **Chairman Hill** asked if these cases were litigated. **Mr. Spangler** answered that both were challenged. The first half of one case reaffirmed that the Senate could amend a House bill (a Supreme Court

ruling). However, it did not address the portion of the case related to the "Radiator Cap" amendment. **Mr. Spangler** said he could not find a case that addressed a "Radiator Cap" amendment either in Idaho or in other states. **Chairman Hill** asked if other states were doing similar types of amendments. **Mr. Spangler** stated that through conversations with people from other states, attorneys and others, and not through formal research, other states use some of the same methods.

3) Exactly what is a revenue raising bill as opposed to a bill that has an incidental effect of bringing in additional revenue:

- a) That is not it's primary purpose.
- b) Regulatory bill originating in the Senate where a fee is involved.

There have been many instances where a regulatory bill has originated in the Senate requiring a permit with an associated fee and those have been enacted without any question regarding whether or not they were "revenue raising." The majority rule in other states is "if the revenue raising provision is merely incidental to the major purpose of the bill.....it is not a revenue bill." The origination clause is intended to raise general revenue in the traditional sense. In Idaho, the Dumas case dealing with the Albion Normal School move to Burley, which was the major focus of the legislation, added a tax to fund that move. Idaho Court said it "won't do" to call this incidental. It really is a tax that goes to the general fund even though it is providing funding to accomplish the move. **Mr. Spangler** said there is another case, the Parson's case, regarding a bill originating in the Senate. Parson dealt with the distribution of earned Workmen's Comp funds after the recipient is deceased and has no heirs. The Senate legislation said the Workers Compensation amount would go to the general fund for the State of Idaho. That bill was challenged as raising revenue. The court said no, that is not a revenue bill, that is recognizing the historical right of the State to effect escheat. There is the Parson's case that is not a revenue bill and the Dumas case that is a revenue bill. Those cases may be resolved by pointing out that the tax that was levied in the Dumas case, was a general property tax, went to the general fund, and then, through appropriation from the general fund, funded the move. Idaho courts may feel constrained to take a somewhat more limited view of what can be called merely incidental revenue raising as opposed to being a revenue bill.

Chairman Hill asked if, in the Dumas case from 1922, the taxes were refunded. **Mr. Spangler** could only apply today's rules to that question. There is a mechanism in place for refunding those taxes.

Senator Langhorst asked, if there is a provision in Idaho law for a tax exemption that was created in the House, and it originated in the Senate, in your opinion, would that be revenue raising? **Mr. Spangler** - "That is his next topic."

4) There are two parts to the question of exemptions:

1. Idaho law has a provision that says the Legislature shall not impose taxes for the purpose of any county, city, town, or other municipal corporation but may invest, by law, such corporate authority to levy and collect taxes. Other states have said that laws that enable local government to impose taxes are not

themselves revenue raising bills. That issue has never come before Idaho courts.

2. What is the effect of something like defining the tax base, i.e., exemptions. Remember, exemptions shift revenue. A statute that has to do with defining the base is not a revenue raising piece of legislation, it only shifts the tax from those with the exemptions to those without.

Senator Langhorst asked if an exemption on sales tax was removed, would that, in effect, be raising the amount of revenue that came into the state? If you had a bill that decreased the tax rate and at the same time eliminated some exemptions so that the overall effect would decrease the amount of actual revenue raised, would that be a revenue raising bill?

Mr. Spangler -"That is the fifth point."

Chairman Hill asked if you are suggesting that a bill that originated in the Senate authorizing a local option sales tax would be constitutional? **Mr. Spangler** said that is what case law from other states suggests. Any legislation that enables local government to raise taxes are not revenue raising bills because the decision to impose that tax and the rates that are set are decisions made by local governments.

5) Reducing Taxes is significant and relates back to the 1922 Dumas case. This case actually relied on a 1880's case from Alabama that says "the subject matter is raising revenue whether or not you are raising or lowering that revenue." It is still legislation raising revenue even though it may be less revenue. That is about the only cases that exist on this subject. Pennsylvania and Ohio cases are marginally analogous but easy to distinguish. They say that decreasing revenue is not raising revenue. However, the Idaho court attached itself to the Alabama case in the 1922 Dumas ruling.

Senator McKenzie - if you have a bill that lowers the tax rate, it still raises revenue, but, what if the section of code that imposes a certain tax was deleted?

Mr. Spangler speculated that if you repealed the code, it would not be raising revenue so the origination clause would not apply.

Mr. Spangler closed by stating that there are two things that are known for sure:

1. The Senate cannot violate the provision of the statute by initiating revenue raising bills.
2. The Senate can amend a House bill but there is a nebulous question about the "Radiator Caps."

Other than that, there is the majority rule about incidentals that may not be as strong in Idaho as somewhere else. Legislation enabling local governments to raise taxes is not revenue raising and could be effective in Idaho but has never been tested. There is still the question about reducing revenue because of the Dumas case which refers to a 134 year old Alabama case. All that precedent may be so old, it may not be important.

Chairman Hill said that from a practical standpoint, the Senate does have some advantages. From the standpoint of originating a bill, it does have to come from the House, however, if the bill is amended by the Senate, it goes directly to the full body of the House. The Senate still has some options open to them.

ADJOURNED: There being no further business, **Chairman Hill** adjourned the meeting at 4:15 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: February 13, 2008

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Corder, Senators Siddoway, Heinrich, McKague, Langhorst, and Bilyeu

MEMBERS ABSENT/ EXCUSED: Senators Stegner and McKenzie

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 Hill** called the meeting to order at 3:05 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.

ANNOUNCEMENT: **Chairman Hill** announced that President Bush signed the Economic Stimulus Act of 2008 today. Dan John, Idaho State Tax Commission, has assisted Chairman Hill with the preparation of a RS so that Idaho statute will conform to that act. The issues that affect Idaho are:

- 1) Bonus Depreciation-Idaho opted out of this option in 2001
- 2) Section 179 Election to Deduct the Cost of Equipment in the Year of Purchase increases from \$125,000 to \$250,000.

If we don't adopt these changes, it will increase the paperwork with double depreciation schedules etc. But more importantly, we need to let Idaho citizens know whether or not the Legislature will adopt these changes so they can plan ahead.

Chairman Hill introduced Kerry Ellen Elliott, Idaho Association of Counties.

H 419 ***Relating to the State Tax Commission: To provide for a cadastral certification program and to make a technical correction.***

Ms. Elliott explained that "cadastral" is a professional term dealing with boundaries and township designations of land parcels. This bill formalizes the credentialing of county mappers who complete the courses and hours necessary to be designated as a cadastral specialist. This training is currently being provided by the State Tax Commission (STC). This duty will not be changed. This legislation is necessary to codify what they are already doing. The bill does not impose any new requirements on county mappers. Their participation in the STC training program is elective and based on county need.

Chairman Hill asked if this would affect those people who are not certified, for instance, part-time people? **Ms. Elliott** said this only allows them to receive professional credentials if they elect, or the county elects, to send them to the training program.

Senator Bilyeu asked if there weren't already programs in place where they could be credentialed? **Ms. Elliott** deferred that question to Dan John, STC. **Mr. John** stated that, although they do provide training to the counties, there are no designations or certifications. If H 419 is passed, the STC would draft rules to adopt some standards for giving credentials and certifications.

MOTION: **Senator Langhorst** moved to send H 419 to the Senate floor with a do pass recommendation. **Senator Bilyeu** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Senator Bilyeu will carry H 419 on the Senate floor.

H 420 ***Relating to the Payment of Property Taxes: To provide that counties may allow for payment of taxes by use of debit and credit cards and electronic funds transfers.***

Sharon Burke, Idaho Association of Counties, requested that the Committee approve HB 420 with a do pass recommendation. This legislation updates the code to accept debit and credit cards and electronic funds transfers. Currently, Idaho Code only allows for the payment of taxes by legal tender which is defined as currency, checks, and drafts. This amendment provides the options for alternate payment methods but does not require counties to accept them. **Ms. Burke** asked for questions.

Senator Heinrich asked how the counties would pay the fees? Fees were not addressed in this legislation. **Ms. Burke** said counties can do one of two things; fees can be passed directly to the taxpayer or they can budget to pay those fees. Currently, they use a third party vender who charges a per transaction fee paid by the taxpayer so they can accept payment in a cash form.

Senator Bilyeu said that when she was in the assessors office, they wanted to use these alternative methods of payment for all areas where licensing, registration, and drivers licenses were purchased. Is there coordination with all entities so that once the county uses these other methods of payment, then all entities can do the same? **Ms. Burke** supposed that smaller counties with these functions communicate better and could coordinate among the various entities. However, it may be more difficult with the larger counties. They need to explore this possibility.

MOTION: **Senator Heinrich** moved to send H 420 to the Senate floor with a do pass recommendation. **Senator Siddoway** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Senator Heinrich will carry H 420 to the Senate floor.

Dan John, Idaho State Tax Commission, presented a tax update showing

the source of local and state tax revenue and the portion of that revenue allocated to the General Fund. **Mr. John** also reviewed the appropriations coming out of the General Fund. Idaho was compared to neighboring states and to all states. **Mr. John** used national trend information that came from the Federation of Tax Administration and The Washington D. C. Study.

Mr. John's data showed that Idaho tax revenues amounted to \$4.4 Billion in 2007. The General Fund receives \$2.5 billion. The General Fund appropriations amount to about \$2.0 billion. Education receives the largest percentage at 61.7% and then Health and Welfare at 22.6%.

When looking at the overall tax burden, Idaho is below the national average but is relatively close to its neighbors except Wyoming is 32.7% over the national average. Fuel tax is one area where Idaho rates are above the national average. However, in the future, Idaho will be closer to the national average because other states have increased motor fuel taxes.

Idaho has a progressive property tax system and ranks below the national average until reaching an income level of \$150,000 then Idaho ranks 25th which is mid point. Idaho is slightly above the national average for individual income taxes. In comparison with neighboring states, Idaho, Montana, and Utah are close. Oregon is much higher than the three states and the national average. Nevada, Washington, and Wyoming do not have an individual income tax.

Chairman Hill asked how sophisticated are the studies? Do they look at rates or dollars? Do they consider credits? **Mr. John** stated that this is coming from census data based on receipts and the information is obtained from the Controller's office.

Mr. John dispelled the myth that sales tax goes to fund schools. Revenue derived from sales tax goes mainly to the general account, but there are some very large diversions. **Chairman Hill** said that his constituents tell him that they were told when the sales tax was passed, it would go to education. Are you saying that is not from the Legislature but came through fighting the referendum to take it off? **Mr. John** said that the state began putting more money from the general fund into education which came from sales tax, but it was never a dedicated revenue source. Indirectly, yes. Directly, no. **Mr. John** proceeded to explain what other non-school entities received funds from sales tax revenue.

Senator Heinrich asked if agriculture equipment comes out of the business inventory replacement segment? **Mr. John** responded that agriculture equipment is treated separately as a fixed-in-time amount that was set in 2001 when the law was passed.

Idaho is above the national average for sales tax as are all neighboring states with the exception of Montana and Oregon who do not have any sales tax. The counties that border those states spend a lot of time following up on citizen calls about people living in Idaho but have out of state license plates on their vehicles. **Chairman Hill** asked if there are penalties on out of state vehicle purchases. **Mr. John** stated that there is a fraud penalty but they are generally on high end vehicles such as motor homes.

Mr. John pointed out that Idaho seems to have higher individual taxes than other states but other states have much higher sales tax sometimes increased by local option sales taxes. Some states have credits to offset sales tax similar to Idaho's food tax credit.

Mr. John gave a summary of what the state is not collecting based on exemptions. The numbers are estimates based on actual dollars from the 1980's and have been increased at the rate of inflation and population over the years. If some of these exemptions were repealed, there is not a great deal of confidence in the amount of revenue that would be gained.

Mr. John explained that the school maintenance and operation (M&O) funding was transferred from property tax revenues to general funding in 2007 causing the property tax revenue to drop to \$1.2 billion. There are still some funds from property taxes going to schools, i.e., for bonds, overrides, and there is still some M&O for the Boise School District since it is a charter school district. **Chairman Hill** asked if detailed information could be broken out for residential property tax only. **Mr. John** responded that they might be able to get residential because of the owner/occupied tax exemption but the STC definition of residential is anything that is a fourplex or less. This means anything from a bare lot in a residential subdivision to a fourplex. It is difficult to compare Idaho to other states because assessments in Idaho are based on market value and that is not true in all other states.

When looking at the increase in residential property taxes and the decrease in other areas such as agriculture, timber and mining, it means that there are fewer properties for the latter and an increase in residential properties.

Vice Chairman Corder said it seems there is a moving disparity in this market between true agriculture values and the values that are exempt based on the formula that is in the rules. This situation could contribute to the decrease in agricultural land. **Mr. John** agreed that does exist to some degree.

Mr. John showed that fuel taxes in Idaho and its neighboring states are higher than the national average. Idaho's fuel tax is currently at 25¢ per gallon. Rates across the country have increased during the last year and Idaho is closer to the national average than it was. Idaho does not have sales tax, local option taxes, or surcharges on fuel as some other states do.

Vice Chairman Corder said that trying to fund the highway patrol separate from the general account may not be as easy as it looks. **Mr. John** said that law enforcement gets 5% of the Highway Distribution Account, the majority of the money that comes in from fuel tax goes to the Highway Distribution Account. **Chairman Hill** stated that the funds collected for vehicle registration is turned over to the Highway Distribution Account. **Mr. John** confirmed that statement.

Mr. John said that excise tax or "sin" tax on cigarettes is 57¢ per pack ranking Idaho 34th in the U. S. New Jersey is the highest at \$2.57 ½ per pack. That equates to \$25.75 per carton. The Other Tobacco Products (OTP) tax in Idaho is 40% of the manufacturers wholesale price. **Mr. John** reviewed the beer and wine taxes. Idaho is comparable to other states in the nation. **Mr. John** asked for questions.

Senator Heinrich said the amount that commercial properties have been paying in property taxes compared to residential is more the function of quantity than higher residential property values. **Mr. John** said that it is a little about the quantity but there is evidence that the value of residential property has risen faster than the value of commercial property.

Chairman Hill requested some of the information that Mr. John presented to be sent electronically so it can be distributed to the Committee members.

PRESENTATION:

Chairman Hill presented our outgoing page, Nicole Ball, with a letter of recommendation and a letter of commendation signed by all Committee Members.

ADJOURNED:

Being no further business, **Chairman Hill** adjourned the meeting at 4:30 p.m. until Tuesday, February 19, 2008.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: February 14, 2008
TIME: 3:00 p.m.
PLACE: Room 211
MEMBERS PRESENT: Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu

**MEMBERS ABSENT/
EXCUSED:**

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 Hill** called the meeting to order at _____. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.

MINUTES:

NO MEETING HELD

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** February 19, 2008
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Senators Stegner, McKenzie, Heinrich, McKague, Langhorst, and Bilyeu
- MEMBERS ABSENT/
EXCUSED:** Vice Chairman Corder and Senator Siddoway
- 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 Hill** called the meeting to order at 3:10 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.
- Chairman Hill** introduced and welcomed Austin Porter, the new page who will be assisting the Committee for the last half of this session. **Mr. Porter** said he is from Rexburg and has four brothers but no sisters. He attends Jepson Montessori School and he has studied government.
- H 457** ***Relating to the Bond Levy Equalization program to clarify that the program applies to actual projects that were previously eligible.***
- Representative Wendy Jaquet** stated that H 457 makes some technical corrections to changes that were made a few years ago relating to H 315. That was the Safe School Act and it provided about \$10.0 million to help keep schools safe. Seven schools took advantage of these monies: Troy, Fremont, Minidoka, Wendell, Boundary, Wallace, and White Pine. Then the Legislature established the Bond Levy Equalization Act (BLE). When the amendments of 2004 were passed, the intention was to allow school districts that were refinancing projects previously subsidized through the state's old safe schools program to get the better of the two programs. Due to the broad scope of the bill, the amendments inadvertently said that if a school district participated in the old program, it could not receive a BLE subsidy for a new project, even though those projects were not related. This is discriminating against poorer districts who really need the BLE subsidies.
- H 457 corrects the deficiency by clarifying that the 2004 amendments apply only to the actual projects that were previously subsidized under the old program and not to new projects. **Representative Jaquet** would stand for questions.
- Senator McKenzie** asked if, by adding the word project, it will effectively

clarify that it is only a specific project that is eligible for financing under the previous program so that future projects can come under the BLE.

Representative Jaquet said that future projects would be funded under the BLE. Those seven districts would then be on equal footing with other school districts.

Phil Homer, representing the School Administrators Association, said they have been through this bill and want to be on record as supporting H 457.

Jason Hancock, Deputy Chief of Staff, Department of Education, supports this bill.

MOTION: **Senator Heinrich** moved to send H 457 to the Senate floor with a do pass recommendation. **Senator McKague** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Senator Langhorst will carry H 457 on the Senate floor.

H 431 Held until February 21

S 1385 ***Relating to Disposal of County Property to revise procedures for holding and disposing of excess funds and to shorten the time period for processing a tax deed.***

Representative Hart, Co-sponsor of S 1385, stated that this bill pertains to real property seized by the County by way of a tax deed. Current Idaho law allows the County to process a tax deed when property taxes are in arrears for three years. After an examination and title search on the property and confirmation that owners have been notified of the intent to issue a tax deed, a tax deed is issued. Once the tax deed is issued, the property can be auctioned off to the general public. Most of the properties are very small strips of land but occasionally a prime property comes up for auction. The proceeds of that auction go first to the county to cover the costs of the action and the outstanding taxes, the rest of the proceeds are distributed among the counties and local taxing districts so that 100% of the proceeds are kept by the county and the owner receives nothing.

Representative Hart believes this constitutes a "taking." The county is entitled to the delinquent taxes and the costs of the process but the balance after liens are paid should go to the owner of the property.

S 1385 would make the county whole for the delinquent taxes and expenses and after all the taxing districts have been paid, then the lien holders would be paid. Then any surplus would go to the property owner.

This bill makes another change. The current process begins at the end of three years. S 1385 would change the waiting period to two years. The counties are very frustrated with a group of people who come in at the last minute and pay enough of the delinquent amounts to get out of the three year delinquent status. If the time period is changed to two years, the counties feel they can police this much better.

Senator Jorgenson, Co-sponsor of this bill, stated that he is pleased to be a co-sponsor with Representative Hart. They have shared an interest

in this bill for about four years. **Senator Jorgenson** said, “to the credit of Representative Hart and the Association of Counties, we have worked in a collaborative effort to get this bill to this point.” **Senator Jorgenson** explained that there is a “loophole” in the current law and gave an example to support that statement. By passing this bill, it will take away any impression about a government entity purchasing property well below its value. **Senator Jorgenson** would like the Committee to consider this bill and consider what it will do.

Chairman Hill called for questions for the co-sponsors.

Senator Heinrich observed that at one time the code said that the “county assessors shall” conduct an auction. At one time there was a concern that the county commissioners would have to assume responsibility for an environmentally unsafe property. Is there any protection for the county in this case? This question was deferred to **Tony Poinelli**, Idaho Association of Counties.

Mr. Poinelli said that in the original draft, there was an exclusion for environmentally sensitive properties because of the concern regarding this same question. There is language in the bill about providing the exception for environmental properties and also maintaining those properties. The county does not want to maintain those kinds of properties for a long stretch of time. They need to be returned to the tax roles immediately.

Senator Heinrich asked what happens when the county takes a tax deed and it doesn't sell? Who is the repository for that property? **Mr. Poinelli** said that the county would be the owner and then the Board of County Commissioners can make the decision about what they want to do with that property. If it is an environmentally sensitive property, there is a fund available for clean up. **Senator Heinrich** asked if Mr. Poinelli was comfortable that the county was not exposed to extra liability. **Mr. Poinelli** agreed.

Senator Bilyeu asked if the counties had a problem changing the waiting period from three years to two years. **Senator Jorgenson** responded that the counties are pleased with the shorter time period. **Mr. Poinelli** added that change was made at the counties' recommendation.

Senator Langhorst asked what happens after the county has the property? There have been issues in the past in Treasure Valley when houses were sold after three years but the homeowner never received a notice that the sale was pending. This shorter time period might result in more of these types of situations. **Donna Peterson**, Payette County Treasurer, responded that they often have water and sewer liens attached to the property sale but they would never have a tax deed for just the water and sewer. Taxes would be the only reason they would issue a tax deed. **Senator Langhorst** asked if this bill changes all kinds of tax deeds including those for the sewer and water districts? **Ms. Peterson** restated her response to the former question. **Representative Hart** spoke as a former water board member. Each year delinquent water charges are submitted to the county treasurer and are included along with the

delinquent property taxes. When the property owner pays the property taxes, the water district receives a check from the county. There is only one entity that can issue a tax deed and that is the county.

Senator Langhorst said that the instances he is referring to involved just irrigation fees. It did not involve property taxes and yet a tax deed was issued on those houses. There were some houses that were sold for just those irrigation fees. The delinquent fees involved here were as low as \$10.00 in some cases. If an irrigation district files a lien on a house, three years pass, the lien is perfected, and it becomes a tax bill, would this law change those kinds of situations. **Ms. Peterson** said that there is a separate code section dealing with irrigation districts. They can put a lien on that property and foreclose on it. This bill will not affect anything pertaining to irrigation districts.

Mr. Poinelli addressed Senator Heinrich's comment on the environmentally sensitive property. These properties are touchy and a liability issue, and the county commissioners don't necessarily have to put a tax deed on that property.

Chairman Hill asked Mr. Poinelli if he agreed with the wording that the counties are not subjecting themselves to additional liabilities and possible lawsuits from the original property owner? Are the requirements specific enough to protect the counties? **Mr. Poinelli** responded that the process is clear and that it is designed to protect both the seller and the buyer.

Chairman Hill encouraged Mr. Poinelli to train the counties about the changes and the process.

Ms. Peterson testified in support of this bill.

Senator Bilyeu asked if the excess funds are currently going to the taxing districts? How will the taxing districts be affected dollar wise? Is it an amount that will be missed or is it insignificant? **Ms. Peterson** replied, insignificant.

Senator Bilyeu asked for a dollar amount. **Ms. Peterson** did not have that information. **Senator Hart** said that statewide, it is insignificant.

Senator Jorgenson responded to Senator Bilyeu with respect to impact. It is nothing that an agency can budget for.

Senator Heinrich would like to personally acknowledge and thank Representative Hart for the excellent job in carrying through what he committed to do last year. Also, thanks to Donna Peterson and Senator Jorgenson. It was a phenomenal job. In response to Senator Langhorst's question, it can be answered in the water code. This bill has nothing to do with the irrigation district being able to take property for those fees.

MOTION:

Senator Heinrich moved to send S 1385 to the Senate floor with a do pass recommendation. **Senator McKague** seconded the motion.

Senator Langhorst stated that this is a bill that he has followed for four years. It is a good government bill and would like to congratulate all the

people for their hard work.

VOTE:

The motion carried by unanimous voice vote.

Senator Jorgenson will carry S 1385 on the Senate floor.

Chairman Hill stated that it was at this Committee's request that this bill was worked out and thanked all parties involved.

Chairman Hill said there will be two bills on sales price disclosure on Wednesday and on Thursday, the confined animal feedlot operations and who can testify.

ADJOURNED:

There being no further business **Chairman Hill** adjourned the meeting at 4:50 p.m. until Wednesday, February 20 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: February 20, 2008

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu

MEMBERS ABSENT/ EXCUSED: Vice Chairman Corder

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 Hill** called the meeting to order at 3:04 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.

MINUTES: February 5, February 6, and February 7

MOTION: **Senator Siddoway** moved to accept the minutes of February 5, 2008 as written. **Senator McKenzie** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

MOTION: **Senator Bilyeu** moved to accept the minutes of February 6, 2008 as written. **Senator Siddoway** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

MOTION: **Senator Langhorst** moved to accept the minutes of February 7 as written. **Senator McKenzie** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Chairman Hill provided an update on Mrs. Corder's health.

S 1400 **Senator Keough** called attention to the headline of the Statesman Business Section that indicated a rivalry between S 1400 and S 1401. These two bills are not rivals; they are complimentary and passage of both could be supported. S 1400 is the same bill that was introduced at the end of the session last year to encourage dialogue between interested parties over the interim. The only change is the amount of the fine for non-disclosure, \$100 to \$300. Idaho law requires that assessed values to set property taxes must be determined, in part, by market value. Currently, the one tool that would

assure market value is not available to assessors on a consistent basis. This bill provides the framework needed to implement a structure to obtain that information and still protects privacy.

Representative Jaquet went through S 1400 in detail to explain each part and answer questions. There are two items that need to be changed and she will note those as she goes through the bill. If the Committee supports this bill, it will need to be sent to the 14th Order for Amendment.

Senator McKenzie asked for clarification on the definition of “real property.” If there is a large number of units as part of a condominium, would this law apply to those single units, or would it only apply to the units in a fourplex or smaller. What is the intent? **Steve Fiscus**, Administrator, Division of County Support, Idaho State Tax Commission, explained that there are commercial and residential condos. The bill refers to residential condos. Duplexes, fourplexes or fiveplexes are considered apartments. Condos are different, they have their own real estate transfer deed and a legal description for each unit of the complex. Each unit would be subject to a real estate transfer deed.

Senator Bilyeu stated that a commercial complex would not be covered. In regard to residential condominiums, each one of those would be valued separately and each one would be considered as an individual home. **Mr. Fiscus** concurred. Anything smaller than a fiveplex is considered residential and a fiveplex or larger is considered as a commercial apartment complex.

Senator Bilyeu asked if an appraiser in a public official's office reveals a sales price, is that disclosing protected information? **Representative Jaquet** said that if this was an appellant, that would be in order. If it was a general conversation, several pieces of property need to be included, not just a single property. **Senator Bilyeu** asked if “public official” includes an appraiser who works for the assessor. **Representative Jaquet** assumed that the appraiser working for the public official is exempt.

Senator Bilyeu restated her question. If an Idaho court finds that a public official has disclosed information that is protected from disclosure, would that include the other people in that public official's office such as an appraiser of property? **Representative Jaquet** said she is not technically confident to answer that question. **Senator Heinrich** said it was his understanding that “public official,” as defined, includes the elected official and/or employees.

Testimony in opposition to S 1400

Jeremy Pisca is an Attorney with Evans Keane Law Firm, Chief Legal Counsel to the Idaho Association of Realtors and Lobbyist for the Idaho Building Contractors Association. Both of these organizations have expressed opposition to S 1400. Mr. Eaton will address the reasons for the realtors' opposition. **Mr. Pisca** will speak for the builders. Everyone here wants the same thing and that is equity in property tax assessments. The assessors do have difficulties in obtaining tools to get sales prices as part of the component that goes into assessing real property. **Mr. Pisca** also represents the Intermountain Multiple Listing Service. Their licensing

agreement allows assessors access to sold price information. In those cases, there has been a good, cooperative relationship with the realtors. Several other realtor associations contracts have been signed and Multiple Listing Services (MLS) are providing information to the assessors on a consistent basis. There is a private industry solution to this problem and that begins in S 1401. Both bills are aimed at resolving the same problem and that is getting sold price information to the assessors.

The Building Contractors oppose S 1400 because, by disclosing sales price information, there is a negative effect when negotiating a sale. Also, the contractors are nervous about a real estate transfer tax being imposed at some point. The sponsors point out that it specifically states in this bill that the information is not intended to be utilized for the imposition of a real estate transfer tax. But laws get changed and language is stricken. Research indicates that out of 38 states that have mandatory sales price reporting laws, 35 have real estate transfer taxes or sales tax on real estate.

Mr. Pisca raised a question regarding "sales price" for real and personal property. This bill does not separate out personal property from the real property purchase price. How much of that sales price is actually attributable to personal property?

John Eaton, Idaho Association of Realtors, stated that S 1400 and S 1401 are not necessarily competing bills and said that no matter what happens to S 1400, S 1401 still needs to be passed because it is a real estate related issue. If there is a solution in the private sector and the data is getting to the assessors correctly, the only reason to have a state law mandating disclosure would be to initiate a transfer tax. The transfer tax is an easy way to make money for the State. That is a very real fear for the State of Idaho.

There are several issues involved with S 1400. 1)Personal property when it is combined in the sales price. 2)It is not clear as to whether or not a deed must be filed along with the property tax certificate. 3)There is a cost to administer this program. Who will be the administrator? 4)The definition of "sales price" is not clear. 5)In regard to the fines, anybody on staff should be included as a public official.

This is an unfinished piece of legislation. It is not a real solution to the problem. It is a piece of legislation that may have its day, one of these days, but the private sector solution is better.

Mr. Eaton asked to get a couple of things on the record. There was an agreement signed on 2/19/08 between the Bonner County Commissioners and the Bonner County Association (of Realtors).

Mr. Eaton called attention to a letter that is going to MLS members to urge them to change their bylaws to allow the distribution of sales price information to the assessors.

They are concerned that the sales price is the only thing that will be used to get the assessed value. In that case, the counties are not following the Tax Commission's rules.

Joe Kunz, Governmental Affairs Director, Building Contractors Association of Southwestern Idaho (Assoc.), spoke in opposition of this bill. Everyone has the same goal, fairness in taxation. Recent developments have provided steps in solving the problems that exist. There are methods to solve this problem but the time is not right for a government mandate.

Senator Bilyeu asked if the building contractors have agreed to disclose the sales prices that don't go through MLS? **Mr. Kunz** said he would have to defer that question. **Mr. Pisca** answered that if it was not a sale listed in the MLS, handled by a real estate agent, it would not be voluntarily reported unless the builder wanted to disclose the information. **Senator Bilyeu** asked, if it was a spec house, would the sales price be revealed to the assessor? **Mr. Pisca** said it would not necessarily go to the assessor.

Greg Manship, Chief Executive Officer, Intermountain Multiple Listing Service representing about 5500 real estate agents. There are a couple of reasons why S 1400 would be the wrong way to go. States that have mandatory disclosures, send data to an automated evaluation model (AVM) that processes the data to come up with the assessed value of the home. The consumer can then look at that value. Commissioners say they are getting a lot of appeals because of the availability of this information. This is a good opportunity for Idaho to work with the private sector solution. That sales data is being made public and more data is going out each year.

Chairman Hill said his impression about the reason for this bill, is that the assessors are having trouble working with MLS. **Mr. Manship** stated that they have a current reciprocal agreement with any and all of the counties that wish to participate. MLS gives the assessors sold data and in return, they give MLS data that goes onto the MLS system. The assessors need sold data, not just sold price. S 1400 concentrates on sold price which is not dealing with all the information to assess the property.

Chairman Hill asked if it was correct that the counties paid a fee to be members of the MLS or to get the MLS information. **Mr. Manship** said that is incorrect. There are two types of members of the MLS. There are appraiser members and there are realtor members. Anything beyond that is up to the local policy of the MLS. Some counties have joined the MLS as appraisers. Others have reciprocal agreements between the assessors and MLS.

Senator Bilyeu refuted some of the statements that have been made. In her experience as a former assessor, all of the information is in the county data base, i.e., the number of bedrooms, bathrooms, etc. and, in fact, the realtors and the appraisers come to the assessors office where they have access, on line, to that information. **Mr. Manship** reiterated that the data is available at the assessors but, within the MLS system, there are things that are attached to that listing such as remarks or things that have been done to the property since the last assessment that is not in the assessors system.

Testimony in support of S 1400

Max Vaughn, Minidoka County Assessor and Legislative Chairman for the Idaho Association of Counties (IAC), said that this is a good piece of

legislation for the counties. Over the years, the assessors have struggled to acquire sales price information, and more specifically the upper end of residential properties. The assessors office subscribes to the MLS, however over the years, MLS has limited the sales reporting sent to the assessors and the frequency of the reports has been reduced from monthly to quarterly. The private solution sounds good but S 1401 does not say the information has to be given to the assessors, it only says it is not confidential information. The assessor's already have an option to address those properties where sales price is not available, it is called discovery by district court. Also, annually the assessors office sends out a Sale Verification Form. Recently those have been returned but the sales price has been reported as \$1.00, some at the direction of a realtor. **Mr. Vaughn** said he believes in the private solution and wishes there was one. However, they have been struggling with this for a number of years and still have not found the answer. This is a good bill, it is a good start.

Senator Heinrich asked if the current software that is being used is capable of using individual sales data to develop the assessed value? **Mr. Vaughn** responded that it did. They do sales analysis now using what little information they have available. Their computer program is a PC based appraisal program.

Senator McKenzie restated that they do not receive residential data from MLS. **Mr. Vaughn** responded, yes, that is correct. **Senator McKenzie** asked if there were certain types of residential information they don't receive or do you have to pay more to get all the sales? **Mr. Vaughn** stated that some of the prices are confidential information and those are eliminated from the records the county receives. We do get some of that "confidential" information on the Sales Verification Form so we know it could have been reported.

Frank Eld, Valley County Commissioner, stated that, over the last year, they have sat through the most grueling Board of Equalization appeals that have ever been experienced by the State of Idaho. They have approximately 25,000 parcels in Valley County. Of those parcels, over 3000 homeowners appealed. This happened because the system is broken.

Under Idaho law, counties are required to assess property at its market value. The law does not give the assessors tools to carry out that job. Assessors across the State must beg and borrow to get information to do a fair and equitable job in assessing property. That is the reason for the avalanche of appeals this last year. In the past, the market has been level but now the market is volatile causing 100-300 percent increases in assessment values in one year. These are increases based on minimal information, and sometime "quirky" sales. **Commissioner Eld** outlined a number of ways that information has been withheld, some by MLS, some in regard to cash sales, and some on the advice of a realtor. **Commissioner Eld** asked for the support of S 1400 which would give the counties one of the tools needed to do a better job of assessing property.

Senator McKenzie stated that the issue has been no access to information from the MLS and, when the data was received, some of those sales were confidential under the MLS rules. **Commissioner Eld** confirmed that

statement.

Senator Siddoway asked for the number of sales that do not go through the realtors in Valley County. **Commissioner Eld** did not have that information. However, in his experience, the majority were very high end homes involving cash sales and the information was not available. That is why it is necessary to have mandatory reporting of all sales.

William A. McCann, Real Estate Appraiser, Sun Valley Appraisal Company. **Mr. McCann** said he has had experience appraising real estate throughout the United States. Idaho is one out of four states without a sales price disclosure law. Access to completely documented and timely market data is the backbone of accurate appraisals whether they are performed in the private sector or public sector such as the county assessors. There are three methods of estimating market value: 1)Cost Approach, 2)Income Approach, and the 3)Sales Comparison Approach. The Sales Comparison Approach is the most reliable because it is not reached by estimation. This approach is the benchmark from which appraisers and assessors can gauge the market value of properties just transferred and establish a data base to get the market value of comparable properties where there is no recent sales history. Real estate transfer data is essential to accurate, equitable, and timely appraisal assessments. **Mr. McCann** said it is his belief that assessors have been denied access to information that is essential to the jobs and tasks required of them. Passage of both S 1400 and S 1401 are required.

Senator Corder asked Mr. McCann if he had said that Idaho was only one of four states without mandatory transfer declarations? **Mr. McCann** said that was his understanding. **Senator Corder** said there is some discrepancy between the number of states with mandatory disclosure stated in earlier testimony and this number. **Mr. McMann** stated that he thought the earlier testimony was that of the states that have disclosure, 35 of those states also have a property transfer tax. **Senator McKenzie** asked Mr. McCann if it was his understanding that there were only four that did not have disclosure? **Mr. McCann** responded that was his understanding.

Valdi Pace, Blaine County Assessor and Idaho State Certified Residential Appraiser, is here to ask for a do pass recommendation from this Committee for S 1400 and S 1401. Idaho is a non-disclosure state, the sales data the County receives is on a voluntary basis only. Sales verification letters are mailed to the buyer when the deed is recorded. They do get some information from sellers and fee appraisers. The rate of return for these letters have decreased over time. In 1999 the rate was 42%, 2005 it was 13.5%, and in 2007 - 23%. Residences in their area are selling for up to 30% below the assessed value. However, not all homes are decreasing in value. **Ms. Pace** stated she is an advocate of disclosure. There will be a more fair and equitable property taxation system with sales price disclosure. She has requested to become a member of the MLS on more than one occasion and has been turned down. She has also made several attempts to educate the public about the process of assessment and advises them of the importance of information to have more fair and equitable taxation. It is difficult to do the job without the tools needed.

Chairman Hill asked what did MLS not allow? **Ms. Pace** responded that they were denied any access.

Senator Heinrich asked for an explanation about the criteria used when there was no sales price information. **Ms. Pace** said that they must use the actual sales they receive no matter how limited it is.

Senator Stegner asked would you offer an opinion of how accurate the voluntary sales verification numbers are? There may be a tendency to report the amount as less in order to keep the tax down. There seems to be a conflict there. **Ms. Pace** verified that they had experienced receiving incorrect sales price reports.

Larry Benton, representing Idaho Land Title, stated he really appreciates the appeal process although he has never utilized it. The co-sponsors of this bill have been very open in their attempt to negotiate and bring together all the people that are involved. If S 1400 is sent to the 14th order, it is important to include the phrase about "trustees deed after a non-judicial foreclosure." One other area of concern is where the bill says the purchaser is responsible for notifying the county assessor. It is not clear who gives that document to the purchaser and who carries the liability to see that it is properly recorded. Those were the only concerns.

Senator Bilyeu stated that it was a very good question as to who has the responsibility to get the documents to the assessors office. For example, when the homeowners exemptions are filed, the title companies fill out the forms at the time of the sale so the purchaser of the property does not have to do that. Sales reporting could very easily be done the same way. **Mr. Benton** said that he suspects the title companies will be the people who end up making these transfers. They just have some concerns about the liability. They would like to see a little more specific information in the bill.

Tom Bowman, Blaine County Commissioner, made a short statement in favor of S 1400. There is incompetence in the system we have now and with the thousands of appeals received throughout the counties, the public does not have confidence in the system. Blaine County is currently working on a disclosure ordinance that mimics S 1400. They hope to have that finished by January and hopes it could be a model for other counties.

Jed Gray, Realtor, Sawtooth Board of Realtors in Blaine County, is supporting S 1400. **Mr. Gray** stated he has worked with Representative Jaquet and the Board of Realtors on both bills before the Committee. Sawtooth Board of Realtors looks at industry support for S 1401 and S 1400 carries merit as well. He was president of the Board when they precluded the assessor from being a member. By the rules and regulations of the Board, they are required to report all sales. They are not required to report the sales price if a client requests them to withhold that information. They are seeing a dramatic increase in the MLS sold price reporting as \$1.00. MLS does not have good information and they are being relied on for that information. If the industry is to maintain a level of integrity, they need to have valid information available to them. There have been instances where the assessed value was over \$1.0 million above the sales price. That is just one case but it is because the assessor does not have the right data. The industry has a problem and needs a resolution and the assessor needs the information for

better taxation in the community. As was reported by Mr. Bowman, Blaine County is developing its own ordinance and in all probability, other counties will do the same. There could be as many as 44 different sets of rules. If the State of Idaho passes this legislation, there will only be one set of rules. This problem needs to be resolved.

Senator Keough closed by saying that the MLS information has not been available. If the data is not available to the assessor, it means that someone is either paying too much or not enough tax. This bill is not to initiate a transfer tax. This bill does not have to be in place to have a transfer tax, that can happen at any time if the majority of the legislators vote for that tax. **Senator Keough** has had requests to continue with this bill even though there have been some contracts signed with the MLS. Keeping this bill alive through the amendment process assures that everyone continues to talk to one another to put this tool to work and not delay any longer.

MOTION:

Senator Bilyeu prefaced the motion by stating that she really likes and intends to support both bills and thinks they are both necessary. **Senator Bilyeu** moved to send S1400 to the 14th order of business for a possible amendment. **Senator Heinrich** seconded the motion.

Senator Stegner said that he intends to vote for this bill. The State of Idaho is very reluctant to impose state regulations on people's enterprises. There needs to be a compelling reason to do and it is compelling to bring transparency into this very complicated system of residential appraisals within a volatile market. Citizens are not interested in volunteering this type of financial data and the only way to obtain this information is through mandatory declaration.

Senator McKague stated that it seems this bill would make it easier to have a transfer tax so she will not be supporting this bill.

Senator McKenzie said that it is clear there is a significant issue that needs to be addressed because, by constitution, we require this uniformity of assessment. At this point the assessors do not have the tools to do it properly. These are two alternatives of doing this job. S 1400 definitely captures a larger spectrum of the sales because it does include private sales. It comes with a price, it is a step towards a transfer tax although we won't get there until the legislature says we do. There is a concern that if, out of the 38 states that require this information, 35 have a transfer tax. Mandatory declaration is a step in that direction. I would prefer private solutions, but the concern is that private industry has refused to share the information until this bill was imminent. He would prefer to see this handled by the private sector without mandating with a new criminal offense, a misdemeanor, when, as purchaser, you don't comply. He probably will not support S 1400 but will support S 1401.

VOTE:

The motion carried with a roll call vote.

Senator Keough will take care of amendments.

S 1401

Relating to Real Estate License Law to revise definitions.

MOTION:

Senator Stegner moved to send S 1401 to the Senate floor with a do pass

recommendation. **Senator Bilyeu** seconded the motion.

Senator Siddoway asked Mr. Eaton when is confidential information considered confidential? The section in S 1401 says that information generally disseminated in the marketplace is not confidential, a sold price is not confidential, and information required by law to be disclosed is not confidential—what is confidential? **Mr. Eaton** answered confidential client information is any information about a client as defined in the real estate license law. This only applies to licensed real estate agents in the State of Idaho. Can a person who is buying a piece of property see the last price it was sold for? Yes, they can probably see that information through their agent.

VOTE:

The motion carried by voice vote.

There being no further business, **Chairman Hill** adjourned the meeting at 5:00 p.m. until Thursday, February 21, 2008.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: February 21, 2008

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu

**MEMBERS ABSENT/
EXCUSED:**

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 Hill** called the meeting to order at 3:03 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.

MINUTES: February 12, 2008

MOTION: **Senator Heinrich** moved to accept the minutes of February 12, 2008, as written. **Senator Bilyeu** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

S 1402 ***Relating to the Local Planning Act to provide for comments on proposed Confined Animal Feeding Operations (CAFO).***

Senator Stennett thanked the Committee for hearing a new bill for an old issue that was presented to the Senate last year, passed, but was held up in the House. This bill cleans up the only place in Idaho Code where public hearings on planning and zoning issues have set limitations for people who want to testify. Only persons whose primary residence is within a one (1) mile radius of a proposed confined animal feeding site may provide comment at the hearing. This industry should be treated no better or no worse than any other industry in the state. The purpose of this bill is to ensure an open democratic process.

Nothing has been changed in this bill from the one that was heard last year. The current law on the books allows the local boards to arbitrarily initiate the one mile limit. This bill removes that limit.

Testimony in support of S 1402

Dean Dimond, Farmer speaking on his own behalf, thanked the Committee for passing this bill last year. It did make a difference in Jerome County, the Commissioners did open up a little bit and allowed a couple of minutes of testimony related to this issue. Whether you are for

or against a confined animal feeding operation (CAFO), unless you live within the one mile limit, you can't testify. A CAFO affects more than just the people within that limit. These operations are managed by good operators and are willing to work with their neighbors but they do affect people outside the one mile limit. There are some places where a CAFO should not be located and those local people who are affected should be able to testify. Lets get this bill through this time.

Senator Siddoway asked if those testifying appeared before the County Commissioners or the Planning and Zoning Commission when they testified? **Mr. Dimond** responded that, in Jerome County, they go directly before the County Commissioners. **Senator Siddoway** asked if it was a requirement for the County Commissioners to not let everybody testify. **Mr. Dimond** said no. The way the law reads, the Commissioners can open it up as much as they want. However, because of the way the ordinance reads, according to the Commissioners, they could not open it up. **Senator Siddoway** said it did not have anything to do with the State law, the local county set its own ordinance not to allow people that live more than one mile away from the project to testify. Is that correct? **Mr. Dimond** responded that the state law allowed them to set that restriction up in their ordinance originally and the County Commissioners, at the time, decided it was a good idea. The local ordinance then bound them to keep the restriction. If this law changes, they will have to change the ordinance.

Senator Siddoway stated that if the Jerome County Commissioners decide they are only going to take testimony from people within the designated area, then those Commissioners would have the authority and the leverage to make that determination. Do you have a different take on that? **Mr. Dimond** stated that, first of all, people do not get involved until something affects them. State and local laws are passed and most of us are busy and don't pay attention until it affects us. There were two smaller CAFO's approved in Jerome County last year without opposition. The Big Sky CAFO was opposed and there were a lot of people coming to testify at that hearing. The language says "affected people" and it is going to affect you so you should be able to testify.

Senator Siddoway asked how do you control the length of the meetings? Can everyone testify? Is there a time limit? Can written testimony be added to the minutes? Do you go until everyone testifies? **Mr. Dimond** said that, in the case of the Big Sky, they blocked out a two day schedule to allow for testimony. There have been other applicants that were not CAFOs that would bring in busloads of people and testimony was allowed.

Richard Carlson, representing Idaho Rural Council, testified in support of S 1402. Big Sky withdrew the first application and a new one was filed in May for 13,000 animals resulting in a denial and is now in court. Mr. Dimond was able to submit written testimony but his parents, who owned 300 acres adjacent to the proposed operation, were not allowed to submit any testimony because they lived in a nearby town. There have been some small changes in Jerome County. Written testimony from non residents is still not allowed but, under the new rules, two minutes of testimony were allowed and 1-2 pages of written comments. This is a harsh prohibition for those running a business, whose life is going to be affected, and who is a

real property owner. **Mr. Carlson** gave some history about the situation in Jerome County.

All this bill is trying to do is match up the “affected persons” who can testify at a public hearing with those who can testify in court.

Senator Heinrich asked for a clarification on who an “affected person” is.

Chairman Hill said an “affected person” as defined in section 67-6521, is: “As used herein, an affected person shall mean one having an interest in real property which may be adversely affected by the issuance or denial of a permit authorizing the development.”

Bob Naerebout, Lobbyist for Idaho Dairymen’s Association, stated that he is neutral on this bill. The question to consider is if this bill is setting a precedent that the local level is not the right level for regulating CAFOs. Has the time arrived to look at a CAFO in a different way? Would the industry have a better feeling by going before the State where they are already regulated by the Environmental Protection Agency, The Department of Environmental Quality, and The Idaho State Department of Agriculture? Maybe that time has come.

Chairman Hill asked what are the dangers of setting a precedent that all affected persons have a say? **Mr. Naerebout** stated that the danger is not setting a precedent that all affected persons have a say, the danger is in taking the decision away from the local jurisdiction. Let the voters who want to take issue with any decisions that are made and if the elected officials have failed in their public service, they can be voted out, whether state or local. At the local level, the voters that are closest to the issue can see that changes in their public officials are made.

In the CAFO situation, it would be handled better at the state level with one set of documents instead of 44 sets.

Senator Heinrich stated that once the application goes through the County Commissioners, then approval is contingent on obtaining a bond and the approval of all the other necessary permits. Is that correct? **Mr. Naerebout** said that a CAFO has to get a conditional use permit. If an ordinance changes, and that CAFO wants to make some changes, i.e., expand, it must apply for a new permit. The new permit would fall under the new ordinance provisions and the operation would no longer qualify if it did not meet the qualifications in the new ordinance.

Courtney Washburn representing Idaho Conservation League spoke in favor of HS 1402. All points have been adequately covered. The Idaho Conservation League has been working on this issue for about six years and have advocated for the removal of all limitations on testimony. This is a compromise with the addition of “affected persons” and they will support this bill.

MOTION:

Senator Langhorst moved to send S 1402 to the Senate floor with a do pass recommendation. **Senator Stegner** seconded the motion.

Senator Langhorst stated that they have heard this issue discussed for years and there is no reason for an exception in Idaho law. This is good

government. The current practice is a blight on Idaho Code, it is the only place it exists and this year there is hope to get S 1402 through both chambers.

Senator Siddoway voiced his opposition to this bill. Current law is a shield for County Commissioners to ward off efforts at the local county level. An “affected person” is anyone that owns or has an interest in real property and not just anyone who wants to testify at a hearing. The change from public to “affected person” should not be made, it should be left open to the public. There is still a shield the County Commissioners can use. This should be left at the local level because it is a local issue. The law should be left as it is until it is fixed, so he will be voting no.

VOTE:

The motion carried by voice vote.

H 431

Relating to the Small Employer Incentive Act of 2005 to revise the definition of “Tax Incentive Criteria.”

Donald Dietrich, Acting Director, Department of Commerce, is seeking a modification of the Idaho Small Employer Incentive Act of 2005 (ACT). The intent of H 431 is to simplify one of the qualifying restrictions to claim incentives contained in the ACT and to encourage smaller employers to invest in new plant and building facilities. It also encourages the creation of new jobs. H 431 will not alter any other requirements within the ACT.

To date, no company has taken advantage of the incentives contained in this act. Currently, if a company hires more than ten employees, the computation used to determine the average wage of new employees in excess of ten is overly restrictive. The current formula excludes from the computation, wages earned that are less than \$12/hour while including those employees in the computation. This provision eliminates most companies from qualifying for the incentives. The Department of Commerce is requesting that the calculation for qualification be a straight mathematical average of at least \$15.50/hour based on employees earning \$48.08/hour or less. Please refer to the handout and the same example showing what an incentive package would look like based on the current requirements compared to the proposed requirements (on file in the Committee office). These examples show why companies are not using the incentives provided in the Act.

Senator Langhorst stated that some detractors have said it will allow for the hiring of industries that we don’t want to target or add only low paying jobs. It looks like this is tight enough that wouldn’t happen. Can you give an example of a worst case scenario? **Director Dietrich** said that they have run a series of calculations and have taken two things into consideration. 1)With a 3% unemployment it is hard to get minimum wage jobs included. 2)The first step is to hire the first ten at \$19.23/hour. It is the subsequent new hires that are the struggle at this point. This bill encourages an increase in wages throughout the state.

Senator Corder asked how many people have applied and then discovered they couldn’t qualify and reported to you? **Director Dietrich** said he only had one that came directly to him. And that person explained why they couldn’t qualify, they couldn’t get past the way the average was

calculated.

Chairman Hill asked if the Department of Commerce had assisted with the original bill. **Director Dietrich** referred the question to Dan John, Idaho State Tax Commission. **Mr. John** responded that when this bill originated, there were a number of different groups involved: The Governor's Office, Commerce, and the Tax Commission. This is the second fix for the same section.

Chairman Hill said he was trying to determine if current calculations were intentional or is this an oversight that is being corrected. **Mr. John** responded that the provision that is there was put there as a limit but at the time the original formula was established, it was not apparent that it would be as restrictive as it is.

Senator Bilyeu asked if the \$500,000 investment in a new plant is excessive. **Director Dietrich** said there have been no complaints. **Senator Bilyeu** asked if this will fix the problem or is it the ten new jobs that should be reduced? **Director Dietrich** said he hasn't heard complaints about the job limit.

Senator Stegner recalled that initially this Act was a response to incentives provided to major, Fortune 500 companies to allow some assistance for smaller companies to attract new businesses to the state of Idaho and also to encourage expansion of existing businesses. Has any large corporation taken advantage of the incentives? **Mr. John** responded that he didn't think so. **Senator Stegner** asked "have any businesses looked at this program and said that they couldn't qualify, therefore, we are not going to locate in your state of Idaho?" Are there others that said we went ahead and expanded or came to Idaho anyway, even though we couldn't use this program? Has this resulted in the loss of any creation of jobs or expansion in the State? **Director Dietrich** said unfortunately, they don't know. A "basket" of incentives is put before a prospective business coming to Idaho. Some are legislative and some are attributes of the State. The professionals representing these businesses look at what Idaho has to offer, may leave town and are never heard from again.

Senator Stegner stated that all levels of government should quantify efficiencies and results. It would be helpful to know whether this effort was used and actually creating jobs or will it award someone who would create jobs anyway. This one has never been used.

Director Dietrich responded that within the next few months, the Department of Commerce will be providing some feedback to the Legislature. Some of that will be a matrix to answer some of the questions that were raised.

Chairman Hill said there have been questions about whether incentives improve business or not and, if they do, are they worth it. It would be helpful to collect data about why a business came here and also about why they are leaving.

Senator Langhorst agrees with the desire to have better data. He referred to Jefferson Jewitt's talk at the Chamber Alliance luncheon where he cited

the ACT as one of the reasons they built their company here. Also, the Interim Committee heard some pretty good presentations that indicated that these are the kinds of incentives that work. There is no front money expended, it requires an investment, it requires high paying jobs, and the money comes in before incurring any expenses for the state.

Senator Stegner asked Mr. John if it is possible to utilize this program without anyone's knowledge. **Mr. John** responded that if someone started using this in 2007, the Tax Commission would not know about it until the 2007 tax returns are filed. Also, if anyone has qualified, they have not availed themselves of any of the incentives.

MOTION:

Senator Langhorst moved to send H 431 to the Senate floor with a do pass recommendation. **Senator Stegner** seconded the motion.

VOTE:

The motion carried by unanimous voice vote.

Senators Corder, Langhorst and Stennett will sponsor H 431.

ADJOURNED:

There being no further business, **Chairman Hill** adjourned the meeting at 4:05 p.m. until Tuesday, February 26, 2008 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES
SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: February 26, 2008

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu

**MEMBERS ABSENT/
EXCUSED:**

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 Hill** called the meeting to order at 3:10 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.

MINUTES: **Senator Siddoway** moved to accept the February 13, 2008 minutes as written. **Senator McKague** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Chairman Hill announced that one of the bills on the agenda for today has been postponed until Thursday.

Chairman Hill turned the gavel over to Senator Stegner in absence of the Vice Chairman.

H 469 ***Relating to Sales and Use Tax Exemptions to provide that the sales and use tax does not apply to charges for personal property tax added to the rent for leases of tangible personal property.***

Chairman Hill stated that this bill is the result of an inquiry regarding sales tax on leased equipment. When a person buys a piece of equipment, they pay sales tax on the original purchase price of that equipment. The personal property tax that is paid on that piece of equipment over its lifetime is not subject to sales tax.

If a person decides to lease a piece of equipment, the sales tax is paid on the total lease payment including the personal property tax calculated in the lease payment. **Chairman Hill** read from the *Administrative Rules 35-01-02 (024) (10)* "Separately stated personal property tax must be included in the rental price subject to tax. For example, some industries rent or lease tangible personal property for a certain monthly or other period, rental charge, plus a separately stated amount determined by the owner-lessor's personal property tax liability on the equipment. Even though the amount of property tax is separately stated from the basic rental charge, it must be included in the total rental price subject to tax."

NOTE: Vice Chairman Corder joined the meeting.

H 469 simply says that if you enter into a lease that is a year or more, and if the personal property tax is charged to the lessee through that contract and as

long as the lessor is not charging more than what is being paid for that personal property tax, it will no longer be subject to the sales tax.

Senator McKenzie said that this makes sense. Has JFAC factored this into their projections? **Chairman Hill** stated that anytime a bill comes before the Committee that has a fiscal impact, a copy is given to the Chairman of the Finance Committee. It is not known how he factors those in.

Senator Corder said that it was listed and the Finance Committee does have it under consideration.

MOTION: **Senator Corder** moved to send H 469 to the Senate floor with a do pass recommendation. **Senator Siddoway** seconded the motion.

VOTE: The motion carried by unanimous voice vote.
Chairman Hill will carry H 469 on the Senate floor.

Senator Bilyeu asked Dan John, Idaho State Tax Commission, if this could be considered double taxation? **Mr. John** responded that there is no prohibition on double taxation. There are many places where double taxation occurs such as excise taxes and property tax when the basis points would include sales tax, etc.

H 460 ***Relating to Counties to Revise Recording Fees***

Tony Poinelli, Idaho Association of Counties, explained that H 460 was brought to the counties by the Clerk's Association. This is a clean up bill that removed the cost of certifying a report for a lien on personal property. This requirement was repealed in 1976 and this change would eliminate the reference to the associated fee.

In addition, the wording "for each page" was added for filing a survey to make the wording consistent with other per page fees listed in this statute. The cost, \$5.00 per page, did not change. It is listed as a per page fee in *Idaho Code 55-1909, Recording of Fees* (copy included with minutes).

Chairman Hill asked if all of the fees listed in 31-3205 are also in other statutes. If a fee is changed, do both statutes need to be changed? What is the reason for fees to be in more than one place? **Mr. Poinelli** responded that the majority of the fees for recording documents are contained in 55-1909.

MOTION: **Senator Heinrich** moved to send H 460 to the consent calendar with a do pass recommendation. **Senator Stegner** seconded the motion.

VOTE: The motion carried by unanimous voice vote.
Senator McKague will sponsor H 460.

ADJOURNED: There being no further business, **Chairman Hill** adjourned the meeting at 3:27 p.m. until Wednesday, February 27, 2008 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES
SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: February 27, 2008

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu

**MEMBERS ABSENT/
EXCUSED:**

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 Hill** called the meeting to order at 3:05 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.

H 465 ***Relating to Local Land Use Planning and Group Residences to revise terms and to eliminate restrictions on local governments to regulate group residences.***

Representative Luker introduced H 465 relating to transition housing. There are two sides to this dilemma. On one hand there is a need to have a place for people who are coming out of the correctional system to enter main stream society and the venues to help them make that transition. Then there are the people in single family neighborhoods who are being impacted by these transitional facilities located in their neighborhood.

In 1988 the Federal government made some amendments to the Federal Fair Housing Act (FHA) requiring that those selling property cannot discriminate against those who are handicapped. Included in the definition of handicapped are those who are addicted to drugs and alcohol. Transition homes were created and a number of them began appearing in residential areas. In 1995, the city of Edmonds, WA tried to enforce a zoning ordinance which limits the number of unrelated adults that can live in a home, typically five or less, in a residential area. That case went to the US Supreme Court. The Court indicated that the FHA "trumped" that particular zoning ordinance and there had to be a reasonable accommodation made for those who were disabled.

The composition of these homes is multi factored. A home can consist of people who have never been involved in the criminal justice system, people who are coming out on probation and parole, any mix may be possible in these homes. Boise has had a few of these homes within the community for a number of years but this past year a particular group began to accelerate the use of these homes (New Hope Inc.).

The purpose behind the homes is not the problem, it is the impact on the neighborhood. These homes appear overnight in the neighborhood, no one

is notified that this is happening and the neighbors do not have an opportunity to provide input. There is increased traffic, concern about property values, and parents concern about their children since there are people on probation in these homes.

The FHA does have some exemptions. One exemption is an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. This exemption has been interpreted to include sex offenders and other offenders who are under supervision.

Cities have struggled to arrive at a balance. The current Idaho law was enacted in 1979 and defined single family dwellings. It makes an allowance for up to eight unrelated handicapped people to live in a home. The Legislature put some restrictions on the cities which prohibit the city from using any conditional use permits, zoning variances, zoning clearances, or any other local ordinance that might restrict the use of those facilities for that purpose. The Idaho law does not include the exemptions outlined in the Federal law making it more restrictive than the Federal law. The bill before the Committee today will engraft that exception from FHA to the State code.

The language is in two parts. One part is a clean up to the current language. The second part is subsection (d) and the language in this section engrafts the FHA language and also specifically references *Idaho section 20-219* regarding felony probation and parole. These classifications would automatically, under FHA, fall within the language of the exemptions.

Chairman Hill asked if these places are not going to be allowed in residential neighborhoods, what are other alternatives? **Representative Luker** responded that this bill doesn't mandate the cities to do anything – the status quo remains. The bill does give cities the tools to work with and everything the cities do when this change is made still has to comply with Federal law and nothing that is discriminatory can be included in their own city zoning.

Chairman Hill asked what will happen to existing homes which will be out of compliance if this bill is passed, could they be addressed by the city and decisions made—there isn't a grandfather clause? The point is that the city needs to address the situation and see what they need to do.

Representative Luker said that is right. This does not mandate or change anything.

Senator Corder said that cities may start applying these rules as quickly as they can and it looks as if there may be some physical damage in some locations. How will that be dealt with? **Representative Luker** said that is an unanswered question that needs to be reviewed. That question is not being addressed in this bill. This is a simple change to the law to allow more discussion and to give cities and neighborhoods a forum to address the issue.

Senator Bilyeu asked if this bill just applies to cities or does it also apply to counties? **Representative Luker** said it applies to anyone with a single family dwelling zoning ordinance. **Senator Bilyeu** gave an example of a single family dwelling located in a new residential neighborhood that housed

eight handicapped seniors. The dwelling was then sold and the new owners switched to a home for delinquent young boys. The citizens in the neighborhood protested the change and it was denied. Does this bill affect that situation? If so, in what way? **Representative Luker** said that H 465 would affect this situation in the sense that it would allow the county to have a few more tools. Under current law, if it is over eight, they can deny it anyway. FHA allows a reasonable accommodation review. With the current restrictions on a city or county to impose any ordinance for these types of uses, it is questionable whether the reasonable accommodation review would be allowed.

Senator Siddoway asked who gets into these houses and who doesn't? **Representative Luker** stated that it is up to the operator of the home unless the Department of Corrections (DOC) steps in and determines how many people they want in that particular facility. **Senator Siddoway** asked if it was possible for the DOC to put a murderer, a rapist, an alcoholic, and a drug dealer all in the same home. Are there any qualifiers to say who will be in the home? **Representative Luker** responded that it is not the DOC that places them, it is the operator and the operator could bring all of those folks together unless the DOC says no.

Senator Langhorst stated concerns about unintended consequences as a result of this bill. There is nothing to keep five or fewer convicted persons from living in a home without supervision. **Representative Luker** said that is right. Currently, there is nothing to keep any combination of people from moving in. **Senator Langhorst** created a model using 10 homes with 10 persons each converting to 20 homes with 5 persons each in an unsupervised situation. Isn't that possible? **Representative Luker** pointed out the economics of that scenario. It would be more lucrative to have fewer homes with more tenants even with supervision.

Chairman Hill announced that, in the interest of time, public testimony would be limited to 3 ½ minutes per person.

Dennis Mansfield, Director, New Hope, drew two distinctions on this bill. 1) The Americans for Disabilities Act and the Fair Housing Act is about ex-addicts. 90% of the residents at New Hope are men and women who are or have been on parole. The other 10% are simply ex-addicts looking for recovery. The issue is recovery and that is how the houses were originally set up. The case went to the Supreme Court because they had to be addicts in recovery.

2) There are 38 companies like New Hope within the State involved in such programs. It is not a real estate deal. This bill caught the operators within this industry by surprise. **Mr. Mansfield** said that no one met with them or included them in the process of crafting this bill. They don't have sex offenders in the New Hope houses. They limit and screen out people with violent histories. They work with Health and Welfare (H&W) and the DOC to assist the probation officers when they have an ex-inmate, we try to accept them. **Mr. Mansfield** opposes this bill.

Senator Stegner asked how many New Hope homes are in operation now? **Mr. Mansfield** said they have 15 homes. **Senator Stegner** asked what

process is used to interact with the surrounding neighborhood when you choose to select a site to create a home. **Mr. Mansfield** said they go into a neighborhood, they let the people know they are going to have a house, and they are going to be at a certain location. It wasn't always like that. Most of the neighbors understand and there has only been a couple of homes where people didn't understand why they were there.

Dennis Davis, Director of Public Safety, City of Nampa, spoke in favor of H 465. **Mr. Davis** said he understood what the intent of the current statute was when it was written. It related to assisted living centers and group homes to provide accommodations for those with disabilities. The City of Nampa has many assisted living centers taking care of people with disabilities located in residential neighborhoods . They are all licensed and monitored by H&W. This is not the case with transitional housing. The City is limited in what they can do to address the issue of transitional housing. Representative Luker has done a good job with this piece of legislation to help us with the issue of transitional homes in our neighborhoods. All the City is asking is to have the ability to deal with this on a local level. They will do what the citizens want them to do.

Claudine Sippoli, House Manager, New Hope House and BSU student spoke in opposition to H 465. **Ms. Sippoli** gave a personal history with her experiences at New Hope and how the program has helped her. She explained that without this type of transitional housing and the opportunities it provides, she probably would never have been able to get back into the main stream and certainly, would not have been attending BSU. She is a recovering alcoholic and has been in the program for two years. New Hope provides work opportunities, counseling, support, and mentoring. The goal at New Hope is to become productive citizens in society and help others who are experiencing the same difficulties. They have had a good experience with the neighborhood where they reside.

Chairman Hill commended Ms. Sippoli for her efforts and stated his respect for New Hope and the other organizations across the State.

Senator Heinrich asked what her alternatives would have been? **Ms. Sippoli** said her alternative would probably be incarceration. She has tried to do this before without the support of New Hope and she has been in and out of the county jail several times.

Senator Siddoway asked about the employment practices at the New Hope houses. How do the residents spend their days? **Ms. Sippoli** said that one of the goals is to help men and women become self sufficient. Obtaining employment within seven days is a strict requirement. If they do not get a job, a case manager will help them get employment.

Senator Bilyeu asked how many women were in this residence. **Ms. Sippoli** said there were ten.

Kevin Kempf, Division Chief over Probation and Paroles, Idaho Department of Corrections (IDOC), stated that the IDOC neither supports nor opposes this legislation. This is a very, very difficult situation because, on one hand, there is someone like Ms. Sippoli and everyone would want the very best opportunities for her and on the other is the concern of the neighborhood.

Part of the IDOC Mission Statement is to protect the public and that is done with sound, supervision strategy and opportunities for offenders to change. Today, there are 13,000 offenders under IDOC's responsibility. 90% of Idaho's inmates will come out of prison and come back into Idaho communities. Any type of legislation that has the most remote restrictions on housing can potentially affect IDOC. This legislation is a new concept and the impact is not known. In April of 2006, there were 30 transitional homes statewide, now there are over 100. This transition home issue did not come to the attention of IDOC until November of 2007. They don't know the recidivism rates for those who go through transitional homes or those who don't. There is not enough data for the IDOC to support or oppose this bill. Currently, there is no clarity on who to go to for questions, concerns, or issues. The IDOC, to some degree, has taken a lead role in bringing together communities and cities. There are probationers and parolees in transitional homes but there are also others that are not under the supervision of the IDOC. It is a very complex issue!!

Senator Langhorst stated that the SOP says one exemption includes people under supervision of the IDOC. Is that correct? **Mr. Kempf** answered that what he knew about FHA was in regard to persons convicted of the manufacture of a controlled substance or sex offenders. Outside this legislation, he is not aware of language that speaks to being a "direct threat" to the community.

Senator Stegner asked do you think the passage of this bill would reduce the number of facilities that currently exist? **Mr. Kempf** said he is really not sure. Senator Langhorst brought up a good point, a potential impact of this legislation could be more houses with less supervision. There is no way of knowing the impact of this legislation at this time.

Senator Stegner said if he thought the passage of this bill would reduce the number of transitional housing opportunities, he would oppose that kind of legislation. There have been some allusions to a public process to consider the ramifications of location and there should be sensitivity to community concerns and some process for reviewing them. It appears there is none in the State. Are you aware of any? **Mr. Kempf** said he was not aware of any. Health and Welfare does authorize some of these homes but others open up on their own and then approach IDOC to let them know about space availability. There isn't any real process. **Senator Stegner** recognized the severe need for transitional housing opportunities in the State and the very positive outcomes shown in other states. There is a significant lack of public policy in Idaho that takes into consideration the concerns of neighborhoods and communities and balancing that with the policy needs for transitional housing. This bill may fall short in recognizing the larger need for development of some significant improved policy in that area. **Mr. Kempf** said that summary was perfect. There is no disagreement that there is a need—neighbors living next to a home and legislators agree. There is a need for community based options. How to go about doing that is unknown.

Senator Corder addressed the question of accountability. Health and Welfare may be accountable for programs that are offered but what standards must those programs meet and how is the house held accountable? **Mr. Kempf** said this legislation does provide some clarity, it

does empower cities to have some control. Today, there is nothing available. As far as the accountability of the program, that varies. The homes that go through H&W facility approval process are held accountable. Other businesses are faith based and they do more faith based programming. The Judiciary Parole Commission does their own testing regardless of what is done by the private operator.

Gaylen Hughes is representing the neighborhoods. He lives across the street from a New Hope home. **Chairman Hill** asked if Mr. Hughes lived there before the home was developed? **Mr. Hughes** said he was there before. The bill is not trying to eliminate this type of housing because there is a need. The neighbors have compassion for the people living there and what they are trying to do to gain control of their lives. The reason people live in single family areas is because they don't want to live where people are coming and going all the time. Mr. Hughes said he would be just as opposed to any other multi occupancy dwelling. He gave his personal experience with living next to a unit that houses 12 men and all of the attendant activities that affect the neighborhood of 17 homes in a cul-de-sac. The concentration is too high. This bill will help.

Bruce Barraclough, House Manager and resident of a New Hope House, and is responsible to set up the houses and hire the house managers. There are ten men's houses and eight women's houses. He told his personal story. He was released from prison 1½ years ago and is on probation. He was released from prison because the judge believed he was not a threat to society. He has resided in New Hope houses since then. In doing his job, he travels with a Health and Welfare (H&W) representative and they inspect the various houses to ensure that those houses meet H&W standards. It is really important for society to work this out in a way to continue to allow transitional housing in neighborhoods because it is very necessary to have a clean environment to rehabilitate.

Senator Langhorst asked if the environment in these homes would be the same if they were located in another area such as a multi family dwelling neighborhood? **Mr. Barraclough** said it is beneficial to live in a single family neighborhood. It gives the house residents a feeling of being normal members of society, they fit in, they are not isolated, and they belong in society. This all helps to establish self esteem and that is one of the most important parts of the program. Living in a nice house gives an incentive to get jobs, go to church, get up each morning and know you can live a normal life. **Mr. Barraclough** said he understands the concerns of neighbors. He has small children and unless those neighbors are willing to get to know the house residents, they cannot know who they are and what the program does for those residents. There is increased traffic and other impacts on the neighborhood but that would happen whoever lived in that house. I think it is very important that we live in these types of residences in a neighborhood for a successful transition into society.

Addie Haas spoke on her own behalf to share her experience with a transitional house located in her neighborhood. She said that in the beginning, it was a good experience and the men in the house were always pleasant, they would help out by shoveling snow and carrying groceries, etc. Things changed when the number of residents increased to eight. The newer

residents were younger, they would look in her windows, and were disrespectful. She is currently babysitting with her great grandson and she is very uncomfortable having a transitional house in her neighborhood with the larger number of residents.

Brian Fischer, Executive Director, Idaho Values Alliance, stated that this is a non profit organization and their mission is to make Idaho the safest place in the world to raise a family. They support this bill because it will make Idaho a better place for families. He said he believes in the work of these transition homes, especially those that are faith based. But, it is also important that policy shows compassion for families and the impact those policy decisions have on their sense of security, safety, and piece of mind. City and counties cannot do much to control where these facilities are placed and this legislation will give local governments another tool to be more responsive to their citizens. There has been discussion of alternatives and maybe something like a light industrial area may be a better location. Families of origin could also be a source of help for those returning to society.

Bruce Chatterton, Planning and Development Services Director, City of Boise, stated that the city of Boise is in favor of this bill. Group homes are clearly allowed by the Americans for Disabilities Act and the City of Boise supports them. However, there are impacts on neighborhoods that can only be addressed by zoning. This bill has clarified the definition of group homes and addresses the supervision issue. The City would like to see some kind of licensing process. There should be more cooperation between DOC and H&W. Currently, there is very little governance around this issue. The City supports this bill as a step forward to getting order and governance.

Senator Siddoway asked if State law restricts the City of Boise from having a city ordinance that would limit a single resident home to no more than five adults? Could Boise do that without changing State law? **Mr. Chatterton** said the current local ordinance allows more than eight people in a single family residence. The City might consider changing some local ordinances.

Senator Langhorst asked what the City of Boise would do if this passes? **Mr. Chatterton** said they would re-evaluate current ordinances to see if they wanted to make changes. If the numbers are limited on these homes, it might have an overall effect from an economic point of view. **Senator Langhorst** asked what would happen with the existing homes? **Mr. Chatterton** stated that grandfather rights would apply.

Senator Heinrich asked if the City of Boise could develop a different process for public review? **Mr. Chatterton** said this bill somewhat empowers city and counties to look at this issue and they would need to look at enabling ordinances that were consistent with the State laws.

Representative Luker summarized some of the issues.

- The appearance without notice, of the homes in neighborhoods.
- The bill was crafted to be unobtrusive and give cities some tools.
- There is an urgency because New Hope is expecting to open 40 homes, they have 15 now.
- There are two viewpoints, one from the neighborhood and the other from the group home. There needs to be discussion to work out

issues and get resolution to a very difficult problem.

MOTION: **Senator Corder** moved to send H 465 to the Senate floor with a do pass recommendation. **Senator Bilyeu** seconded the motion.

VOTE: The motion carried by roll call vote.
Ayes: Senators Corder, Stegner, McKenzie, Heinrich and Bilyeu
Nays: Senators Siddoway, McKague and Langhorst

Senator Lodge and Senator McKenzie will sponsor H 465 on the Senate floor.

H 490 ***Relating to the State Athletic Commission to provide for the use of certain moneys to promote and support amateur boxing.***

Senator Bilyeu introduced Tom Katsilometes to explain H 490. **Mr. Katsilometes** explained that this bill designates that 5% of the money the Boxing Commission received as revenue from ticket sales would be used to promote amateur boxing for boxing organizations throughout the State.

Phil Whiting said this designated money is primarily for at risk kids that are involved in boxing programs across the State of Idaho. The programs serve about 300 kids and about 25 organizations. The major purpose is to keep kids off the streets and provide funding for tournaments and other needs that may arise.

MOTION: **Senator Siddoway** moved to send H 490 to the consent calendar. **Senator Heinrich** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

H 438 ***Relating to Property Exempt from Taxation to provide a tax exemption for certain low-income housing.***

Representative George Saylor explained that H 438 proposes to add a new section to *Chapter 6, Title 63, Idaho Code*, preventing the use of the federal tax credits when assessing property taxes for Low Income Housing Taxpayers under *Title 36, US Code, Section 42*.

The issue goes back to the Federal Tax Reform Act of 1986 which created Low Income Housing Tax Credits (LIHTC). This program provided tax credits to those offering low income housing. There are over 7700 units within the State of Idaho under this program.

The Federal Government annually awards an allocation of housing for low income taxpayers in the states based upon population. Each state then allocates those credits to builders who submit low income housing projects. The rental properties that are built with those credits must set aside a portion of the properties as low income rental units. Those who rent the units must qualify as low income residents based on federal guidelines and rents must remain capped for a period of 30-40 years. Failure of the builder to adhere to the criteria will result in the loss of the tax credits. Builders generally sell the tax credits to investors who will then use them to reduce their tax liability and the builder, in return, gets a low interest cash loan, usually 90-95 percent of the value of the tax credits. Tax credits represent 60-80 percent of the

project costs and are considered a form of equity capital and are not subject to federal or state income tax. For 2007 Idaho received \$2.9 billion in tax credits that are good for ten years amounting to \$29.0 million in credits which, when sold to investors, equals about \$26.0 million in private capital as leverage for more new housing. This represents about 300-400 new units in the State.

In recent years, an attempt has been made to include these credits in the market value of the projects for property tax purposes. Including those credits will increase assessments and increase property taxes. Since the rents are capped, the rental incomes cannot be adjusted to cover that increase of costs and the net result is that many of these properties will no longer be economically viable and will be forced into foreclosure. This will also jeopardize the prospect of future projects. That would have a negative result for the affordable housing industry, for low income citizens, and for the lending industry in Idaho.

In 2006 the Idaho Supreme Court ruled that low income apartment properties could be assessed using two components: 1) They could be assessed on actual rental income, and 2) The value of the tax credits must be included/considered for assessment purposes, Brandon Bay, Ltd. Partnership v. Payette County, 142 Idaho 681, 132 P.3d 438 (2006). Following this ruling, some county assessors began to include the tax credits in their assessments, resulting in increased assessed values and increased property taxes.

There have been discussions between the affected parties (various associations) but without resolution. It was believed this bill was acceptable to all but, with the comments heard today, that does not seem to be the case. Currently, there is no consistency in the methods of assessing low income housing projects so there is no certainty for potential builders. This legislation would resolve the issue and create a specific policy excluding these credits from the assessment process. There are 24 other states that have addressed this issue in primarily this way. Some have had court decisions declaring that the tax credits should not be included in the assessment process.

Representative Bayler would like to yield to Mr. Hunter from the Idaho Housing and Finance Association.

Gerald Hunter, President, Idaho Housing and Finance Association (IHFA), and Administrator for Low Income Housing Tax Credit Program (LIHTC). **Mr. Hunter** explained why his organization is concerned and why IHFA is supporting this legislation.

Mr. Hunter provided a handout and reviewed the dynamics of how the tax credit creates affordable housing (included in minutes-see NOTE above). The Federal Government provided for a tax credit over a ten year period of time. The investor provided the up front funds to the builder at a lower cost in exchange for the tax credit resulting in a smaller loan and lower rents to accommodate lower income citizens. The investor is paid back over the ten years plus a return on the investment (from p.2 of handout).

The next chart (p.1) provided a historical perspective about property taxes

on Section 42 (tax credit) properties compared to the average normal tax of \$750/unit/year. A model was used to incorporate the tax credits in the property tax calculation. There would be a tax reduction during the first ten years and then taxes would level out over the next thirty years.

Discussions have centered around reaching a value for the tax credits. The tax credits are paying the investor back for the money contributed as equity into the development but in order to value that tax credit, consideration must be given to how many remaining years of credits are left. If the assessor uses this model to assess property taxes, in the first year, the taxes will be double and will slowly decrease over the ten year period then levels out for the remainder of the forty year period.

IHFA has some concerns about how these properties are valued. If an appropriate way to evaluate Section 42 properties is not reached, there may be some significant, if unintended, consequences. There are thousands of units that have been funded with low income tax credits that would suddenly be subject to a significant jump in property taxes. Using the graphic, property taxes represent about 16% of the gross revenues and is a major part of the overall revenue stream for these properties. To take that property tax and potentially double it would mean pushing these properties into a negative cash flow.

Another concern is wasting affordable housing resources. Having a somewhat level valuation for property taxes is an approach that makes it much easier to underwrite the properties, determine expenses, then allocate the right amount of resources to make that happen.

There is a concern about the ability to penetrate all parts of the State. These programs have had a heavy penetration into all areas of the State. With higher taxes there may be areas of the State where this program will not work financially: 1) The more rural areas, and 2) The vacation, or higher cost areas.

This bill resolves IHFA's problems . This issue has emerged across the country and legislatures in 24 states have taken tax credits "off the table" in their property tax calculations. There are not a lot of alternatives to deal with this issue and IHFA supports H 438.

Chairman Hill asked if the tax credits are used to repay investors. **Mr. Hunter** responded yes they were. **Chairman Hill** asked how does the normal investor get repaid? **Mr. Hunter** answered that in a conventional house development they are repaid through cash flows from operations of the development or the increased value of the property. **Chairman Hill** confirmed that such cash flows or increase in values is called "income." **Mr. Hunter** concurred.

Chairman Hill asked if it was true that the assessors had a Supreme Court ruling to support their aggressiveness in including the tax credits to arrive at market value? **Mr. Hunter** responded that the Brandon Bay case indicated that tax credits should be considered but the court did not describe how they would be considered or what methodology should be used so that was left open and that is part of the problem. **Chairman Hill** stated that they should not be ignored either. **Mr. Hunter** agreed. **Chairman Hill** quoted the court,

“when determining the market value of low income housing developments, the value of Section 42 tax credits should be included in the assessment,” Brandon Bay, Ltd. Partnership, 142 Idaho at 442. When increased costs put the investor in a negative cash flow, normally that would result in increased rents. Don’t these investors have that same option? **Mr. Hunter** said that they do not. The projects are structured developments; the financing is fixed, and the rents are based on median incomes and those rents are fixed. The only way rents can go up over time is if the median incomes increase.

Chairman Hill asked if a developer intentionally told the tenants that an increase in property tax would cause their rents to go up, he would be intentionally misrepresenting the truth wouldn’t he? **Mr. Hunter** said that if the rents were already at the maximum level and there is an increase in operating expenses, the owner would not be able to raise the rents.

Chairman Hill asked if the answer to his previous question about whether or not rents could be raised should also have been “that depends?” **Mr. Hunter** agreed.

Senator Stegner said he has spent ten years in the Legislature and this is the third time he has seen this bill. He did not like it before and, unless he sees something significantly different, he is expecting to vote against it again. How are the tax credits classified and are they viewed as equity? A case can be made that they are replacing rents on that property and therefore, it is income. It makes perfect sense that they are then included in the income approach to valuation. Idaho could possibly come up with a better model than front end loading the entire revenue stream in the first ten years. There could be a way to adjust that through State law that would allow an even distribution of that income over a longer period of time making it more equitable to the investor. That is not what this bill does. This bill prohibits the use of that income in the consideration of that valuation. Is there any significant accounting basis to call those tax credits equity rather than income?

Mr. Hunter responded that it is a difficult question to address because it is a complex issue. The way the program has been designed and structured in the Federal Tax Code allows for these different perspectives. In 1986 when the program was initiated, it would have been easier to set up a grant program but this program was easier to sell than a grant. This Federal program requires a financial intermediary that puts the money into the project on behalf of the Federal Government and then gets paid back over a period of time. This is the reason it should be viewed as equity.

Chairman Hill asked how can you call it a loan if you don’t have to pay it back? It doesn’t matter if it is income or equity. Income is equity on the balance sheet. The value of the asset, the building, the assets less the liabilities equals the equity and income is what creates the equity or what the investors have contributed. One is taxable and one is not but they both increase value.

Senator Heinrich requested clarification on Mr. Hunter’s statement “it requires an allocation of additional resources to offset the increased property taxes.” Where do the additional resources come from? **Mr. Hunter** said if it is the standard approach about how loans work and operating expenses are

increased, it takes some other income the property generates to pay for those additional expenses. The loan is smaller so it will take more equity to fund the project.

Senator Langhorst addressed the tax credit equity example of 65% (p2 of handout). Instead of Federal Government giving a subsidy, the investors, at the direction of the Federal Government, provide the funds to build the project and then the Federal Government pays them back. **Chairman Hill** said the equity was paid back. Investors don't make loans, they invest in equity. They get paid back with profits or government tax credits.

Senator Corder said the assumption is if the assessment goes up, the property taxes will double. There is no evidence that will happen. The flaw in the whole investment is that there are no investors that have determined that this is a good investment and used their own capital. The Federal Government decided that the only way to get people to invest in this venture was to provide equity for them and provide a mechanism that the investor could use as a cash equivalent on their own tax return. What is wrong with this investment that there are not investors who will do this type of project without government intervention? **Mr. Hunter** ultimately answered that these types of developments would not pencil out. A developer could not get the financing to construct this type of housing and offer the apartments at the lower rent structure.

Senator Siddoway said if a family qualifies for low income housing, the amount of rent they can pay is capped by the Federal Government. That is why the rents are so low and why it is unattractive for an investor to put money in that kind of project.

Mr. Hunter said this tax credit program has been very successful. It is a vast improvement over what federal housing used to be. **Chairman Hill** agreed that this is a great public/private partnership. **Mr. Hunter** said the tax credit program really rests on the private sector.

Senator Heinrich asked if the people that rent these units are the same people the non-profit organizations are helping? **Mr. Hunter** said he didn't believe so because most non-profit housing is directed at people with a lower level of income. There are some non-profit developers in the State that have put up these Section 42 projects. When they do that, they operate and manage them the same as a for profit entity.

Chairman Hill announced that due to time constraints, limits would be placed on public testimony so that everyone would have a chance to speak.

Commissioner Royce Chigbrow, Chairman, Idaho State Tax Commission, explained that the Idaho State Tax Commission (ITC) met in November of 2007 to write rules on this issue and ultimately came to the conclusion that they were implementing a law so they withdrew Rule 217 and left it to the Legislature to address how to value and how to tax low income housing and the tax credits. ITC supports H 438 because it defines the tax credit and it provides consistency throughout the 44 counties. There are a lot of questions to address. If the income approach is used, is it "bricks and mortar" or is it equity? The reason we are here is to get legislation that determines how to treat low income property tax valuation. The investors put

in 85¢ for every \$1.00 of tax credits for equity and the dollars that flow to build the project come as a return to those investors. They are not getting dollar for dollar because the cost was only 85¢ on the dollar. Is the credit coming back to the investor for that income?

The credit itself is based on the estimated cost of construction before the project is started and it is dollar for dollar based upon a formula for that amount of construction. In that aspect, it is government equity in a low income housing project where they bought in over a ten year time period. The investor can redeem the credits they have purchased over a ten year time frame. Does it relate to the rental income? Can that be defined as rental income? Then there is the formula to be considered that transforms the tax credits to real estate. It is very technical. **Chairman Hill** agreed that it was very technical but the Supreme Court Justices gave a unanimous opinion.

Senator Bilyeu asked who proposed Rule 217? **Commissioner Chigbrow** said it was a result of the Supreme Court decision and it was represented by the County Assessors and maybe the Idaho Association of Counties.

Representative Saylor said it came out of the negotiations between the County Assessors, Counties, and ITC.

Caleb Roope, The Pacific Corp., owner and builder of low income housing projects in the State of Idaho testified in support of H 438. **Mr. Roope** explained the information packet (on file with the minutes) is a comparison between Idaho and several western states for annual property taxes per unit and the economic impact of the tax credit housing program. The objective is to show how other states are treating the tax credit.

Senator Heinrich asked Mr. Roope if his renters utilize the services provided by property taxes? **Mr. Roope** answered that they do. They are residents of the community just as others are residents of the community. **Senator Heinrich** agrees that this is about public policy. If we are going to establish a public policy where one group does not pay taxes, why should the Legislature tell the local jurisdictions that all the other citizens must pay taxes to provide those services or should they be provided by the General Fund? **Mr. Roope** said this is not a question about the property paying taxes. The Section 42 property will pay taxes as it has been for years. The issue now is that the funding source is being characterized as income or a vehicle that needs to be assessed as set forth in the Supreme Court decision. It is not a question of paying the taxes, it is a question of paying additional taxes. **Senator Heinrich** asked if the Legislature is being asked to establish public policy where the local assessors will be instructed to avoid assessing property unless it is considered income. Ad valorem taxes are not based on the ability to pay. **Mr. Hunter** said the assessors have the freedom to assess this property under one of three methods. The comparable sales approach, the income approach, and the cost approach. The purpose of the bill is to take away tax credits the Supreme Court said "shall be considered." It is not restricting the assessors from using any of the three approaches, the issue is that the credits come off the "menu" to be assessed.

Chairman Hill asked what percent of the properties he owns, charge less than the LIHTC limit? **Mr. Roope** said that rental rates are based on residents' income levels restricted to bands of 30%, 40%, 50%..... of the

median income. When they apply to the state, generally anything below 50% is set at the maximum. When it gets to 60% the rental rate has to stay 10% below the market rents and it can get very close, especially in rural areas.

Senator Bilyeu asked Mr. Roope how many projects does he own in Idaho?

Mr. Roope responded that they own nine properties in Idaho and 80 in the western states. **Senator Bilyeu** asked Mr. Roope if he had applied for tax credits to build more for next year? **Mr. Roope** said no. Part of the reason is that the tax situation is unpredictable. He has two properties in Nampa where the assessors are using the Brandon Bay decision in their assessments and it has caused the properties to show a negative cash flow. They can absorb some of that as a for profit corporation but non profits cannot.

Bob Barber, Idaho Community Reinvestment Corporation (ICRC), is a non-profit financial consortium of national, regional, and local banks located in the State of Idaho established solely to provide long term financing for low income Section 42 housing. The letter from ICRC President, Steven D. Nielson, was entered into the minutes as being testimony in support of H 438 in lieu of his oral testimony. (See Note above for permanent record.) **Mr. Barber** said the ICRC is in favor of this legislation. In the opinion of ICRC, failing to pass this legislation will put many of the developments with long term loans in jeopardy, not only current developments but future developments. We have great developers but our concern is for the tenants. This whole issue of allowing the tax credits to be used to assess property taxes will impact the tenants of these properties. The bottom line will affect low income families and seniors regardless of whether rents can be raised or not. As a lender for these properties, we realized at the beginning there is a very narrow margin of profit. This has not been an issue with underwriting these loans because until recently, the assessors were not using the tax credits.

Senator Corder asked what is the average value of the properties that ICRC loans on? **Mr. Barber** said that the average loan in the portfolio is \$1.5 million so the average cost would be double that. **Senator Corder** asked what is the average size of each property? **Mr. Barber** said the average is a little over 40 units. **Senator Corder** asked what is the average return of those 1300 units—what is the average income? **Mr. Barber** said he didn't have the average rent but their underwriting requires a certain debt service coverage of not less than 1.5 to 1. They are low margin projects. Right now many of the projects struggle to stay at 1 to 1. **Senator Corder** asked how much capital is required for a \$3.0 loan. **Mr. Barber** answered that ICRC goes up to 75% of the value

Chairman Hill referred to Mr. Nielson's letter quoting "LIHTC legal restrictions prohibit the direct increase in rents to cover any property tax increases." Can it be assumed that the rents are at the maximum amount allowed? **Mr. Barber** responded that the majority are at the maximum limit.

Senator Heinrich asked if the current rent requirements are for a 40 year contract period? **Mr. Barber** answered yes. **Senator Heinrich** asked why they would enter into a contract when they had to know that property taxes were going to increase over those 40 years. **Mr. Barber** said they review the history of property taxes through a variety of sources and come up with a “best guess” and apply a formula to project those increases.

Matt Geddes Jr., testified in support of this bill and gave an overview of how low income housing helped him while he and his wife attended a university. **Senator Corder** asked who pays? **Mr. Geddes** said he and people like him who have benefitted will pay.

Kalyn Geddes stated the same reasons as Matt Geddes.

Jolene Adair testified in support of H 438 as a senior resident of a project and gave her personal story. **Chairman Hill** asked her if anyone had told her that her rent would go up if this bill was not passed? **Ms. Adair** said she was told it would not go up.

Misty Bonner, Property Manager for three low income housing projects in Lewiston, spoke about the effects of the increased taxes on building and maintaining these properties. The projects have benefitted the residents but it has also brought economic development into the area. **Ms. Bonner** said she had been a resident because her income was not enough to find a place to live and save and at the same time work and pay taxes. **Ms. Bonner** referred to a handout explaining their programs at the project. (On file, see NOTE above.)

Senator Bilyeu asked if Polamar was a unit Ms. Bonner manages? **Ms. Bonner** responded that Polamar is a new senior project that is under construction. **Chairman Hill** asked Ms. Bonner if her residents had been told the rents would go up as a result of this bill. **Ms. Bonner** said no.

Linda Ball, Manager, Tramore Senior Apartments in Meridian, testified in support of H 438. **Ms. Ball** stated that this is a tax credit property for senior living and there is a need for this type of low income housing.

Georgia Plishkey, Washington County Assessor and Chairman of the Legislative Committee for the Idaho Assessors, testified in opposition to H 438 and stated that most of the 44 county assessors are against this legislation. **Ms. Plishkey** said that after the conclusion of the Supreme Court decision, the Association of Assessors formed a sub committee who met with the industry and anyone else involved to get an informed way to assess the tax credit properties. They met with an accredited appraiser who shared a formula to assess these properties. The Committee then met with people from the Idaho Association of Counties and the industry and they all agreed upon a formula. The Idaho Association of Assessors agreed to the formula. The objective was to be consistent and equitable across the State. As a result of this meeting, the tax rule was introduced and in August, they realized that industry was not going to support this solution. The Assessors want to find a good way to assess this property equitably but this legislation is not the right way to do it. **Senator Stegner** said there are other alternative solutions but does your formula redistribute the allocation of the benefit over a longer period of time? **Ms. Plishkey** said they had looked at 40 year and

10 year and decided on the 10 year plan. **Senator Stegner** asked if there would be other alternatives agreeable to the assessors. **Ms. Plishkey** said they are willing to work on other alternatives. **Senator Stegner** said that rejecting this bill doesn't automatically end all of these projects in the State. An acceptable alternative to the legislature, assessors, property owners, and all the people involved must be worked out so this is not a one sided issue. **Ms. Plishkey** said after this hearing, they intend to try to get all interested parties together and find a good way to address this issue.

Morice Theirrien, Real Estate Appraiser, Mountain States Appraisers, spoke in favor of H 438. Mr. Theirrien specializes in apartment valuation. He has been involved in the appraisal of tax credit properties. H 438 is a remedy to protect the integrity of the LIHTC program as it has been operated for the past 20 years. It would prevent assessors from fundamentally changing the way they currently assess these projects. Mountain States attended the assessors discussions about how they were going to implement the change in assessment policy through the ITC. The proposal was to include tax credits by amortizing them over a ten year period which would have raised the tax by 50% for those properties five years and older and newer properties by 200%. The program has been successful in facilitating new construction and rehabilitating older apartment projects in smaller communities that have a great need for affordable housing. Tax credit properties are not tax exempt nor will H 438 lower property taxes from historical averages. These projects are paying as much taxes as regular housing projects.

Bob MacKenzie, Payette County Assessor, testified in opposition to H 438. The Brandon Bay and Kenmare Trace projects are both Section 42 projects in Payette County. After the Brandon Bay decision, the Payette County Assessor's office adjusted their assessments and the Board of Equalization upheld that valuation. In 2003 an appeal was filed with the State Board of Tax Appeals which upheld that value. Brandon Bay took the case to Fourth District Court and argued on the intangible personal property issue saying that the tax credits were part of an exemption under 63-602, *Idaho Code*. The County appealed to the Supreme Court which reversed the previous court decisions and said tax credits should be considered. All five Supreme Court Judges agreed. **Senator Stegner** asked if, during all this time, you were using the value of the credits to appraise these properties? **Mr. MacKenzie** said they had been using the cost approach during this time until the end of the litigation. This past year is the first year using the methodology in the formula mentioned by Ms. Plishkey using the tax credits. **Senator Stegner** asked if this will increase the taxes 100% on those most recently built? **Mr. MacKenzie** said that was correct. **Senator Stegner** asked if the older ones would be almost nothing? **Mr. MacKenzie** said once they reach the 11th year the values will decrease significantly.

Tom Manshrek, Owner, Thomas Development Company, testified in support of H 438. **Mr. Manshrek** said the question they get asked most frequently is "who are you renting to?" The residents of Section 42 housing projects are those who have a very low income like teachers, students, single parents, and seniors. That is the segment of population these developments serve. Taxation needs to be fair and socially responsible. The taxes can go up as much as 200% without this bill. With this tax liability, it

will be impossible to underwrite a permanent loan. They want to continue paying taxes on a level playing field. **Senator Bilyeu** asked how many projects does he have in Idaho and have you applied for tax credits for next year? **Mr. Manshrek** responded that they have 1300 units in Idaho and yes, they did apply for tax credits. **Senator Bilyeu** asked if he had sold any low income housing projects? **Mr. Manshrek** said the real estate has not been sold, the interest in some of the partnership was sold but not all of it.

Chairman Hill said that considering that only two weeks ago, there were only two people who knew he had concerns about this bill, could you say who contacted hundreds of people across the state saying that he was opposed to the bill and as a result their rents would go up? **Mr. Manshrek** said he had no personal knowledge about that and it did not come from his office. **Chairman Hill** asked who organized the effort to get over 635 letters faxed to him? **Mr. Manshrek** had no knowledge about that. **Chairman Hill** read several of the letters showing the stress and concern of many residents, mostly seniors. **Mr. Manshrek** explained what could happen but stated that rents would not go up. **Chairman Hill** said that it is sad seniors, handicapped persons, and those less fortunate in our State were alarmed by misinformation that their rents will increase and they will lose their qualification for housing to the extent that this kind of response would come from those citizens. **Chairman Hill** is not making any accusations, but he is concerned that unnecessary alarm has been caused to the most vulnerable citizens of this State.

Russell Westerberg representing Citizens for Affordable Housing, spoke in support of H 438.

Valencia Bilyeu, Attorney, speaking on behalf of herself, said the Section 42 housing program is invaluable. It is an incredibly good program and it is obvious from those testimonies heard today. This program isn't about how low income tenants use the project and discussion on this bill should center around how the owners of the property use the project and that is for profit. **Ms. Bilyeu** provided a handout showing a history of court cases in Idaho and reviewed it in detail. (On file with minutes, see Note above.)

Ms. Bilyeu said the partners get a good return on their investment. In one case, a partner invested \$6.3 million in equity and the returned tax benefit was \$8.5 million. For-profit entities own these projects and some of those profits could be utilized to pay taxes and that could happen without increasing any rents.

Senator Langhorst asked if the \$8.5 million in the example was recouped over a ten year period. **Ms. Bilyeu** said it was and also, in that partnership agreement, they had a guaranteed 9% return which would either come through the tax benefit or at a sale at the end of the 10 year term. **Senator Langhorst** asked if they were paying taxes on the 9%. **Ms. Bilyeu** said they were. There are three different groups that make a profit on this: 1) The developers are making 14%, 2) The management companies which, in many cases, are owned by the developers, and 3) The for-profit owners.

Chairman Hill asked if Ms. Bilyeu was aware of any other federal subsidy programs available? **Ms. Bilyeu** said she was aware of a few.

Senator Stegner recalled that every time there was a court case, there was an attempt to change the law. The implication is that this is a radical change but, in fact, what is being done is to maintain the status quo. **Ms. Bilyeu** responded yes. This is not a change. If it is a change for some properties then they have been getting an exemption they are not entitled to and that is what the Supreme Court case said. **Senator Stegner** said anyone that is building a project that would have the credits included in the income approach to the valuation has been ignoring the history on this issue for the last ten years. Is that correct? **Ms. Bilyeu** agreed. When these projects are taken to a bank, the appraiser looks at them from a market standpoint and they put in the proforma the tax rates at the market rents.

Representative Hart summarized and answered Senator Corder's question on why someone from the private sector won't come forward and invest without the tax credits. The tax credit is an indirect subsidy. The Federal government is participating as a partner in the project but is willing to accept a zero rate of return. The developer then gets all of the return. If that developer had to spread the profit over the total investment, the return on that investment would not be high enough to do the project because the rents are fixed at a rate lower than market. The Federal government has created an artificial market with these low income housing projects. Through the tax credit, the government low income housing projects have been privatized.

MOTION:

Senator Stegner moved to hold H 438 in Committee. **Senator Corder** seconded the motion.

Senator Siddoway said we are talking about profits as a bad thing and profits are not bad. Are we going to allow a tax exemption on a low income housing credit? If we aren't going to, is it different than a tax credit that is allowed to another entity that would create jobs, etc.? There is a concern that, if this bill is changed, are the tax credits going to be lost immediately or will they just be lost on new investments? Senator Siddoway's concern is that the projects already built have set rents, they have been paying taxes and now the taxes go up and there is no opportunity to increase the rents. He will vote against this motion.

SUBSTITUTE MOTION:

Senator Langhorst made a substitute motion to send H 438 to the Senate floor with a do pass recommendation. **Senator McKenzie** seconded the motion.

Senator Langhorst commented that it is a situation where two properties that are identical; low income housing paying twice the amount of property taxes as the regular project. If this is changed now, the rules will be changed in the middle of the game.

Senator McKague said she is agreeing with Senator Langhorst's motion because people will be hurt if those projects go away.

Senator Heinrich stated that this has been a difficult issue and he will support the original motion. He has a sense of comfort that the assessors will work all this out. It can't double the taxes. This is a vital industry and the parties will work out the problems. Try the formula for one year and see what the actual results are.

Senator McKenzie pointed out that everyone who testified agreed this type of housing is important. He stated that he had no reason to doubt the gentlemen who said that not passing H 438 would cause taxes to increase dramatically which would curtail future low income developments. **Senator McKenzie** acknowledged that passing the bill would shift taxes to other properties but that shift is acceptable because of the social need for low income housing.

Senator Langhorst weighed back in on the conservation easement that sells off part of the property rights and what is being done here is the same thing. By locking in low rents a portion of the bundle of rights has been sold. The market value of the piece of property that has a conservation easement is lower and by the income approach, these properties are lower as well. If the sale of the easement was paid over ten years it wouldn't be considered income just like what is occurring with these properties.

Chairman Hill said the payment from the Federal government was intended to be a rent subsidy. **Senator Langhorst** said he considered the 9% as being the payment for the risk. The rest is payment for the capital.

VOTE ON

SUBSTITUTE MOTION:

The substitute motion failed by roll call vote.

Ayes: Senators McKenzie, Langhorst, Siddoway and McKague

Nays: Senators Corder, Stegner, Bilyeu, Heinrich and Hill

**VOTE ON ORIGINAL
MOTION:**

The motion carried by roll call vote.

Ayes: Senators Corder, Stegner, Bilyeu, Heinrich and Hill

Nays: Senators McKenzie, Langhorst, Siddoway and McKague

ADJOURNED:

There being no further business, **Chairman Hill** adjourned the meeting at 7:40 p.m. until Thursday, February 28 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES
SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: February 28, 2008

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu

**MEMBERS ABSENT/
EXCUSED:**

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 Hill** called the meeting to order at 3:00 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.

H 470 ***Relating to the Local Economic Development Act to exempt revenue from any special levy or bond issue or judgments from distribution to an Urban Renewal District (URD). Funds will be expended only for the special purpose specified on the levy ballot.***

Senator Hammond provided some history which indicates that urban renewal law in Idaho is the result of past efforts by the Federal Government to provide funds to help cities do some economic development and improve their communities. When those funds were no longer available, cities were looking for other ways to fund these efforts. The Economic Development Act of Idaho (Act) came into being. The Act allowed for the use of tax increment financing to fund different types of improvement projects within a community. The strategy was to take under developed, under utilized property, clean it up, put in new infrastructure, and pay for that infrastructure through the increment which is the difference between the base value and the value that is created as a result of the improvements. Urban renewal does not rebate taxes, it does not give direct financial assistance to businesses, and it does not cause higher taxes. The taxpayers pay the same rate of property tax whether they live in or out of a URD. The only difference is how those taxes are distributed.

In more recent times, the financing has moved from bonds to developer agreements and, if the developer can create the increment, then the increment will be repaid through those improvements and the value in that increment. Originally, the taxes that were the result of the improvement would go to the district for the payment of the infrastructure investments. However, voter approved levies and bond issues can also create funding that go to the URD. If a levy for a school district is passed by the voters and the school district resided in a URD, the school district would get the designated amount of money but there would be an additional amount that would be paid to the URD. In reality, more money must be raised by that levy to pay both the school district and the URD.

H 470 will exempt those voter approved levies from distribution to the URD. The voter expects that the full amount of the levy or bond issue will go towards the designated district. This bill ensures that it will.

There is an exception that excludes supplemental levies which tend to run for long periods of time. Supplemental levies were intentionally left out because the funding mechanism is already in place and it would not be fair to change it.

This bill is the result of a joint effort between The Idaho Association of Cities, The Idaho Association of Counties, Urban Renewal Districts and Boards, and Legislators.

H 470 will not affect URDs already in place, it will only affect new projects. From now on, the monies from the levies that are approved by voters will go toward the intended purpose and nothing else.

Testimony in Opposition to H 470

Ryan Armbruster, Attorney, Elam and Burke, is primarily representing the Urban Renewal Agency for the city of Ammon. **Mr. Armbruster** said his purpose is to request some amendments to H 470. When the original bill was drafted in 1988, it was set forth as a very simple process. URDs have no role in the assessment process, no role in the collection process, and no role in the delivery process. The agency only gets a distribution of tax receipts on the increases above the base level.

Urban renewal agencies are at the whim of the system. If the levies are not reinstated or renewed, they are not funded. In some areas the plant facility levies and the supplemental levies seem to come on a regular basis. The Ammon School districts account for almost 40% of the overall rate that the Ammon Urban Renewal Agency is receiving. H 470, by statute, would take away those levies even if the electorate agrees to reinstate or redo them. The agencies would like to have the ability to complete their obligation under the existing rules and request that the Committee consider an appropriate grandfather clause for those agencies who have adopted an urban renewal plan and incurred debt prior to this year.

There is a major philosophical complaint in subsection (d) that affects supplemental levies. If a URD adds existing property by using an amendment process, it will not get the benefit of levies that are in existence prior to December 31, 2007. However, by treating the addition as a separate and distinct area, it would get those levies. Sometimes there are very important reasons why the local community and the local city council would agree to do an amendment as opposed to a stand alone situation.

Mr. Armbruster requests that this bill go to the 14th order and consider a grandfather clause and strike subsection (d).

John Shine, Commissioner, and Chairman, Jerome Urban Renewal Agency, gave an overview of his experience with a URD in Jerome which has been active since 1999. Jerome made an \$11.5 million investment over the last nine years and has been able to entice seven major employers to the area and several smaller ones, creating about 825 jobs. They have funded items such as a new fire station and equipment,

city/county recreational center, well and water improvements, and traffic signals, and the wage rate increased \$3.00 per hour. **Commissioner Shine** provided some examples of instances where the Jerome Agency improved an existing warehouse and expanded some boundaries. Urban renewal has been a phenomenal tool in Jerome. There was no development in Jerome until the establishment of the URD. Any changes to this law will have a profound impact on servicing the debt.

Major concerns with H 470 are: 1)the grandfather clause regarding supplemental levies, and 2) the boundary amendments. **Commissioner Shine** said they wish to continue operations as they have and would support the amendments Mr. Armbruster outlined.

Senator Corder asked what happened to the districts when you changed the boundaries? **Commissioner Shine** responded that he couldn't answer that without getting more information.

Senator Bilyeu asked if the same objective could be reached by creating a new district rather than expanding the boundaries? **Commissioner Shine** said they could have created a new district and they have subsequently created a district with another project. In this particular case, the property was contiguous and they expanded the boundary rather than go through the whole process of creating a new district. **Senator Bilyeu** asked if it is easier to amend an already created district rather than create a new one? **Commissioner Shine** responded that it was easier.

Senator Corder asked if the tax impact is identical if a district was amended or a new district was created. **Commissioner Shine** said he thought it was.

Shane Wardle, Administrator, Meridian Development Corp., talked about why an Urban Renewal Agency may consider amending their plan. There is an aging shopping center in Meridian that may need help in the future to rebuild and seek tenants to continue to increase it's property value. This shopping center is contiguous to Meridian's URD but not included in it. An amendment might be utilized in this situation. **Mr. Wardle** said that whenever an amendment is considered, there is still an approval process to go through. Other affected districts provide input.

Senator McKague asked Mr. Wardle if he supports H 470. **Mr. Wardle** responded that subsection (d) needs work in terms of what happens when an Urban Renewal Agency considers an amendment. In the case of a small parcel, the administration would be more than needed to create a new district but an amendment would be appropriate. Forming a district would be for larger parcels.

Senator Corder asked for an example of how an expansion would make a property more valuable. **Mr. Wardle** gave an example of Meridian's tax increment over the past three years.

2 years ago	\$400,000
Last year	\$800,000
This year	\$1.5 million

When the agency sunsets, all that tax revenue goes back to the districts.

Senator Corder asked if they have any ability to levy, does the expansion assume all of the ability to levy or do they have a little bit left so that the increased value offsets what they get? **Mr. Wardle** stated that it was not quite clear to him what happens with subsection (d). That is why it needs a little more work. That is why he cannot support the bill as is.

Testimony in Support of H 470

Tony Ponelli, Idaho Association of Counties, focused on the rationale for limiting the levies. The whole purpose is not to encompass all levies, this bill is primarily focused on those levies that are short term and capital related. A short term fix for one or two years should never be incorporated by any district as revenue to pay necessary expenses.

Mr. Ponelli said they did stay away from the school supplementals because those are ongoing. They are more like the operational type levies of cities and counties.

John Watts, representing The Idaho Chamber Alliance (Alliance), said the Alliance represents twenty Chamber of Commerce organizations across the State. **Mr. Watts** said the position of the Alliance is to support the work of Urban Renewal Agencies in the State as an effective economic development tool. The Alliance will examine future legislation to ensure that only reasonable legislation which enhances this tool is implemented. Conversely, the Alliance will advocate against any changes that would dismantle or unduly constrain an Urban Renewal Agency's effectiveness. The Alliance believes this bill is an appropriate one.

H 470 will make some changes to the statutes to improve this tool so taxpayers have a better feeling when the district tries to generate additional revenues to enhance the city, provide infrastructure, and allow the city to do a better job of tracking business in the area. This requires openness, transparency, and communication with the citizens of a city or county. **Mr. Watts** supports H 470.

Cameron Arial, Chairman, Eagle Urban Renewal District, stated that Eagle has been working on an Urban Renewal Plan for about 1 ½ years and just received approval. **Mr. Arial** supports the intent of the bill but also has some concerns. They support the grandfather clause and the boundary portion of the bill.

Max Vaughn, Minidoka County Assessor and Idaho Association of Counties, testified in favor of H 470.

MR. CHAIRMAN AND COMMITTEE,

IAC HAS WORKED WITH THE CITIES, URBAN RENEWAL DISTRICTS AND STATE TAX COMMISSION ON THIS LEGISLATION.

THIS LEGISLATION PROVIDES THAT CERTAIN VOTER APPROVED LEVIES THAT WERE CAPITAL ORIENTED OR SHORT TERM WOULD NOT BE INCLUDED IN THE URBAN RENEWAL (INCREMENT) CALCULATIONS. THE VOTER APPROVED LEVIES INCLUDE:

LEVIES FOR REFUNDS/CREDITS DUE TO A JUDGEMENT ORDERING PAYMENT TO A TAXPAYER OR GROUP OF TAXPAYERS (EXAMPLE: STC CASE WITH IDAHO POWER AND GAS COMPANIES);

OVER RIDE LEVIES OF TAXING DISTRICTS, EXCEPT SCHOOLS SINCE THEY ARE VOTED ON AND SHORT TERM (2 YEARS AND THEN DROP BACK);

VOTER APPROVED BOND BY TAXING DISTRICTS AND PLANT FACILITY LEVIES SINCE THEY ARE PRIMARILY FOR BUILDING PROJECTS;

THIS LEGISLATION ALSO CLARIFIES WHEN A REVENUE ALLOCATION AREA THAT WAS CERTIFIED PRIOR TO DECEMBER 31, 2007 IS EXPANDED THE NEW AREA WOULD NOT RECEIVE ANY VOTER APPROVED GENERAL OBLIGATION BONDS OR PLANT FACILITY RESERVE FUND LEVIES PASSED AFTER DECEMBER 31, 2007;

THIS LEGISLATION PROTECTS ANY URBAN RENEWAL DISTRICT WHERE AN EXISTING VOTER-APPROVED BOND CURRENTLY EXISTING IN A REVENUE ALLOCATION AREA AND ANY REVENUES GENERATED GOING TO THE URBAN RENEWAL DISTRICT WOULD CONTINUE UNTIL THE ISSUE EXPIRES. THIS PROTECTS ANY BONDS THE URBAN RENEWAL AGENCY MAY HAVE ISSUED FOR INFRASTRUCTURE.

This is good legislation and I think it should go with a do pass recommendation.

Senator Corder asked if Mr. Vaughn and Mr. Armbruster disagree on how this will work? **Mr. Vaughn** answered yes.

Senator Hammond thanked everyone for testimony to bring forth all the issues. Urban renewal is a great tool. The intent is to “tweak” some areas that are appropriate for change. There have been no complaints because the voters do not understand how the current process works and even those working with this issue did not understand how the funding mechanism was working.

All current levies are being grand-fathered in. If you expand, you don't get to go back and take the levies or any kind of bond indebtedness that already existed within that expanded area. Urban renewal was never meant to raise taxes, only take those monies and use them to pay off the debt that has occurred in that district.

The bill presented to you is a good bill. The only question is, “should supplemental levies be included?” There are some other things to work on that will provide more accountability and those will be worked on in the interim. There is the request to strike subsection (d) . Senator Hammond disagrees, subsection (d) is an appropriate part of this bill.

Senator Langhorst wanted clarification about striking subsection (d). **Senator Hammond** believes it is an appropriate part of the bill and should

not be taken out.

Senator Corder addressed the issue of a grandfather clause. By identifying the dates in each paragraph, do you think those districts already in existence are sufficiently protected? **Senator Hammond** responded that they were.

Senator Bilyeu asked, when amending a tax increment financing area, and you designate a certain area as an URD but not a tax increment district, and you wanted to develop another area, could you add it to the existing URD? **Senator Hammond** said there can be revenue allocation areas within a URD that may or may not be the same size.

MOTION:

Senator Heinrich moved to send H 470 to the Senate floor with a do pass recommendation. **Senator Siddoway** seconded the motion.

Senator McKenzie likes the concept behind H 470 but was concerned that those representing URDs testified that they do not support it as written, but would with amendments. The main concern is subsection (d). Senator McKenzie would like to see consensus on this issue, because he likes what this bill does.

SUBSTITUTE MOTION:

Senator McKenzie moved to send H 470 to the 14th order for possible amendment. **Senator Langhorst** seconded the motion.

Senator Bilyeu had questions about section (d) and if it should be deleted.

Senator McKenzie was concerned about the grandfather clause for current levies and that an existing URD should also be grandfathered in.

Senator Langhorst stated he would like some time to research some questions he has.

Senator Stegner also has questions and would like more time to research this question individually and talk to people who could provide more information than is available at the moment. It is hoped the extra time will give Committee members time to get a better understanding of this bill.

AMENDED

SUBSTITUTE MOTION:

Senator Stegner moved to amend the substitute motion to hold H 470 until the Local Government and Taxation Committee meets Tuesday, March 4, 2008. **Senator Corder** seconded the motion.

Senator Corder stated that he is concerned by the differences of opinion of the experts. They are directly opposite and should be somewhere in between. He would like to know where that is so the Committee can do the right thing.

Senator Langhorst said he wanted to support this motion.

VOTE:

The amended substitute motion carried by unanimous voice vote.

Senator Hammond asked to address the objections to subsection (d). All

subsection (d) does is say that if you expand your to include a property already paying debt on a levy or a bond issue, subsection (d) says you can't access those additional levies for the URD.

Chairman Hill announced that on Tuesday, the Committee will not be hearing additional testimony. The testimony portion on this bill is closed.

ADJOURNED:

There being no further business, **Chairman Hill** adjourned the meeting at 4:25 p.m. until Tuesday, March 4, 2008 at 3:00 p.m.

Senator Brent Hill
Chairman

TAXATION

Twyla Melton
Secretary

SENATE LOCAL GOVERNMENT AND

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MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** March 4, 2008
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, and Bilyeu
- MEMBERS ABSENT/
EXCUSED:** Senator Langhorst
- 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 Hill** called the meeting to order at 3:03 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.
- MINUTES:** February 19 and February 20
- MOTION:** **Senator McKenzie** moved to approve the February 20, 2008, minutes as written. **Senator Corder** seconded the motion.
- VOTE:** The motion carried by unanimous voice vote.
- MOTION:** **Senator Stegner** moved to approve the February 19, 2008, minutes as written. **Senator Bilyeu** seconded the motion.
- VOTE:** The motion carried by unanimous voice vote.
- H 470 Continued:** ***Relating to the Local Economic Development Act to exempt revenue from any special levy or bond issue or judgements from distribution to an Urban Renewal District. Funds will be expended only for special purpose specified on the levy ballot.***
- Chairman Hill** announced that the testimony phase of this bill has passed. However, the sponsor will review the purpose of the bill. There is a written summary included with the minutes on file in the Committee office.
- Senator Hammond** described urban renewal and urban renewal districts as a tool to help economic development within communities. The method is to take underdeveloped areas and improve them through public infrastructure and pay for those improvements with facility improvements to that piece of property that raise additional taxes and it is those additional taxes that then pay for those improvements.
- Unknowingly, other funding sources are allowed to go to urban renewal

efforts and those are revenues from bond issues, mil levies, and judgements. Any taxes that are generated within that urban renewal district were going to that cause.

The intent of H 470 was to remove that ongoing financing effort. If you vote for a mil levy or bond, those proceeds should go for that intended purpose. Currently, if a \$1.0 million levy is voted in for a specific purpose, that purpose received the \$1.0 million but the levy rate must be increased to generate enough additional revenue to pay the URD.

H 470 says from this day forward, there will be new rules. The revenue source for the urban renewal district in the increments is the improvements in value not special levies; not bond issues; not any kind of voter approved levies.

There seems to be general agreement on subsections (1), (2), and (3). The concerns were with subsection (d). Subsection (d) says that should you choose to enlarge a district that is already in existence, you could not capture the revenue being generated from the enlarged portion of that district being generated as the result of a special levy or bond issue. That money must go to the intended purpose only.

Senator Hammond talked about section 33-802 (3) regarding supplemental levies. When H 470 was being discussed by cities, counties, and urban renewal districts, supplemental levies were intentionally left out of the mix. Supplemental levies are typically ongoing levies, sometimes permanent, used for operations just as other tax revenues are used. They are not used for capital facilities. It is appropriate for them to be considered as part of the base.

The question came up that it may be okay to leave them in going backwards, but going forward. Because of the voter approved levy, supplemental levies should also be included in the bill. **Senator Hammond** hoped discussion would occur in the Committee today regarding the question on supplemental levies along with any questions on subsection (d).

Senator Stegner asked if any thought had been given to what an amendment would look like to point the levy back to section 33-802 (3). **Senator Hammond** responded that a subsection (e) would have to be added to 50-2908 stating "school supplemental levies as authorized under section 33-802 (3)." Those levies would then be the same as the other levies.

Senator Stegner asked if the language "after December 31, 2007" should be used? How are the new ones identified without including the old ones? **Senator Hammond** said the same date would be used.

Chairman Hill asked Dan John, Idaho State Tax Commission, if he had reviewed the language to see if it accomplishes what the bill intends. **Mr. John** said they had reviewed the language and were comfortable that it reflects Senator Hammond's intention.

Senator Stegner asked Mr. John if he was referring to the bill as written or with the suggested modifications by Senator Hammond? **Mr. John**

stated that the bill as written does what was originally intended. To do an amendment to take school supplementals out, just copy the language in (b) and change the code reference then it would exclude the school supplementals from going to the URDs.

Senator McKenzie said that since the last meeting, representatives from the URDs had discussed the process. Would Mr. Armbruster explain what his position is on behalf of his clients and discuss the processes and review the areas where there was consensus and the concerns with the sections where there was not a consensus?

Ryan Armbruster, Lobbyist, representing Urban Renewal Agencies, responded to Senator McKenzie's question. **Mr. Armbruster** outlined the process that was used to develop H 470. Discussions went well for a period of time. There were some competing interests among the Association of Cities, the Association of Counties, and the Urban Renewal Agencies. They did reach consensus on several key portions of this bill. Discussions broke down when the decision was that school district supplementals would not be included under the umbrella of this bill. Now there is a difference of opinion about whether or not H 470 as drafted includes or excludes school district supplementals. **Mr. Armbruster** said he thought Mr. John said that, as drafted, it does include the school district supplementals. So an amendment may not be necessary. **Mr. John** said that is not what he meant. The Tax Commission does not agree that school district supplementals are included in this particular legislation as drafted. The amendment would bring the school district supplementals under H 470. The way the bill is written right now the URDs would still get the revenue that was generated from the levies on school district supplementals.

Mr. Armbruster addressed subsection (d) which was not discussed during the process as a needed piece of H 470. If you want to accomplish a planned amendment, it will not be possible to take advantage of the levies that are on the books at the time of the amendment. URDs only get monies if the assessed value rises. If there is no growth in the amended area, there will be no revenues. If the new area, as amended, goes forward and adds property, then that URD would get the benefit of those levies. There is no justification in treating a geographical area differently under an amendment process as opposed to a stand alone process. This bill does not affect the stand alone process. There are situations when it is much more beneficial to do an amendment than it is to have a new district.

Mr. Armbruster said the last area of disagreement is the attempt to get a grandfather clause for those agencies who have incurred long term debt under the old rules. There are cases where a grandfather clause would be critical.

MOTION: **Senator Siddoway** moved to send H 470 to the Senate floor with a do pass recommendation.

Motion died for lack of a second.

MOTION: **Senator Stegner** moved to send H 470 to the 14th order for amendment.

Senator Corder seconded the motion.

Senator Stegner explained that supplementals should be included in H 470. The whole purpose of this effort is to give full disclosure to citizens when levies are brought before them. To have exemptions from supplementals sends people to the poles voting on supplementals not knowing they are going to be contributing their tax dollars to some other effort as well. The purpose of this bill is to close those technical loop holes. All kinds of levies should be treated the same. This is not damaging to the districts. Also, subsection (d) should stay in. When there is an expansion of a district, everything should start over.

VOTE:

The motion carried by unanimous voice vote.

Senator Hammond will sponsor H 470 on the Senate floor.

H 418 aa

Relating to Cooperative Service Agencies to allow a cooperative service agency that has already been created and includes multiple school districts to have access to the same voting procedures as taxing districts for the purposes of authorizing the facilities levy.

Representative Nonini described Cooperative Service Agencies as a program that provides services including professional, technical, educational, alternative high school special education, and a gifted and talented program. **Representative Nonini** reported on a consortium of five rural public school districts, The Canyon-Owyhee School Service Agency (COSSA) made up of Homedale, Marsing, Notus, Parma, and Wilder.

The special education program, *No Child Left Behind*, has federal guidelines with which all school districts have to comply. It is extremely expensive and the cost for smaller districts to do stand alone programs would be prohibitive. During the 2005-6 school year, COSSA savings of educational dollars were over \$2.0 million. If these districts had stand along programs in special education only, the total cost would have been over \$3.9 million. The cost for COSSA was \$1.8 million. That did not include any of the other programs involved.

The purpose of H 418aa is to change the method of the voting procedures covered in section 33-317 (3). Under current law, the levies for additional funding must be approved by 66 2/3% of all votes cast in each of the five districts. If one district did not get the 66 2/3%, the levy would not go through. H 418aa says that if the levy passes by 66 2/3% but there is one or more of the districts that did not get the 66 2/3% vote, those districts could opt out and the districts approving the levy would support the project. The districts that did not pass the levy could hold subsequent elections to authorize participation in the project.

This is a phenomenal program and they need this bill to continue to be efficient. This is an attempt to get a facility built. Bussing problems would be eliminated, programs could be expanded, and there would be opportunities to expand from only secondary level classes to include elementary levels. That is the basis of the bill.

Mark Cotner, Executive Director, The Canyon-Owyhee School Service Agency (COSSA), presented an overview of COSSA describing the composition of the consortium, the programs that are provided, how the agency is governed, and the financial aspects of the program. COSSA employees three administrative team members, ninety certified and classified staff who provide direct services to the 945 students served annually.

Senator Stegner asked if H 418aa with the amendment is passed, could there be a situation where the expanded project couldn't be completed because all the school districts did not participate? **Mr. Cotner** said that is a possibility. COSSA is overseen by a ten member school board made up of trustees from each district. They operate like a school district within a school district. In all probability, the board would make the decision to cancel the project if all five school districts were not in agreement.

Senator Stegner said he thought he heard that there must be flexibility to reassess the possibilities whenever this situation arises. There is not a problem with the bill as amended, but this could be creating a situation where one district figures out they don't have to support the levy but they continue to get the benefit. **Mr. Cotner** explained that, with the makeup of the board, an option might be that whatever programs that relocate to this center, the students from the nonparticipating districts would not participate. Those students could pay a per head fee to participate.

Phil Homer, representing the School Administrators Association, wanted to be on record as supporting H 418aa and this great program.

Jim Doramus, Superintendent, Notus School District, said they are the smallest school district in the consortium. Without this program, Notus would not be able to offer the programs COSSA provides. There is a great need for a central location. With one location and the new high school reform, additional and advanced subjects can be offered. On behalf of the Notus Board of Trustees, we support this bill.

Senator McGee said this is a very good program and a great example to the rural school districts across the state. He will be supporting this bill.

Representative Nonini summed up by saying that Wallace and the Silver District is looking at a model like this. He requests the support of the Committee for this bill.

MOTION:

Senator McKenzie moved to send H 418aa to the Senate floor with a do pass recommendation. **Senator Stegner** seconded the motion.

VOTE:

The motion carried by unanimous voice vote.

Senator McGee will sponsor H 418aa on the Senate floor.

H 530

Relating to Circuit Breaker Property Tax Relief to provide for how income is determined for certain married individuals living apart.

Representative Harwood related an instance where a lady had applied for the Circuit Breaker and been denied because she couldn't provide financial information including details about her estranged husband's

finances whom she had not been in contact with for several years.

The purpose of this bill is to change current law relating to married individuals living apart to coincide with the provisions of *sections 2 (c) and 7703 (b) of the Internal Revenue Code* when applying for the Circuit Breaker benefit. Representative Harwood referred to 7703 (b) (3) stating that during the last six months of the taxable year, such individual's spouse is not a member of such household, such individual shall not be considered as married.

Senator Stegner asked Mr. John if it was fairly common to cite the IRS code in Idaho's statutes. **Mr. John** said it is fairly common. They try to do it as much as possible in the income tax statutes.

MOTION:

Senator Heinrich moved to send H 530 to the Senate floor with a do pass recommendation. **Senator Siddoway** seconded the motion.

Senator Bilyeu asked how many people are we talking about statewide? **Representative Harwood** said he wasn't positive on the number but it would cost about \$20,000 so it would not be very many. **Mr. John** said they did not have an exact number but talking with the people who handle the Circuit Breakers, in this type of scenario, there are just a few.

VOTE:

The motion carried by unanimous voice vote.

Senator Heinrich will sponsor H 530 on the Senate floor.

ADJOURNED:

There being no further business, **Chairman Hill** adjourned the meeting at 3:55 p.m. until Wednesday, March 5, 2008 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES
SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: March 5, 2008

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu

**MEMBERS ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the Committee office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Hill** called the meeting to order at 3:05 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.

H 529aa ***Relating to Taxation of Energy Systems Using Geothermal Energy to include producers of geothermal energy under the identical tax provisions as producers of wind energy.***

Stephen West, President, Centra Consulting, Inc. is appearing before the Committee on behalf of U. S. Geothermal, Inc., an Idaho company engaged in the exploration and development of geothermal resources for the purpose of energy production. A complete copy of Mr. West's presentation is on file with the minutes in the Committee office (see NOTE above).

Mr. West pointed out that H 529aa does not shift a tax burden to another sector of the population. This is new revenue generated from new power production. **Chairman Hill** asked why this bill does not apply to existing geothermal projects? **Mr. West** said it does apply to existing facilities but we only have one existing facility in the State of Idaho. **Chairman Hill** asked why that would not be a tax shift? **Mr. West** said it could be a shift to itself through a different structure of taxation. There have not been any revenues because they just came on line in December, 2007.

Mr. West said the tax restructuring proposal will not adversely impact the general fund. It will promote the economic viability of existing and future renewable energy facilities.

Senator McKenzie asked if the projected gross receipts are based on a contract rate for those kilowatts that are sold to Idaho Power? **Mr. West** said that is correct.

Mr. West explained the tables in the presentation materials showing projected receipts, tax receipts, sales tax revenues, and individual income tax revenues.

Senator Langhorst stated that when the Committee looked at the tax structures for wind power, the property taxes went down over time. Why doesn't that happen

here? **Mr. West** referred this question to Kerry Hawbley, Chief Financial Officer, U S Geothermal. **Mr. Hawbley** answered that the property tax calculation is based on Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA) under a contracted, published, pricing schedule. When revenues escalate, the EBITDA also escalates over time.

Senator Langhorst said that in the law that is being amended which was the one used for wind power a couple of years ago, the property was depreciated and EBITDA was not considered. That would mean that this bill is not analogous to wind. The property tax structure was one of the arguments for the wind legislation. Over time, the budget of old, stable, earnings based tax made sense, that is not happening here.

Senator Stegner asked if Dan John, Idaho State Tax Commission (ITC) could explain why the property tax evaluation was different in this example. **Mr. John** said he was not quite certain where these numbers came from. It is important to keep in mind the way property tax works. The county won't get any less, it just comes from someone else. If the value goes down, it only changes the relative mix and the percentage that is paid. Even if the wind power paid less, the county would have received the same amount of money. In this case, it is being assumed that the value will go up based on the income approach which is one of three approaches that can be used in valuing companies such as this.

Chairman Hill stated that it was strongly demonstrated in the case of wind power that values were going to decrease because of the depreciation of the towers. Why don't these values go down because, if you look at it from the income point of view, wind power was going to have a steady stream of revenue as well. **Mr. John** said that there would also be depreciation in these properties. Using the three methods of arriving at value, these could actually go down depending on how the value was calculated, or, they could go up.

Senator Stegner recalled that, in the case of wind power, the county would receive more funds. In this case, the company is asking for over a \$3.5 million tax cut. That situation did not have to be considered for wind power.

Senator Bilyeu asked how much of this is personal property and what happens if that personal property goes away? **Mr. John** said that they would still be paying a kilowatt tax. **Senator Bilyeu** asked if the same was true with the wind? **Mr. John** concurred. **Senator Bilyeu** asked what percentage of the generator valuation is personal property? **Mr. John** couldn't answer that question without having the appraisers look at it.

Mr. West responded to Senator Stegner. The county has not received any of this new money yet. So this is a restructuring and the real value of this will be the economic improvements due to the expansion. They have tried to present a very conservative estimate of what the tax would be.

Chairman Hill said the Committee is not questioning the numbers, they are questioning the difference between the wind and geothermal structures.

Senator Stegner said potentially, there is a larger problem by accepting as a premise, the reason to go forward with this bill is to encourage economic development. We may be asked to take the same type of approach to evaluate any number of energy generating capacities, i.e., a merchant coal firing plant or a merchant gas fired plant. The concern is the different scenarios that were presented between wind and geothermal, one is based on depreciation and the other on a \$3.5 million tax reduction. **Mr. West** responded that by improving the economics of these projects, it will allow them to go forward with units two and three which will bring additional revenues into the county and state. By staying on the existing structure, it is essentially taking these dollars off the table. Is this energy resource a logical one? Are there other ways to do this without resulting in a tax shift or a burden to other parts of the population?

Chairman Hill agrees that wind and geothermal energy must be separated. The decision made with wind energy was to level the tax and that was a policy decision. Now another policy decision must be made and it just happens to be in the same section of code.

Senator Langhorst has concerns that a \$3.8 million tax reduction for a revenue producing "engine" with projected total gross receipts of \$192.7 million would impact whether or not they would build two additional units. Would \$3.8 million make that much difference? **Mr. West** responded that the tax is calculated on the gross receipts not the net profit and yes, it would make a difference. **Senator Langhorst** said he realized the net profits are not shown. If gross receipts are \$192.7 million over 25 years and there is a \$3.8 million tax cut over that same 25 year period, why is that enough to stop investing in the expansion of more units? **Mr. West** said he did not know what the profit margins are. Those margins are not relevant. This bill is about fairness in taxation. Renewable energy sources should be taxed consistently. The goal is to come up with alternate resources regardless of what the total receipts are.

Senator Langhorst agrees with the fairness issue and the goal. But, is the restructure necessary? It doesn't look like enough to make a difference.

Mr. West said the goals of tax policy should be one of fairness and to the extent that renewable energy producers are taxed on gross receipts, it is reasonable to expect that geothermal energy producers should be taxed in the same fashion. While it may seem surprising that the amount of the tax reduction makes a difference, it does. There are other potential geothermal projects in the State that this change would benefit and enhance the ability to go forward.

Senator Heinrich said that some of the assumptions made on the property tax will never happen with projections based only on income stream. The ITC will value this property by looking at depreciation and obsolescence, and not just the income stream. The projections assume that all the budgets in all the taxing districts in the county are going to stay the same. That is not true. They are assuming the valuations for the county will be the same. That is not true. They are assuming the levies will stay at .009200186. There is no way a prediction can be made that in 25 years the assumptions will be stable—they won't be stable. The property tax

schedule is over inflated.

Senator McKenzie stated that, as a business owner, predictability has a lot of value. There are quite a few assumptions on property tax but they do know what the gross receipts are going to be because of the contract. If we want to promote this type of production as a State policy, this is one of the cleanest sources of energy available. It is a good energy source. However, there is still the issue of capping the taxes going to the county and causing a tax shift.

Senator Bilyeu asked how many employees will be hired? **Mr. West** answered that there would be ten employees at Raft River. **Senator Bilyeu** confirmed that Idaho is one of the best states for geothermal opportunities. How are your facilities being taxed in other states? **Mr. West** said they do not have facilities in other states, they are evaluating opportunities in other states.

Senator Bilyeu asked how other states are assessing geothermal properties? In addition to the 3% of gross receipts, what other property tax will be paid? **Mr. West** answered that the operating property will be exempt from property tax. The non operating property will be taxed. The value of the gross receipts will be taxed.

Senator Bilyeu asked how other states are assessing property taxes? No one could provide an answer.

Senator Stegner asked what is the output in wattage? **Mr. West** said 1500 megawatts. **Senator Stegner** said there must be undeveloped resources since Raft River is the only developed resource in the State. **Mr. West** said the Raft River resource has the potential of being the largest megawatt resource available. There is a lot to consider in managing a geothermal resource to sustain that resource.

Senator Stegner asked if there was an estimated life for this property as it is configured today? **Mr. West** responded that the beauty and value of renewable energy is that it is truly renewable. Geothermal continually rejuvenates because the water is re-injected back into the aquifer. The operating life of the property is related to the equipment and what it takes to run it.

Senator Stegner asked Mr. John if this is an assessed operating property? **Mr. John** said this would be appraised by the county. **Senator Stegner** asked if there would be a distribution to a number of counties? **Mr. John** said that in the case of a company such as this where all of the property is in one county, the revenue would stay in that county and be apportioned to the various taxing districts within the county.

Senator Heinrich asked Mr. John if any of this would be involved in the new construction roll. **Mr. John** said the only thing that could possibly go on the new construction roll would have been the change in use of the land.

Senator Bilyeu asked how much water is used in the geothermal plant at Raft River? **Mr. West** did not know. **Senator Bilyeu** asked when there is a geothermal source, is that a spring or an aquifer of hot water—what does it look like? **Mr. West** said it is an aquifer and they drill about a mile deep to reach it. **Senator Bilyeu** asked if one geothermal source draws hot water from one aquifer or does it also

draw from others? **Mr. West** said that generally speaking, the aquifer is managed in a way that sustains the viability so that as the resource is brought to the surface it is run through the exchanger and injected back into the aquifer. It is important that the aquifer is not depleted or overused. As the industry expands, everyone must work together to keep the balance.

Mr. Hawbley said he joined U S Geothermal a little over four years ago and at the time there were four people working, now there are 20. Ten in Ada County and ten in Cassia County. Our first operating facility is in Cassia County. **Mr. Hawbley** said they are concerned about the economics at Raft River. This facility cost \$45.0 million. The estimated cost for units two and three is close to \$60.0 million each. Every time they drill an additional well, they go one mile deep and it cost over \$3.0 million. Comparing Raft River with other potential projects, Raft River is estimated at \$4.6 million per megawatt. The other projects are in the range of \$3.2-\$3.5 million per megawatt. So the \$3.8 million tax reduction may not look like much until viewing the economics, it is close. They want to continue with Raft River but they are a public company and the money goes where they can find the best for the shareholders.

Efforts to reduce the burden resulted in using the 3% gross receipts tax. They looked at the economics and said that they know the projected gross receipts, they could put that in the forecast and know it would be stable. We provided the county commissioners and the county assessor with the numbers and they saw the assumptions. **Mr. Hawbley** asked that the Committee vote in favor of this bill .

Dustin Rose, Auditor, Idaho State Tax Commission, explained that he helped develop the chart in the presentation. The chart projects an overall benefit to the County with the income tax and sales tax that would be generated. The hidden parts are the jobs and the economic effects on rural counties. The high paying jobs and the construction that is planned for about \$100.0 million produces city and county revenues. That is hard to quantify. Numbers do change and the only known number is the contracted amount per megawatt. This is a great benefit for Idaho.

Senator Heinrich asked Mr. John how Idaho would assess irrigation wells? **Mr. John** said he didn't know that irrigation wells are assessed separately from the property they are attached to. They are not broken out separately on appraisals.

Chairman Hill asked when there is talk about consistency with renewable energy, why are you just adding geothermal? If there is going to be consistency with renewables, why not add solar power, bio mass and nuclear and other renewables? Wouldn't that make good tax policy? **Mr. West** said that he thinks the reason they did not include other types of renewable energy is that they didn't have any background information. The time will come to look at each one of those renewable energy types. **Chairman Hill** indicated they would each have to be looked at independently.

MOTION:

Senator McKenzie moved to send H 529aa to the Senate floor with a do pass recommendation. **Senator Heinrich** seconded the motion.

Senator McKenzie said he has taken a look at what other states have done with energy policies. Most states have been much more aggressive than Idaho on either mandating certain things and/or setting aside a large amount of money to ensure a certain conduct. Geothermal is consistent with what is recommended in Idaho's Energy Plan and it is a good base load resource. In the future, there will be some tax shift. There is the economic incentive from having a facility. This is a good policy and a good way to avoid a huge shift of costs to other taxpayers and/or from the general fund.

Senator Langhorst agrees with the assessment that geothermal should be decoupled from wind. The fairness argument is enough to support this bill. It does look like there is a tax cut.

Senator Stegner stated "this is why property tax needs to be eliminated." The whole premise of property tax is that it is based on some uniform standard. If we were trying to give an incentive for this production in the State of Idaho, it should be done with the state tax collections; sales tax or income tax. Instead, we are asked to lower the amount of money the county is going to get. It isn't that the company isn't deserving, the problem is adjusting how property tax is collected. Each time one entity gets an adjustment, it makes it unfair for someone else. The good thing about the initial concept was it's consistency with the wind. Also, Senator Heinrich's evaluation that the property tax assessment might be overstated is a good point. There is a significant place for recalculation and making the case that this is similar to wind. We shouldn't have to make the case, there should be strong data to indicate that scenario. It is difficult looking at all the other business owners in Cassia County that provide jobs, make investments, and pay taxes based on what we have established as a fair method for evaluation and then suggesting that we are treating them fairly when approving tax exemptions. That is why these types of exemptions are so troubling. There are all kinds of people who don't come to Boise to ask for favors. Maybe we should go back and revisit the wind farm issue that was looked at last year. Once exceptions are made, where do you quit? Everyone who comes to Boise and this Senate Tax Committee deserves the same kind of consideration and we don't do that.

VOTE: The motion carried by voice vote.

Senator McKenzie will sponsor H 529aa on the Senate floor.

H 545 ***Relating to Annexation to revise annexation categories, evidence of consent to annexation, and procedures for evidence of consent for Category C annexations.***

Senator Fulcher introduced H 545 and stated that he represents a district that has had double digit growth for the last five years. Growth is a huge issue. Last summer, a joint legislative land use study group was formed. It was made up of five Senators, five Representatives, Association of Cities, Association of Counties, and a Representative from the Planning and Zoning Commission. The group developed a list of recommendations. This bill represents two of those recommendations.

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This bill does two things: 1) It clarifies Category A annexations. There is a conflict in *Code* right now; 50-222 directly conflicts with 67-6526 and it has to do with annexations outside of areas of impact. One says it can be done, the other says it can't. This bill clarifies the code and supports 50-222 which is the current practice. This bill clarifies that Category A annexations that require the consent of all property owners may extend beyond the area of impact so long as the comprehensive plan includes the area of annexation.

2) It eliminates "implied consent" due to hookup to services. This has been a contentious issue. When you sign up for services, the hookup fees must be paid but that sign up is also an implied consent to annexation. The bill will be effective July 1, 2008 moving forward—nothing is going backward.

Senator Bilyeu gave the following scenario: If I am not in the city limits but am fairly close and can hook up to city water, is that a consent to agree to annexation.

Senator Fulcher said it was just the reverse after July 1, 2008. **Senator Bilyeu** said if she had property and there was a county road along the front boundary and the city had extended out and annexed the road that goes right by her property which is not in the city limits, but the road has been annexed so the city now owns the road – does that mean in any way, that she is agreeing to be annexed?

Representative Luker responded that H 545 has nothing to do with roads, only water/sewer hookups.

Senator Siddoway gave another scenario: If there is a city and across the road there is a subdivision that has been developed and the city decides to annex that subdivision and there are ten homes in that subdivision but one of the homeowners decides that he doesn't want to be a resident of the city, does he have an "out" or does he have to comply? **Representative Luker** said that situation is one of the three different categories of annexation. Category A requires 100% consent but if the developer had already consented to the annexation of that development then it will be annexed.

Senator Fulcher said that this bill will not change anything in the situations described by Senator Bilyeu and Senator Siddoway. It does not affect the current procedure, only the implied consent.

Russ Hendricks, representing Idaho Farm Bureau Federation, said that they support H 545. Implied consent has been a problem for a long time and they are appreciative of the work that has brought this practical solution. It makes the annexation process much more transparent, more forthright, and it is a much better process for the future.

Nick Miller, Holly Troxell Law Firm representing Teton Springs Resort, identified an issue with H 545 but said it has been resolved. They now support the bill.

Representative Luker stated that there are some technical corrections. Category A is simplified by showing three types of Category A annexations, Category C clarifies the 50% consent required by cities in an annexation, and the change provides for a time frame for letters of consent to be returned to the committee.

Chairman Hill asked Mr. Harward if the Association of Cities is in favor of, opposed to, or neutral on this bill. **Mr. Harward** stated that they are not in opposition of the bill. **Mr. Harward** thanked Senator Fulcher as co-chair of the land use group and Senator Heinrich, Senator McKague, Representative Luker, and other legislators who all put a lot of thought into this piece of legislation.

MOTION: **Senator Heinrich** moved to send H 545 to the Senate floor with a do pass recommendation. **Senator McKague** seconded the motion.

VOTE: The motion carried by a unanimous voice vote.

Senator Fulcher will sponsor H 545 on the Senate floor.

ADJOURNED: Being no further business, **Chairman Hill** adjourned the meeting at 4:40 p.m. until 3:00 p.m., Thursday, March 6, 2008.

Senator Brent Hill, Chairman

Twyla Melton, Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: March 6, 2008

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu

**MEMBERS ABSENT/
EXCUSED:**

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 Hill** called the meeting to order at 3:04 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.

MINUTES: February 21 and February 26

MOTION: **Senator Heinrich** moved to accept the minutes of February 21, 2008, as written. **Senator Siddoway** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

MOTION: **Senator Corder** moved to accept the minutes of February 26, 2008, as written. **Senator Langhorst** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

H 544 ***Relating to Property Tax Relief to expand the Circuit Breaker to provide relief for the next tier of property taxpayers.***

Representative King introduced H 544 by reviewing the application form for the Circuit Breaker. To qualify for the Circuit Breaker program, the applicant must be 65 or older, blind, a former prisoner of war, or a child without parents and have an annual income of \$28,000 or less. 73% of the applicants for Circuit Breaker have received the 100% exemption. 27% have received partial exemptions and only three people have applied for the property tax deferral. The Circuit Breaker program either pays all of the taxes so why get a deferment and get all the taxes paid, or people are having problems paying because their incomes are just a little bit above the \$28,000.

This legislation expands the Circuit Breaker Deferral Program to \$40,000 indexed to CPI and includes those who only receive a partial exemption. Participants maintain the same eligibility of home ownership and use the same application. The homeowner will repay the State the deferred tax

amount plus interest at the time there is a transfer of title. The State will secure repayment with a lien secured by the property. The State holds the Counties harmless by paying the property tax. Currently there is a cap of \$500,000 and that will not change. 63-714 (2) says that a deferral will not be granted if there is not sufficient homeowner equity, failure to show proof of insurance to cover the deferred tax and interest, and the amount owned is greater than 50% of the claimant's proportional share of the market value.

It is sound public policy to help seniors to continue to live in their homes. People stay healthier and heal faster if they are at home and it saves on medical costs. It is hoped that the Committee will introduce this bill.

Chairman Hill confirmed that this only extends the portion regarding the deferral, not the Circuit Breaker itself. Is that correct? **Representative King** concurred.

Senator Stegner asked if the current income level for participation in the deferral is \$28,000 and is it the same as the Circuit Breaker?

Representative King responded yes to both.

Senator Stegner said he would call the deferral concept a reverse mortgage. When it was passed, it was pointed out that reverse mortgages were available through private institutions. It was questioned at that time if there was a reason for the State to get involved since the same type of program was available in the realm of private finance. Did the three applicants that availed themselves of this program do so because they were denied participation in a private financial endeavor? Do you think this will significantly increase the number of applicants?

Representative King said that with reverse mortgages, someone can start borrowing at age 62 and must own and live in the property and participate in a Consumer Information Session given by HUD. Other than that, Representative King was not sure of other requirements. Using the deferral mechanism would be easy for the Tax Commission to implement and manage. The intent of the original bill was to do this but the income level was too low. As far as the reverse mortgage, there is no income limit so it could deplete the estate.

Chairman Hill said that this is not a market banks are particularly interested in getting into. Small loans that can be renewed every year for additional amounts and the paperwork that goes along with it led banks to charge substantial fees. This program was a way to keep people in their homes. The program was set up so it could be easily administered and the counties helped people to fill out the application. The Bankers Association even encouraged the State program rather than getting involved.

Senator Bilyeu asked who would be responsible to check how much equity the applicant has in the home? **Representative King** said the Tax Commission does that part of the process. **Mr. John** agreed.

Senator Bilyeu stated that if someone was over 65 and wanted to get on the deferral program, they are limited to an income of \$40,000. It does not necessarily mean they qualify for the Circuit Breaker because the income limit for the Circuit Breaker is \$28,000. **Chairman Hill** agreed.

Senator Bilyeu asked how successful this deferred program was in other states? **Representative King** said Oregon was the one looked at the most and they had about 8,000 applicants. That is only about 10% of those eligible. They don't have a \$500,000 cap.

Senator McKenzie asked how the \$40,000 was derived? It seemed like a large jump from \$28,000 to \$40,000. **Representative King** said Oregon was at \$36,500 and Washington State is \$48,000 and \$40,000 seemed like a good number. **Chairman Hill** reminded the Committee that interest is being paid on these monies and this is a reverse mortgage and will be paid back.

Senator Corder asked if there is the ability to track applications to see if there were more than three and if there were others, what happened to them? **Mr. John** said these applications come directly to the Tax Commission—what you see is what they received.

Representative King said there was one person who was eligible based on income but she owned quite a bit of acreage and couldn't qualify. The lady went to the county but did not pursue the option because the information she received from the county indicated she wasn't eligible.

Senator Langhorst said that this is a small change to an existing policy and we can see if there are any more people who will qualify at this level. It is a way to defray the perception that people are being taxed out of their homes.

Senator Corder commented that the original bill came out of the summer long conferences and it was a matter of picking a number then and it still is. He supports this bill.

MOTION:

Senator Langhorst moved to send H 544 to the Senate floor with a do pass recommendation. **Senator Bilyeu** seconded the motion.

VOTE:

The motion carried by unanimous voice vote.

Senator Langhorst will sponsor H 544 on the Senate floor.

H 567

Relating to the Sales and Use Tax to clarify the tax exempt status of the Idaho Digital Learning Academy.

Representative Shirley explained that the Idaho Digital Learning Academy (IDLA) was introduced to the Legislature about five years ago and it was one of the great things that has been accomplished. IDLA gives students a better choice of alternative educational opportunities. They have better access and flexibility and could get curricular offerings that were not available otherwise. This concept was so unusual, the Legislature determined that IDLA would be placed under a host school district which was Blaine County School District. When the IDLA was initiated, the thought was that it would serve a few hundred students. After five years IDLA is serving nearly 6,000 students. 90% of the school districts have enrolled students in IDLA. Blaine County School District has willingly accepted the responsibility of overseeing and helping financially do their books. Now it seems it is time for IDLA to become an independent, governmental entity.

H 567 is a trailer bill to H 552 which was presented to the Education

Committee this session. H 552 gives IDLA independent status and will withdraw from the Blaine County School District. IDLA will also be allowed to extend beyond secondary offerings into the elementary school level. Supplemental offerings are in demand in the Middle Schools and H 552 will allow IDLA to do these offerings.

As IDLA becomes independent, it is natural for them to want to continue with the same tax exempt status that was enjoyed when they were part of the Blaine County School District. H 567 is the trailer bill that will allow IDLA to continue on with that tax exempt status. Under **Title 33, Idaho Code**, IDLA is defined as an educational institution making them eligible for tax exempt status.

MOTION:

Senator Siddoway moved to send H 567 to the Senate floor with a do pass recommendation. **Senator Langhorst** seconded the motion.

Senator Bilyeu asked whose choice it was to separate IDLA from Blaine County? **Representative Shirley** stated it was a mutual agreement. Both wanted severance. In the beginning, IDLA needed to be part of an existing school district but as it has grown and matured, Blaine County found it was taking a lot of their time and they recommended the change. There are many educational entities that agree with this bill.

Senator Bilyeu asked what kind of supplemental offerings are being made available? **Representative Shirley** said they have regular and advanced courses in English, math, science, languages, music and others.

VOTE:

The motion carried by unanimous voice vote,

Chairman Hill announced Senator Langhorst's plan to leave the Senate and that he will be running for county commissioner.

ADJOURNED:

Being no further business, **Chairman Hill** adjourned the meeting at 3:40 p.m. until Tuesday, March 11, 2008.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** March 11, 2008
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu
- MEMBERS ABSENT/
EXCUSED:**
- 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 Hill** called the meeting to order at 3:07 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.
- MINUTES:** **Senator Siddoway** moved to accept the minutes of February 28, 2008 as written. **Senator Heinrich** seconded the motion.
- VOTE:** The motion carried by unanimous voice vote.
- GUESTS:** Jason Richardson, Teacher, Brady Price, Javier Rodriguez, Broni Bloxham, and Tiffine Aeschbacher from the Jefferson Montessori School in Rigby, Idaho.
- H 569** ***Relating to the Special Olympics Idaho Fund to revise funds authorized to receive certain moneys and to make technical corrections.***
- Representative Shirley** introduced H 569 which will establish the Special Olympics of Idaho Fund in the State Treasury to be collected through a voluntary check off box on the Idaho State Income Tax Form. Citizens can choose to contribute back a portion of their refund due or in the case of a tax liability, the contribution can be added to the amount owed.
- This bill does not increase the number of organizations or accounts already authorized to receive monies by this method. The U. S. Olympic account is on inactive status and that account is available to the Special Olympics Fund.
- This piece of legislation provides the Idaho taxpayer a unique opportunity to contribute to a needy organization and provide services to those with developmental disabilities. Representative Shirley handed out an overview of the impact of Special Olympics in Idaho. (On file with minutes, see NOTE above.)

Christine Jarski, Director of Development and Marketing, Special Olympics of Idaho, said that this bill will help the Special Olympics to continue with ongoing programs. Excitement generated around the World Teams coming in 2009 is causing the Idaho program to grow exponentially. There has been a 15% increase in the number of participants. In addition to the sports training and conditioning, this program provides vital screening and referral services for the athletes with specific health care needs and provides these services throughout the State.

MOTION: **Senator Heinrich** moved to send H 569 to the consent calendar. **Senator Siddoway** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

H 525 ***Relating to the Local Planning Act to modify existing code related to the property rights of private citizens.***

Jerry Deckard, Consultant, representing Ada County Highway District, stated that H 525 has to do with condemnation activities and eminent domain.

NOTE: Jerry Mason, Attorney, Association of Idaho Cities, Worley, Idaho, is in attendance via a conference call.

Mr. Deckard demonstrated what occurs with an eminent domain procedure. Ultimately, changes in the conformity of a property whether by condemnation or under eminent domain, changes the use of the property and diminishes the value of the property. The property owner is paid the amount of the value that is lost for the property that was taken. H 525 provides a uniform application of the provisions of the Local Planning Act on a statewide basis. Presently local ordinances pertaining to certain eminent domain issues vary widely throughout the State and provide little uniformity for private property owners. H 525 provides equal and fair protection for all property owners everywhere in Idaho. This bill does nothing to interfere with cities' comprehensive planning activities or authorities. H 525 is supported and endorsed by the Idaho Association of Commerce and Industry, the Idaho Association of Counties, the Idaho Association of Highway Districts, Idaho Transportation Department, Ada County Highway District, Idaho Association of Realtors, Association of General Contractors, and the Intermountain Forestry Association. Mr. Deckard urges support of H 525.

Senator Langhorst asked if a property decreased from four acres to one acre would the one acre retain its entitlements as before? **Mr. Deckard** said through the rights of eminent domain, you would be paid for the property and the rights that go with it and then you would have a remnant piece of property where the entitlements would not apply. **Senator Langhorst** said the way he reads the bill, it would apply. The bill is very broad.

Senator Siddoway said the example showed the encroachment coming from the North toward the building and affected the construction opportunities that were on the South side of that building. Why would that be affected? Is it because of a requirement to have so much space around

the building in order to add on? **Mr. Deckard** responded that in the example, the property is now less than the square footage required for an addition of that size, therefore, the building must be smaller.

Tim Gorley, expert in areas of eminent domain, responded to Senator Langhorst's question. He said that pursuant to *Title 7, Chapter 7, Idaho Code* (eminent domain statute), the appraisers are responsible to determine whether the taking has been so significant the property is rendered unusable for the purpose that it otherwise would have been qualified. The property owner should be paid just compensation because the new owner could put the same size building on the property with the same amount of parking places. That is why the two statutes are correlated to come up with a logical and rational approach. **Chairman Hill** said Mr. Gorley was explaining this from the standpoint of the entity that does the condemnation and what they would pay for the property. What does this do for the property rights of the owner and what he can do with the remaining property?

Mr. Gorley said that under state law which allows condemnation to occur there is nothing that addresses what happens to the property rights of property owners. The only thing mentioned in statute says you are not committing a crime if you have a non-conforming property as a result of a condemnation. There have been some cities and counties that have tried to address this issue by creating grandfather rights but they are not uniform. This bill attempts to create uniformity and fill the void in the law so that property owners know what property rights have been preserved following a condemnation and the authorities know exactly what they are taking and can pay just compensation.

Chairman Hill gave an example of an apartment building where the condemning authority takes that property. Before that property was taken, under city code, they could have added another 5,000 square feet of apartment building. Year one the property is taken. Year four, the city passes an ordinance saying that for every two apartments there must be 1.5 parking spaces. Year five, the owner says he has the same rights as before so the 5,000 square feet will be added but now, because the land is gone, there is not enough room for the parking requirements. What rights does the owner have and what rights does the city have to enforce the ordinance? **Mr. Gorley** said the current statute preserves rights that are under the existing zoning classification. The rights of that owner would be preserved under the zone classification except if it is no longer feasible because there is not the same amount of room as before.

Senator Corder said it seems that this bill locks out the landowners ability to negotiate. As soon as the value is established, until it changes class, it continues to have that value. The agency goes into a negotiation with the power of this bill and the landowner's power is lost. Without this bill, that land owner gets to negotiate and make the condemning authority pay whatever the land owner thinks it is worth and what the authority agrees to. **Mr. Gorley** said that all those rights exist anyway under *Chapter 7, Idaho Code*. There are always issues over the valuation of what has been taken. Negotiation is always there in some form. The problem has been that no one knows whether these property rights are remaining or not remaining so

there is not a uniform treatment of property owners and authorities throughout the State. The purpose of this bill is to eliminate speculation. **Senator Corder** said that speculation will remain with or without this law. This law closes the void that allows the landowner the ability to negotiate.

Senator Langhorst said under this bill, the city would not be able to change the zoning for this property. Is that correct? **Mr. Gorley** said that is not his understanding of the bill. The intent of the bill is to preserve existing rights under the existing zoning classification. The statute does not impair the cities or counties ability to change the zoning either way.

Senator Langhorst asked, under current law, if a city changes the zoning to a lower classification, are they subject to a regulatory taking? **Mr. Gorley** responded that yes they were. **Senator Langhorst** asked if the rights "run with the land". **Mr. Gorley** agrees that the bill does not contemplate a cut off time. A change in zone classification is the cut off. If the zone classification stays the same it could run for a long time.

Bill Nichols, testified on his own behalf in opposition of H 525. **Mr. Nichols** provided some personal background, qualifications and experience in the areas of condemnation and eminent domain. This bill corrects the problem the way it is constructed. If the idea is uniformity, then let the Legislature designate that commercial dirt is so many dollars a foot and residential dirt is so many dollars a foot and that is it. Zoning throughout the State is very different. Condemnation action in Valley County is very different than someplace else. The City of Meridian zoning is different than zoning in Cascade or Moscow.

The eminent domain statute, *Title 7, Chapter 7, Section 11, Idaho Code*, states "that if the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned is one of the elements of damages." In the example **Mr. Deckard** used, the taking reduced the parcel to below one acre in size which reduced the potential expansion of the building. That reduction in potential expansion is part of the damages that the condemning authority would have to pay to the property owner. From the city's regulatory standpoint, there is a situation where the planning authority is different from the condemning authority. This could cause congestion, services, and parking issues for the planning authority. This bill would prevent this situation.

Senator Stegner said in this example, the landowner received \$80,000 for the loss of the option to build that 5,000 square foot addition to the building. Then the landowner goes to planning and zoning and is granted a variance to build that addition. The landowner is compensated twice. Is that fair? **Mr. Nichols** responded that there is a provision that if the condemning authority can show that they haven't done a total taking, and the property is enhanced, the enhancement is a credit against any compensation received from the condemning authority. Yes, they could have the compensation for the taking, and find an alternative way to increase the value of the property and do that too.

Senator Corder asked if the condemning authority could use that situation to reduce the compensation they are paying? **Mr. Nichols** said it would probably not be successful telling the landowner they could get a variance so we won't pay you as much.

Chairman Hill asked if it is ever negotiated to pay a certain amount contingent upon the landowner seeking and being granted a variance and then the amount would be reduced. **Mr. Nichols** said he had not seen that happen.

Mr. Nichols said this bill greatly affects the ability of cities to regulate use after a taking in a way that makes sense.

Senator McKenzie questioned the penalty the government body can impose for a violation under *Section 1, 67-6527, Idaho Code*. Language is confusing about the penalty that can be imposed for a violation. It says "it may be declared a misdemeanor" and then it says "local ordinances adopted pursuant to this may be enforced by the imposition of infraction penalties." Infractions are not crimes or misdemeanors. With this change, are they limiting the imposition of a misdemeanor or do the infraction penalties allow them to have a civil infraction as a penalty under the current language? **Mr. Nichols** said it is his understanding the civil penalty should be divorced from the issue of the eminent domain portion. An infraction would be viewed as a civil penalty. The intent of the language in the Local Land Use Planning Use Act is if a landowner is cited for a violation of the zoning code, the citing authority can do so under the criminal code. **Senator McKenzie** said the bill is poorly drafted under the current language. It does say misdemeanor, which is a crime and then it says an imposition of infraction penalties—it is not clear what was intended. Should it be separate and apart from the eminent domain issue, granting authority to enforce it through infraction of civil penalty rather than as a crime?

Mr. Gorley said he does not disagree with the analysis. That language on the infraction wasn't changed. This should be viewed as a civil penalty instead of trying to eliminate only criminal issues.

Jane Wittmeyer, Vice President, Idaho Affairs for Intermountain Forrest Association, said that at first glance it seemed the Intermountain Forrest Association would have little to do with this legislation. They do support this legislation because it recognizes the value of pre-existing property rights including those of future development. Expansion is occurring in what was once forest lands and rural areas and there is continued pressure to limit development and use of the land. This legislation is a step in the right direction and they support this bill and urge a do pass.

Jerry Mason, Coeur d'Alene, is representing Association of Idaho Cities. His firm also represents nine cities, a health district, and various counties from time-to-time. He testified in opposition of H 525. **Mr. Mason** agreed with Senator McKenzie and said that the mere mention of penalties without some further explanation seems to be wholly inappropriate.

Mr. Mason said that very often purchases are made under threat of eminent domain because of certain tax implications. There are two

principles worthy of consideration in looking at this legislation. 1) When land is acquired by public agency through eminent domain, the property is taken, just compensation is paid, and then the conceptual part that is hard to understand, no rights are taken with that taking. **Mr. Mason** gave an example where a landowner had 40 acres zoned residential, undeveloped and a power company came along and purchased 32 acres under threat of eminent domain leaving the landowner with a remnant of 8 acres unencumbered. Under this legislation, the landowner could concentrate all the rights of the 40 acres on the 8 acres. That just doesn't make practical sense.

2) The second part of this issue is where current law states that the rights will "run with the land." That is perpetual-forever! Would the rights that exist now, that would persist and sustain, be appropriate 75 or 150 years from now? Who would track those laws? It is not practical that rights are locked in forever. This legislation should not be in this section of the Code. It belongs, if anywhere, in the eminent domain section. Please hold this bill in committee.

Senator Siddoway said he thinks that some principles can be long term. This bill, as he read and tried to understand it, would facilitate making the contracts and all the legal descriptions held by the land owner and taken by the purchaser more clear. If there were farms on both sides of a 400 foot power line easement, they could still farm under the power line without being in violation of the contract. **Mr. Mason** said that may be true but in the case of residential, it would be physically impossible to put the same number of residences on 8 acres that would fit on 40 acres.

Mayor Bradley Holton, Mayor, City of Greenleaf, submitted written testimony in opposition to H 525.

Mr. Deckard summed up and addressed the concern about the 40 acres example. The right was one unit per acre for 40 acres so the rights remaining with the 8 acres would be one unit per acre for 8 acres.

Mr. Deckard said that economic issues should not be confused with the condemning authority. The condemning authority has no right to go before the zoning authority to seek change. This bill is not a bad deal, it levels the playing field and provides assurance to the property owner. He would urge the Committee to send this bill with a do pass.

Chairman Hill welcomed the students and their teacher from Jefferson Montessori School. This is the same school Austin Porter, the Committee Page, attends.

MOTION:

Senator McKague moved to send H 525 to the Senate floor with a do pass recommendation. **Senator Siddoway** seconded the motion.

Senator McKenzie said he is still confused on the issue of "legally conforming property."

Senator Stegner said he must oppose the motion. It is a tough issue on the side of the land owner in negotiations for condemnation. The land cannot be separated from the property rights and it is better to error on the side of the landowner during settlement negotiations because they may not

realize the long term consequences of that taking.

VOTE:

The motion failed by voice vote.

ADJOURNED:

There being no further business **Chairman Hill** adjourned the meeting at 4:20 p.m. until March 12, 2008 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: March 12, 2008

TIME: 3:00 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu

**MEMBERS ABSENT/
EXCUSED:**

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 Hill** called the meeting to order at 3:09 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.

Chairman Hill set the rules for hearing public testimony. Those who signed up to testify for both bills in the interest of time, both bills will be discussed at the same time and no one will have to testify twice. Mr. Tim Solomon will introduce both bills.

H 561 ***Relation to The Production Exemption to include processing materials for the production of energy.***

H 562 ***Relating to Taxation by adding the New Capital Investments Incentive Act of 2008 to provide incentive for major capital investment in Idaho.***

Tim Solomon, Executive Director, Regional Development Alliance, said the purpose of H 561 and H 562 is to allow more frequent and sizable capital investment. Although AREVA has sparked this activity, this legislation has brought forward some additional actions that can be taken to take advantage of large investment opportunities in the future. The competition is fierce for these types of opportunities and, although Idaho has a lot to offer, the incentives provided for in these bills will make Idaho competitive with other states that make it to the short lists of potential industries looking for a place to invest and build.

H 561:

-Amends the existing production exemption to include processors of materials used for fuel for energy production. The existing exemption is problematic because it requires that the materials produced be intended for sale at retail. In the case of AREVA, uranium can't be sold at retail because they don't own the product, only process it, and there are national security and other reasons it can't be sold.

-If counties encounter projects with significant heavier burdens in terms of impacts, they can compensate through the use of development or similar agreements as they do now.

H 562:

-Provides a tool for counties and the State to use to compete for business. Economic impact on states and communities is driven by capital investment that leads to job creation allowing monies to flow out to cities, counties and the State.

-If a company meets the investment requirements and the community wants them, Idaho will gain property taxes and there will be a very significant positive economic impact in the state and communities. If they don't come, nothing will be lost.

The passage of H 561 and H 562 will send a clear message to corporate site seekers everywhere that Idaho continues to want to open their doors to significant private investment; the kind of investment Idaho needs. (A copy of Mr. Solomon's testimony is on file, see NOTE above.)

Senator Bilyeu asked where is the site to be located? **Mr. Solomon** said the site is about 10-25 miles west of Idaho Falls along Highway 26.

Chairman Hill asked if that was in Bonneville County and how far into Bonneville County? **Mr. Solomon** said it is about 8-10 miles inside the Bonneville County border.

Senator Bilyeu asked about H 561 and the uranium that cannot be sold at retail, what other products might this apply to? **Mr. Solomon** responded that he thought there could be other products but he could not say what those were. There are some who think AREVA would qualify under the present exemption but it isn't clear because uranium cannot be sold at retail. This is simply a clarification that a processing company would be eligible for the exemption but they did not want to broaden the exemption.

Senator Bilyeu asked, from a standpoint of other counties, the location and development of the site is left up to just the commissioners in whichever county the site might be located. How much consideration is given to surrounding counties when a site is established? **Mr. Solomon** stated that they consider the surrounding area because it is important that neighbors are considered when an industry is considered. The Commissioners need a broad range of support when making these decisions. It is important that neighbors are involved in the relationship and no one should work in a vacuum.

Senator Bilyeu asked if there is support from Bannock County for this particular site? **Mr. Solomon** said that it is his understanding there is significant support. **Senator Bilyeu** asked if the Commissioners and the Mayors from cities like Pocatello and Chubbuck favor the AREVA project? **Mr. Solomon** said it is his understanding that there is a solid base of support although there are some that do not support it. **Senator Bilyeu** asked if someone could address environmental concerns? **Mr. Solomon** deferred to Mr. Poyser from AREVA to answer those questions.

Senator Corder questioned the statement that there will be no need for

other infrastructure. The road is already there so that is good. However, with employees in excess of 1,000 and 1,700 during construction periods, will there be enough homes? **Mr. Solomon** answered that there were sufficient homes. Most employees will come from within the community. There will be some from outside but the employees and homes are already there. **Senator Corder** confirmed the schools are already there and it will be the same children attending them. There will not be a need for more schools, homes, streets, and city services will not have to be extended to all of the structures that will be needed to sustain those 1800 people because they are already there. **Mr. Solomon** concurred-that infrastructure is already in place. **Senator Corder** recalled that the people that would be employed are already there at skill levels ranging from executive to tradesmen with a small percentage at the bottom level. If they are already there, what are they doing now? **Mr. Solomon** clarified that the 1,000 plus people will work during the construction period which could be up to ten years and that would be tradespeople and those people are already here. When the plant is up and being operated, there will be about 250 full time individuals. One-third of those will come from the outside in upper tier ranges. The mid and lower levels will come from people already in the community.

Senator Corder asked if there are a lot of people unemployed right now? **Mr. Solomon** stated that there are as many unemployed as other areas and there are those that are underemployed. Eastern Idaho will be losing 1,500-2,000 jobs at the end of the clean up for Idaho National Laboratory (INL). This is a significant hit for Eastern Idaho. **Senator Corder** asked for an explanation of why there would not be a tax shift to other taxpayers. Is there something in the legislation that prevents that from happening. **Mr. Solomon** said it is in Subsection 5 which specifically precludes placing it on construction or tax roles. If these businesses come into Idaho, they will look for undeveloped property on which the tax level is very small and will be replaced with increased property taxes. There will not be a shift in the tax burden because there isn't a burden in the first place. The rationale to cap property taxes is, especially in a rural area where the company is producing its own infrastructure, the taxes become so high they are burdensome on that one sector of the economy. The idea is to spread the taxes out over a period of time to become a more broad based tax base so there will not be a dependence on one segment of the economy. If the county is dependent on those taxes and they go away, it causes significant damage to a county budget.

Senator Corder read from Subsection 5 "property section provisions of this section shall not be included on the property role." Is that right? **Mr. Solomon** said that is correct. **Senator Corder** submitted for consideration that one of the reasons rural agriculture communities struggle is because much of that property is already exempted. The base deteriorates quickly and there is a shift.

Bob Poyser, Vice President and Project Manager, AREVA, is appearing before the Committee at the suggestion of Grow Idaho Falls and other representatives of the communities in Eastern Idaho. AREVA is the world's leading supplier of technology, services, and products related to the

generation of clean nuclear power. In the United States AREVA is the leader in the nuclear fuel and electricity transmission and distribution business and employs about 5,000 Americans in 45 locations in 20 states. In 2007 AREVA presented a plan to the U. S. Nuclear Regulatory Commission to expand the country's nuclear infrastructure by licensing, constructing, and operating a new uranium enrichment facility in the U.S. This will be a \$2.5 billion state of the art facility that will become operational in 2013-2014 and would supply the growing needs of domestic power users. AREVA considered 200 sites and reduced the list to five finalist states and five sites. Idaho is one of the five competitors. AREVA is completing the analysis, weighing the information now available, and in the coming weeks, will present to the Board the findings and justification for recommending a single preferred site.

Senator Bilyeu asked if AREVA is a French company? **Mr. Poyser** said AREVA is a French owned company but is incorporated in Delaware. **Senator Bilyeu** asked which other states are being considered and what are the challenges in Idaho? **Mr. Poyser** said the other four states are Ohio, Texas, New Mexico, and Washington. The challenges are different in every state and in Idaho the challenge is to remain competitive. **Senator Bilyeu** asked if the site that was selected in Eastern Idaho was over an aquifer? **Mr. Poyser** said that the site selected is about ½ way between Idaho Falls and the INL and it is over the Snake River aquifer at about 600 feet with basalt over the top of that. They are still working on the geological investigations but think the site is in a good location.

Senator Stegner asked for confirmation that the potential total investment may be \$2.5 billion. **Mr. Poyser** said that was correct. **Senator Stegner** said it might not get that high. The only certain phase is \$1.0 billion with decision points for further investments that would take it to potentially \$2.5 billion. Is that correct? **Mr. Poyser** said the facility will be built in phases. The phases are going to be constructed. It takes time to get to that point. **Mr. Poyser** offered the expected schedule to build the facility. Licensing will begin at the end of this year. There would be a two year licensing phase. Construction would begin in 2010-2011 and that would build the workforce to about 1,000 employees. By 2013-2014 the first phase of production, which means the first set of cascade and centrifuges would be in place and started up. Building will continue through 2017.

Senator Stegner asked if the total investment will achieve the \$2.5 billion. **Mr. Poyser** concurred.

Senator Heinrich asked for an explanation of how the product changes hands if it is not for resale. **Mr. Poyser** said the material that is fed to the plant and comes out of the plant does not belong to AREVA. The material is owned by the utilities. The facility will provide a service to convert a natural level of uranium to an enriched level.

Chairman Hill said that this is not a debate on the pros and cons of nuclear energy as such, this is not a nuclear reactor that is being built, it is a uranium enrichment facility. Would you explain how that is different, how it works, and address the waste issue.

XX Tape stopped completely here—got some info from internet to match notes.

Mr. Poyser said the process is the third step in what is called the nuclear fuel cycle. It starts with mining which produces a product called yellow cake. Yellow cake goes to a conversion facility and is converted into a solid form called uranium hexachloride (crystal like). **Senator Siddoway** asked if Mr. Poyser could go back to the mining and start with the drilling process and work from there to the yellow cake stage. **Mr. Poyser** said the In Situ Leaching Mining process is used to mine raw uranium. Hydrogen peroxide is used to dissolve the uranium. After it is mined, it goes to a mill and is processed. The uranium is stripped of the hydrogen peroxide in what is called ion exchange and ends up in little beads that have a negative charge; uranium has a positive charge. The uranium is stripped off the beads and goes into an ammonia based form that has a yellow color. It is then put through a filter press that separates the solid uranium which is then dried and, depending on the drying temperature, can be either green or yellow cake. **Chairman Hill** asked if, at this point, there would be anything done in Idaho? **Mr. Poyser** said no, it hasn't reached the enrichment plant yet. At this point all of the material is natural uranium, "238," and is 99.3% pure. The other part, isotope 235, was leached out at .7%. The uranium is then converted into a solid state (crystals) and put in cylinders which are transported by truck to the enrichment plant where it is heated to 60°C, converted from a solid to a gas and then processed through the centrifuges and cascades. The more the uranium is run through the centrifuges and cascade, the more it is enriched. The enriched uranium is transported to the utility and the depleted uranium is stored until the Department of Energy (DOE) takes the material off the property.

Senator Corder asked how important is it to have INL located close to the site in their choice of a location? **Mr. Poyser** responded that the INL facility would provide the most spectacular work force available compared to any other location being considered. **Senator Corder** asked if the other site might be Ohio? Is it an issue where the depleted uranium goes? **Mr. Poyser** said the disposal of the depleted uranium was not an issue because DOE would be the owner.

Senator Bilyeu asked if the depleted uranium would be stored on site and, if so, will it be there until the facility is closed? **Mr. Poyser** agreed that it would be stored on site and could be there for the life of the project, about 30 years. **Senator Bilyeu** asked why it could not be removed every year? **Mr. Poyser** said the deconversion facilities are still under construction in the U. S. and won't be finished until 2009. **Senator Bilyeu** asked who is developing the deconversion facility, is it AREVA? **Mr. Poyser** said it is the DOE. The depleted uranium will be at the project enrichment site until the DOE takes it.

Chairman Hill asked when does AREVA enter into the contract with the DOE? **Mr. Poyser** said the contract will be negotiated with the DOE during the licensing process.

Chairman Hill asked about the need for a uranium enrichment facility. It has been a number of years since a nuclear reactor has been built in the

U. S. Where is the demand for enriched uranium and what do you see as the outlook in the U.S.? **Mr. Poyser** said that AREVA foresees an increased demand for enriched uranium. The Russia Highly Enriched Uranium Agreement (HEU) will be completed in 2013 and will leave a huge gap in the enriched material supply. The materials processed through existing plants will be used in the U. S. and none of it will not be shipped overseas.

Chairman Hill asked if this facility would make the U. S. less dependent on other countries for energy and reduce the dependence on oil. Are there other facilities in operation? **Mr. Poyser** responded yes, there is one facility using an old process. There is a new centrifuge facility in New Mexico and another at the old Portsmouth site. There will not be enough facilities by 2013 to meet the need.

Senator Siddoway asked for an explanation of the dangers—that is a big concern. What does the uranium emit and what are the safety factors in place for the drivers? **Mr. Poyser** said that natural uranium as found in the ground and slightly concentrated has alpha, beta and gamma emissions associated with it. Alpha is stopped by one layer of human skin, beta is stopped by the thickness of a phone book. Gamma rays will go through everything. Both beta and gamma rays produce a very low level of low specific activity (LSA). It can be dangerous in several phases of the process if it is not handled properly. However, there are no airborne emissions.

Mike Virtue, Mayor, Blackfoot, spoke in support of H 561 and H 562. **Mayor Virtue** read a letter addressed to Jerod Fuhrman, Mayor, Idaho Falls, from the Bonneville County Board of Commissioners supporting both bills and asked that it be entered into the record. (Signed copy in the office) **Mayor Virtue** added a personal postscript to reinforce the letter on behalf of the City of Blackfoot. **Mayor Virtue** suggested that this legislation, when passed, will provide a “seed bed” that will open up opportunities within the State. He compared this to hydrology by priming the well to draw new business.

John Watts, Lobbyist, Chamber Alliance, endorsed H 561 and urged passage of the bill. **Mr. Watts** spoke to both bills stating that H 561 is a rational extension of *Section 63-3622D (4) (d), Idaho Code*. **Mr. Watts** addressed the question about the possibility of a tax shift. The current value of the site is agriculture at \$500.00 in property taxes per year compared to \$400.0 million in property value with this company. This bill would open the door and stimulate local economies.

Senator Corder asked about the estimated value of the sales tax exemption. **Mr. Watts** responded that he was not an assessor but it would be significant.

Senator Bilyeu asked if all the Chamber members in the Alliance had been contacted? **Mr. Watts** said they had heard from all the Chamber members and most of them approved the bill.

Erik Simpson, Chairman, Greater Idaho Falls Chamber of Commerce Legislative Committee and member of the Board of Directors, is testifying

in support of H 561 and H 562. Companies that could benefit from this legislation would contribute to Idaho in many ways. They typically partner with universities offering scholarships, internships, specialized faculty, and assist in establishing curriculums that keep students competitive with their counterparts across the country. Companies that will benefit from this legislation also invest in small and disadvantaged businesses that put people to work. They employ people who in turn put dollars back into local economies. The companies and their employees support charitable institutions, other businesses, and improve the communities they live in. Send the message to companies across the country that we want their business. I encourage your support of these bills. (A copy of Mr. Simpson's statement is on file-see NOTE above.)

Senator Bilyeu asked if INL was in a phase out mode? **Mr. Simpson** said the clean up contract is being phased out not INL. **Senator Bilyeu** asked how much of the business of INL is part of the clean up? **Mr. Simpson** said that, in the past, 40% of the budget is clean up and 60% is research and development. **Senator Bilyeu** asked if Mr. Simpson was involved in the clean up. **Mr. Simpson** said he was.

Randy Nelson, Legislative Advisor, Associated Taxpayers of Idaho, was neutral about these bills. **Mr. Nelson** presented a schedule of Assessed Taxable Values by County 2004-2007 and a Summary of Some Statewide Exemption Values that relates primarily to H 562 and how the \$400.0 million tax valuation compares to the different counties. The second part shows the main exemptions that relate to the property tax. This is not all inclusive—there are some that are not mentioned. **Chairman Hill** asked for examples of those that are on the schedule. **Mr. Nelson** reviewed the 2007 line showing the Homeowners Exemption, Speculative Value Exemption, Qualified Investment Exemption, and others to get to the total Net Exempt Value of \$51.8 billion for 2007. The report also shows the percent change from 1999 to 2007. (Exhibits on file, see NOTE above.) **Chairman Hill** looked at Bonneville County and asked if these numbers were current? Would the \$400.0 million in value add about 9% to the total assessed value of the whole county? **Mr. Nelson** responded that it would. **Chairman Hill** asked if the cost of the services provided to that facility are 1/2 of the greater market \$4.0 million in taxes, what happens to the other \$2.0 million? Can it be applied toward the cost of the services provided or could it reduce the overall tax rate for all the other taxpayers? **Mr. Nelson** said that it would go to reduce the tax rate.

Senator Langhorst referred to the column for Significant Capital Improvements-63-602HH and noted that Ada County had the largest exemptions with \$282.3 million. If this bill passes, how much would be exempt and how much would go to Bonneville County? **Mr. Nelson** said it would depend on the investment, for example, the difference between \$400.0 million and \$1.0 billion would be three or four times.

Senator Heinrich asked what is the levy rate for the county and the total levy rates for the districts in that area? **Mr. Nelson** responded average overall rate for the State is 1%. That is just an average because there is quite a range.

Andrea Shipley testified on behalf of the Snake River Alliance in opposition to H 561 and H 562. The Snake River Alliance advocates renewable energy resources in Idaho in its energy initiative. Although the Alliance acknowledges and respects the efforts by members of the Legislature to encourage economic development and diversification, they cannot support these bills.

Both bills are before the Committee to create tax incentives to attract a single company that is considering Idaho for development of its proposed uranium enrichment centrifuge complex. These bills would also apply to the proposed nuclear power plant in Owyhee County. Nuclear power and uranium enrichment are expensive, dirty, and dangerous.

Ms. Shipley discussed the principles that came from the Interim Committee and took the position that H 561, as it is written, fails to meet these principles. The Alliance also believes that, by passing this bill, the Legislature is sending a signal of its desire to lure an industry to Idaho without first fully understanding the social, economic, or environmental impact that industry may bring with it.

Ms. Shipley declared that this bill is not revenue neutral. If this project is built today, Idaho would receive a tax benefit. If this bill passes and the project is built, that benefit evaporates.

Ms. Shipley said that H 562 is construed so narrowly that it could not be described as anything other than an AREVA recruitment bill. She agrees that it should be the decision of the city or county that would be affected as to whether or not to forego millions of dollars in property tax revenues. The question posed was that if Bonneville County agreed to reduced taxes, would that force other counties to do the same and if they would not, would the developer have recourse?

There is no justification to rush these bills through without thorough investigation other than the fact AREVA will soon be making a decision about where they will locate. The Alliance respectfully urges the Committee to hold both of these bills until a more thorough discussion of their impacts can be held. (A full copy of Ms. Shipley's testimony is on file, see NOTE above.)

Senator McKenzie asked if there could be a cost to the state if these bills are passed? Was that one of your points? **Ms. Shipley** responded that the cost to the State could be a hidden one dealing with the cost of waste and also the cost to the DOE which would be charged back to the taxpayers. **Chairman Hill** asked Ms. Shipley to restate her views about not interfering with the affairs of Bonneville County's decision to forego property tax revenues. **Ms. Shipley** complied. **Chairman Hill** asked Mr. Nelson if Bonneville County had the option right now to forego those property taxes? **Mr. Nelson** stated that they can forego property tax. **Chairman Hill** asked if Bonneville County could cap the \$400.0 million in property tax revenue on their own without this bill and if they can't, what can they do? **Mr. Nelson** said no they can't, he was talking about the budget side when he said yes. **Chairman Hill** confirmed that the county could not exempt the \$400.0 million without Legislative authorization.

Senator Bilyeu asked if the Snake River Alliance had taken a stand to oppose nuclear energy? **Ms. Shipley** said yes they have. **Senator Bilyeu** asked what kind of other renewable energies do you support? **Ms. Shipley** said that renewable energies are wind, solar, geothermal, and other sorts. Nordic Wind Project is now in Pocatello offering more than 160 jobs. **Senator Bilyeu** asked for elaboration about the statements concerning waste from enrichment facilities and have there been problems in France? **Ms. Shipley** stated that she couldn't speak to that at this time but there have been problems in France with droughts.

Blake Hall, attorney from Idaho Falls said he is a lobbyist and does represent CWI, the clean up contractor for the site but he is **not** here representing them. He is also a Prosecuting Attorney for Bonneville County a member of the State Board of Education and he is testifying as an individual member of the Board and Bonneville County in support of H 561 and H 562.

Mr. Hall is a past Chairman of the Regional Development Alliance and served for the first ten years after its inception. The Alliance was very active in promoting economic development in the State.

The good part about this legislation are the tools that are being provided to local economic development people to attract new businesses to Idaho without requiring any appropriation of funds from the State. This is not a bill that is going to benefit just Idaho Falls. Southeastern Idaho views itself as a region, an economic unit, and they are working together to ensure that there are appropriate tools to bring business to Idaho and this provides them with the first opportunity to have tax policy as one of the tools.

The State tries to bring people here to buy Idaho products, we should be bringing businesses here to employ our children with good paying jobs. Then, when we educate our children, there will be good paying jobs to keep them here. If we can attract a \$2.5 billion project anywhere in the state to provide that kind of economic engine, we ought to do what we can.

Mr. Hall, acting as Legal Counsel for Bonneville County, read a letter from the three County Commissioners from Bonneville County in support of H 561 and H 562. (On file, see NOTE above.)

Mr. Hall discussed tax policy. How much is the forfeited revenue if this bill passes? If this bill doesn't pass and AREVA doesn't come, the forfeited revenue is zero and if AREVA does come the tax revenue goes from \$500.00 on a piece of property to \$4.0 million on a piece of property in a rural county. This is good tax policy because it provides an opportunity for a rural county and the school district to benefit from the new revenues that will be generated. The region supports this project because with this type of investment, this type of technology, and this type of intellectual power, there will be spin off that will support businesses and the entire economic engine will benefit. That is good tax policy and the County supports it.

Historically, the only entity that provides large economic investments in Idaho is the government. This is a private company establishing itself on private property. This is a chance for private investment to bring bigger tax revenue and also other opportunities.

Mr. Hall then spoke as a member of the State Board of Education and submitted a letter of support for H 561 and H 562 from Art Vailas, President, Idaho State University. (On file, see NOTE above.) **Mr. Hall** talked about the partnership between Boise State University (BSU) and Micron and the benefits that have been reaped for BSU, Micron, and the community. If there was an opportunity for a \$2.5 billion project to locate close to any institution of higher education in Idaho, the Board would aggressively pursue that. Idaho State University (ISU) and **Mr. Hall**, as a member of the State Board of Education, supports this legislation because it is recognized that if ISU is to really flourish, they must have the advantage of the opportunity for a partnership with a company such as AREVA. The accelerator available at ISU and the research and nuclear engineering programs available at ISU would provide a wonderful partnership.

This is not a question of whether or not this project will be built. That decision has already been made. Will Idaho be competitive enough to have it built in Idaho? **Mr. Hall** said we want private investment in Idaho, we want education opportunities, and we want opportunities for our children to be employed in Idaho and so I encourage you to vote for this legislation.

Senator Corder said we all want those things but how we get them is the question. How many of the five states on the short list do not have property tax? **Mr. Hall** responded that he believed that there was not a state in the Union that did not have property tax. Every state has tax incentives to bring private industry into their state. Idaho's rating against other states is low with regard to any incentives for private investment in this State as compared to those who are competing with us. **Senator Corder** referred to Mr. Nelson's schedule of Assessed Taxable Values. There is \$124.7 billion in total assessed values and \$30.9 billion in exemptions. What would property taxes be in this State if the \$31.0 billion were all taxed and broadened the tax base and everyone paid their own share? What would the tax rate be? Would that be sufficient to entice other companies to come in? **Mr. Hall** said he did not know the answer but that is not an issue that has ever come before this Committee because there has not been a bill that takes away all exemptions. There is not a choice between two bills, the choice is that, from Bonneville County's point of view, do we want to have \$400.0 million worth of additional property tax values as compared to zero.

Senator Stegner said that, although the Committee would like to attract this company to the State, there is a larger job to provide a consistent, fair tax policy throughout the State and this has ramifications in that area. The Committee is being asked to give this company a significant advantage over all other participants in the State of Idaho in terms of their contributions to the State. Does this bill meet the definition of sound State policy? **Senator Stegner** used Micron as an example. Micron, through legislation, has an \$800.0 million cap on property tax. This company has been in Idaho 20 years and has provided jobs and paid taxes and then a new company comes in and gets a \$400.0 million cap. What happens when Micron comes in next year and requests a \$400.0 million cap? **Mr. Hall** said his example of Micron had nothing to do with property taxes, it

was about the partnership between companies and educational institutions. This message regards attracting private capital into the State. Mr. Hall agrees that tax policy should be fair and equitable. The letter from the Bonneville County Commissioners addresses that issue. In this case, the revenues generated far exceeds the demand on services from the county and in fact, subsidizes others. Good tax policy would allow for this entity to be taxed at a level that is more representative of the revenues that are generated require.

Senator Stegner stated he does not share this view. It is not prudent to tax a company on its need and demand for government services. If that were so, there would be a strict fee system where everyone paid exclusively on what they used. If this bill had been written with an \$800.0 million cap on property taxes consistent with what the Legislature and this Committee has already done for Micron in Ada County, there would be an aye vote right now. What is the property number to attract a new company? If the total investment does reach \$2.5 billion, and we capped it at \$400.0 million, that is 16%. That means a discount to one company of 84%. Thirty two percent, the amount given to Micron, is a defensible, fair position. **Mr. Hall** said he is here to testify that the bill before the Committee is a proper, reasonable approach to bring new industry into the State. In the Micron case, it was an existing company and the Legislature had to consider the effects of shifting property taxes to other taxpayers in the County. In this case, there would be zero shifting of tax burden. This is only going to provide for new investment. This is not shifting the tax burden away from a company and onto private citizens or private industry. With this type and level of investment, the tax burden of others will actually go down.

Senator Stegner said he understood that logic but that is not exactly what happens. When Micron asked for that cap, *Title 63, 6-602 HH*, they were not yet at that level. H 562 is a similar type of bill. There was no shift when the cap for Micron occurred. However, if a company like Potlatch used the cap, there would be a shift because it would not be new money. Companies that have been in the State, paying taxes, and providing jobs for a long time, deserve at least the same consideration that would be used to attract new business. The goal of good government tax policy is a tax policy that rewards current businesses for being here providing significant services to the economy and that same tax policy is so attractive that companies like AREVA want to come to Idaho. If this Committee amended the bill to an \$800.0 million cap consistent with current state policy, would that be satisfactory? **Mr. Hall** said the short answer is no because we would not be successful in bringing in this company. If you would present a bill with the same incentives for existing companies, he would be here testifying on behalf of that bill.

Amy Lientz, Chairman, Grow Idaho Falls, and Vice President of the Idaho Cleanup Project (ICP) described ICP as the "muck and truck" component for INL. ICP is managed by three Idaho firms; CH2MHill, Washington Group, and Premier Technologies. There are currently 2,000 employees, many who are Idaho natives who love and want to stay in Idaho, who are working themselves out of a job. The annual income is about \$65,000 and they are the economic backbone of the community.

In addition, ICP subcontracts and buys products from many firms that employ Idaho residents all across the State. In fiscal year 2007, the ICP subcontracted goods and services to Idaho firms totaling over \$98.0 million. The 2008 annual budget is \$40.0 million and decreasing rapidly. Jobs are quickly evaporating.

These employees have the skills that AREVA needs but they are also the skills required by any other firm that probably would benefit from these two tax bills. Passing these bills gives us hope that bigger opportunities will come to Idaho and employ its talented work force. It could be a \$2.0 billion AREVA firm, or a \$1.0 billion wind mill or solar manufacturer. It leads to job retention although it also helps bring new businesses. The economic benefits of keeping jobs in Idaho far outweigh the incentive given to these industries. Please vote yes for the "Keep Idahoans in Idaho" bill.

Layne Allgood, Lobbyist, representing Partnership of Science and Technology (PST), urges the Committee to vote yes on H 561 and H 562. PST is a non-profit organization made up of over 200 businesses, municipalities, economic development organizations, non-profit organizations, labor and trade unions, families and individuals to advocate science and technology issues and decisions that are in the public interest.

There have been reports that tax revenue projections are millions of dollars less than what was projected. Disappearing high technology jobs makes it obvious that Idaho needs a plan to encourage new capital investment and that is what this legislation will do. The passage of these bills will help Idaho attract jobs and compete for outside opportunities in a highly competitive environment. This legislation may have been introduced because of AREVA but the legislation is about capital investment opportunities for the entire State.

Mr. Allgood said they have studied the environmental and economic impact of the AREVA opportunity. It is obvious that the economic impact is tremendous. PST has members, both retired and current, that are engineers, scientists, and hydrologists who have expertise in nuclear issues and hydrology, waste management, and environmental restoration. A committee of these experts has reviewed the AREVA proposal, and they endorse it wholeheartedly; they see very little environmental impact to the community.

Without this legislation, investment opportunities will be few and far between. We urge you to send these bills for full debate.

Linda Martin, Executive Director, Grow Idaho Falls, testified in support of H 561 and H 562. Ms. Martin also submitted a written statement in support of these bills from Lee Radford, Vice President and Incoming Chairman for Grow Idaho Falls, Inc. (On file, see Note above.) Grow Idaho Falls is the economic development organization for Bonneville County, the city of Ammon, and the Greater Idaho Falls area. It is a daily struggle to grow and expand existing companies and attract new private investment into the State.

The strength of any economy depends on four areas:

1) Ability to create clusters of private and public capital investment.

- 2) Encourage new job creation and retain current jobs.
- 3) Create opportunities to enhance education and training institutions.
- 4) Support the social and civic infrastructure through economic development activities.

The specter of possible recession, increased unemployment, slashed government budgets and programs, and lack of capital to expand, faces communities each day. There needs to be a partnership where government encourages private investment which in turn, generates tax revenues of all different types, i.e., property, sales, personal property, and income so programs may be funded that constituents need and desire. Our State needs to elevate itself to an advanced, economic playing field. The communities need the tools to get there.

Idaho is in competition with other states for capital investment, as in the AREVA case and one competing state offered a 100% property tax exemption. A search of Idaho statutes revealed that AREVA did not fit into any category of incentives for a variety of reasons. The Regional Development Alliance conducted an impact analysis and the results were impressive. This legislation encourages any company to invest \$1.0 billion dollars into the State, which, in this case, would provide the opportunity to tip the balance of trade by introducing direct foreign investment into the State. **Ms. Martin** said she would be just as enthusiastic about any other project that would make this type of investment in the community where she worked.

An invitation has been extended to a company to be the largest taxpayer in Bonneville County. This site provides only about \$500 on the tax roles annually, \$3.0 or \$4.0 million for that same property would be "quite helpful." These bills do not constitute an outflow of revenues from state or local government tax roles to any private company. There is not a dramatic shift from one taxpayer to another. This relationship may be described as a subsidy from the company to the taxpayers within this taxing district. These bills are narrowly defined, a company can earn these measures only through investing in Idaho. We urge you to pass and give your favorable support to these two bills.

Senator Heinrich asked if Ms. Martin was involved in the choice of the \$400.0 million figure? Is it arbitrary or is there some methodology used to reach the amount? **Ms. Martin** said they consulted with legislators on both sides of the House and the county association. There was some concern that other companies already on the tax roles would affect the counties and so the requirement was "new investment." **Senator Heinrich** asked "where did the \$400.0 million come from?" **Ms. Martin** stated that it was somewhat arbitrary. It was a matter of finding a number that was competitive.

Kent Kunz, Director of Government Relations, Idaho State University (ISU), representing President Arthur Vailas, ISU, speaking in support of H 561 and H 562. ISU has three campuses: Idaho Falls, Pocatello, and Meridian. There are two things that ISU does really well: 1) Train and educate people in the Health Sciences, and 2) Train people in energy and nuclear engineering. ISU-Pocatello has a nuclear reactor, nuclear accelerator, and the Center for Alternative Energy Development which is a

\$2.5 million grant with private sector companies to develop alternative energy. The Center for Advanced Energy Studies is under construction and is adjacent to the Idaho Falls Campus. It is a collaborative effort of the three main universities in the State: ISU, Boise State University (BSU), and University of Idaho (UI). **Mr. Kuntz** read a portion of a letter sent to the Committee from President Vailas stating that the investment of millions of dollars would provide a stimulus to the economy and ISU would benefit from that investment. **Mr. Kuntz** also read from a letter written by Larry Ford, Vice President of Research. (Both letters on file, see NOTE above.) Mr. Ford said that the nuclear fuel cycle is an area where ISU has focused its nuclear engineering efforts and AREVA would fit into those efforts. AREVA has provided considerable financial support for nuclear engineering students at ISU.

Idaho State University believes that attracting this company to Idaho would be a financial and intellectual benefit and encourages passage of both pieces of legislation.

Rob Childs, President and Chief Executive Officer of the Greater Idaho Falls Chamber of Commerce, said that the people associated with the Chamber of Commerce, Board members, Chamber members, and staff are very much in favor of these two pieces of legislation for all the reasons that have been stated.

Ann Rydalch, Chairman, National Foundation for Women Legislators (NFWL) Energy Committee, submitted written testimony in favor of H 561 and H 562. (On file, see NOTE above.)

Tim Solomon addressed the importance of economic impact and stated that he had some expertise in economic impact analysis. Governments don't derive economic impact. Tax revenue should be consistent in providing a seed bed of support for economic impact which is derived by private investment. Private companies invest in the community by buying machinery, materials, processes, patents, and/or commodities to produce a product to sell. They employ people. Therein lies the beginning of economic impact. There are business to business transactions and employees spend money. Economic development is a difficult process for local and state officials, it is hard to change old ways.

To reach the \$400.0 million cap, they did a backward calculation to get to a competitive number. Companies like AREVA develop competitive matrices to evaluate competing sites. That is how the numbers were derived and this is the number that made us competitive.

This state will not thrive without private investment and this Committee has the opportunity today to make that happen. The way to encourage economic investment is to have proper tax policy, however that is defined, in a way that consistently implies inducements to companies seeking investment.

Senator Langhorst referred to H 561 where it says "available to a business.....engaged in the business of processing materials,for use as fuel for the production of energy." Does that include natural gas, oil, shale, coal, geothermal, and nuclear? **Mr. Solomon** said he doesn't have

a list of the kinds of industries that might fit under that exemption but the intent was to keep this narrow. **Senator Langhorst** sought to look for unintended consequences of the bill and asked for information from the Idaho State Tax Commission (IST). **Dan John**, Idaho State Tax Commission, said they have looked at this bill for unintended consequences and they couldn't find any. The key is the processing part of the bill. An example of a company that is not eligible would be natural gas because it is not being processed, it is being transported. **Senator Langhorst** asked if coal found in viable amounts in Idaho would already be covered under this production exemption. **Mr. John** said they would be covered under this exemption. The key here is producing a product for sale. That was the thing that was stopping AREVA from qualifying under the existing production exemption.

Chairman Hill thanked everyone for coming to testify and their patience with spending a long time here.

MOTION H 561:

Senator McKenzie moved to send H 561 to the Senate floor with a do pass recommendation. **Senator Siddoway** seconded the motion.

Senator McKenzie agrees with the earlier testimony that this bill is consistent with our current tax policy and AREVA does not qualify because they don't have a product to sell. They process a product owned by utilities. The bill is consistent with current production exemptions and there is good reason for those exemptions in the tax policy.

Senator Corder said he will say the same thing for both bills. He doesn't agree that the policy we have on production exemptions right now is a good one. It was deemed good at one point when the sales tax was started. When the question was asked what would happen if all that exempted property was taken away, how much of the property tax would be left and Mr. Hall said that was not the question before the Committee. That bill should be before this Committee. AREVA would not need us if we could determine what property tax ought to pay for and then we would know how many exemptions there would be. What is the value of sales tax exemptions? We will never get that kind of bill if we continue to grant exemptions piece by piece. The Interim Committee made an effort and some of the goals were noble and not one single thing has been done this session in regard to those goals. In fact, we continue to go the other way. There is a good reason to have this bill and there are valid reasons not to have it. **Senator Corder** said he will continue to stay on the side of elimination of exemptions and broadening the tax base, not finding ways to narrow it and to offer special concessions. He is opposed.

Senator Heinrich said he agrees with both Senator McKenzie and Senator Corder. **Senator Heinrich** said he does not like production exemptions but what is being done today is like what was done with charitable organizations and LLCs. We are not broadening this exemption, we are clarifying what is exempt and it should be a discussion to do away with all exemptions but this is not that opportunity and he can't penalize this bill by voting against it for that reason. This is just clarifying the intent of the production exemption and so he supports the bill.

Senator Langhorst said he is concerned with the tax base and the idea

that there are other companies that are penalized every day by the tax base being narrowed at their expense. There have been non-profits that have been excluded from certain exemptions that are available and they have been told this is not a good time, that the mood is not to add credits or exemptions or deductions. The system we have is one that anyone with the political power or the money to hire the right people to come before the Legislature can get a tax break while everyone else must pay higher rates. He can't support this bill.

Senator Siddoway said this is a new business, not an existing business and the question is do we want to bring in this company or not. The production exemption will qualify AREVA to come to Idaho. There is a skilled work force already there because of the winding down of the INL Clean Up Project. ISU is there to educate people in areas of nuclear engineering and energy. There will be additional taxes coming into the community because of the increase in property tax. I will support this bill.

Senator McKague said that having AREVA in Idaho will put more people to work. She supports the bill.

Senator Bilyeu said that it is only fair to amend the current bill to add this type of processing to the production exemption in H 561. She can't agree with the \$400.0 million cap for the property tax. She will support H 561.

Senator Stegner said he found the definition to be acceptable. This is a new concept that was not considered at the time the bill was originally written and it seems that it would be the intent of the original legislation to be consistent. He will vote yes for H 561.

VOTE:

The motion carried by voice vote. Senator Langhorst and Senator Corder are on record as voting no.

Senator McKenzie will sponsor H 561 on the Senate floor.

Senator Stegner addressed H 562 and said this bill is a different matter. We have an offer and it is a matter of accepting, rejecting or making a counter offer. Idaho doesn't need to race to attract any and all businesses and that is what we are being asked to consider. I sincerely hope they come to Idaho.

How far do we have to reach? Idaho is the fourth fastest growing state in the Nation, the first in jobs, the sixth with the best business climate, and 46th when it comes to the cost to do business. Idaho has a lot going and we are trying to decide how far to reach. This \$400.0 million proposal is too good, we are reaching to far. There should be a more reasonable cap level and if this isn't an appropriate response, then there should be a counter offer.

MOTION H 562:

Senator Stegner moved to send H 562 to the 14th Order for amendment to increase the cap to \$800.0 million. **Senator Corder** seconded the motion.

Senator Siddoway said there has been some tough negotiation and should the negotiated parameters be moved? He had confidence in the testimony and even if the \$400.0 million was arbitrary, are we going to stay in or drop out? He will vote no to send to amending order because he has

faith in those involved with the negotiations. We must trust one another.

**SUBSTITUTE
MOTION H 562:**

Senator Siddoway made a substitute motion to send H 562 to the Senate floor with a do pass recommendation. **Senator McKenzie** seconded the motion.

Senator McKenzie said there are few mediations where we like what we get. When negotiating, it is nice to get everything you can get. The taxing districts that will be affected will make the decisions about whether or not to give the incentive. Mr. Solomon said that a “backward calculation” was used to be competitive with other states. It is good policy to have incentives for capital investment when it doesn’t create a current tax shift to other taxpayers. It is important to have tax policy goals and this is an enticement for a single foreign company. This is a non-renewable and base load energy source. **Senator McKenzie** stated he is not certain if this is the right number or not. If the taxing district believes that it is the right number for them, then he is comfortable with the number.

Senator Bilyeu said she doesn’t think of this as a negotiation. If we give an exemption of 84% to anyone, give it to everyone. She will support going to the 14th Order.

Senator Langhorst said that this is an exemption of over 80% that is an over-reach in the attempt to bring this company to Idaho. We have the INL area with skilled workers, three Idaho universities, and the cost of doing business is comparable. Where do we draw the line? He will not vote for the substitute motion but will vote for the original motion.

Chairman Hill said that, in this case, the services the county is to provide are minimal compared to what it is getting. This type of business is extremely capital intensive.

**VOTE-SUBSTITUTE
MOTION:**

The substitute motion passed with a roll call vote.
Aye: Senators Mckenzie, Siddoway, Heinrich, McKague, and Hill
Nay: Senators Corder, Stegner, Langhorst, and Bilyeu

Chairman Hill will sponsor H 562 on the Senate floor.

ADJOURNED:

There being no further business, **Chairman Hill** adjourned the meeting at 6:27 p.m. until Thursday, March 13, 2008 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** March 13, 2008
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu
- MEMBERS ABSENT/
EXCUSED:**
- 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 Hill** called the meeting to order at 3:05 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.
- MINUTES:** **Senator Corder** moved to accept the March 4, 2008 minutes as written. **Senator McKenzie** seconded the motion.
- VOTE:** The motion carried by unanimous voice vote.
- H 549** ***Relating to Adjustments to Taxable Income to provide for adjustments to taxable income, limitations on taxable income when transferring moneys from college savings plan to a tuition program.***
- Liza Carberry**, Investment Manager, State Treasurer's Office, described the Internal Revenue 529 program that was passed in 2000 and was designed to encourage people to save for college. Monies that are deposited to these accounts will be tax deferred or tax free if the withdrawals are qualified withdrawals for college or higher education expenses. In Idaho, residents can write off up to \$4,000 on a single return and \$8,000 on a joint return. The fund now has \$134.0 million in assets with 15,170 accounts.
- Review of the program revealed that an increasing number of account funds were deposited on December 31 and withdrawn immediately afterward on January 1 where they were transferred to another fund. This was not fair to the Idaho program. The tax write offs should mean that the moneys should be required to remain in the fund for a period of time. The wording in the current law was not specific enough so it was penalizing people if they decided in January that they wanted to take their fund and go to another program. This bill limits the period in which the transfer is taxed to twelve months.
- Chairman Hill** asked for confirmation that the tax free status is only good

if it is used for qualified purposes or transferred to another program. **Ms. Carberry** agreed.

Senator McKenzie asked why the add back is not limited by the amount transferred out? Why can't it be capped at the lower of the amount of the transfer or the amount that has been deposited in the last twelve months? If someone has put a significant amount in the fund over the year and transfers a small amount out, they will be taxed on the entire twelve months. **Ms. Carberry** requested that Julie Weaver be allowed to answer this question. **Julie Weaver**, Attorney General's Office and representative for the College Savings Program, rephrased the question for clarification. The example is if you are putting in \$4,000 over the twelve months and transferring out \$5.00, will the tax be on the full \$4,000? **Ms. Weaver** said she reads the bill to say the add back transferred to another program has new language that says "if it was deposited in the prior twelve months it would only be the amount transferred to another program."

MOTION:

Senator McKenzie moved to send H 549 to the Senate floor with a do pass recommendation. **Senator Siddoway** seconded the motion.

VOTE:

The motion carried by a unanimous voice vote.

Senator Langhorst will sponsor H 549 on the Senate floor.

H 550

Relating to Property Exempt from Taxation beginning with year 2008 a Board of County Commissioners may declare that all or a portion of the market value of certain investment facilities meeting certain tax incentive criteria shall be exempt from taxation.

Senator Heinrich introduced H 550 which will provide an economic development incentive tool to County Commissioners across Idaho. It will put the decision making into the hands of those most affected.

This bill will provide a mechanism for counties, in conjunction with economic development professionals, an option to provide property tax incentives for business development in rural Idaho. It finally gives County Commissioners the ability to negotiate with and attract new business to their counties or encourage expansion of existing manufacturing businesses.

With that introduction, I would like to yield to Ken Burgess who will explain the details of H 550.

Ken Burgess, Veritas Advisors, LLP, stated that this bill is a permissive piece of legislation that will allow County Commissioners the authority to grant property tax exemptions for a period of up to five years on a portion or all of the new construction value of a manufacturing facility in the rural areas of Idaho. Negotiations can occur providing that the capital investment in the new construction or expansion is at least \$3.0 million.

The rural definition in this bill is the same as the U. S. Department of Agriculture (USDA) Rural Development Business and Industry Guarantee Program uses. It is easier in the State of Idaho to say what is not qualified as rural than it is to show what is. All 44 counties have rural areas that

qualify under this definition. The areas that do not qualify are those cities or towns that have a 50,000 or greater population and the urbanized areas surrounding those cities or towns. There are only six counties in Idaho that would not qualify under the USDA definition.

This bill does not allow for any kind of tax shift when and if a County Commission were to grant the property tax exemption. It is for the terms of the agreement that is reached and the new construction value cannot be added to the tax role.

Several people accompanied him to testify but in the essence of time the following people support this bill:

The Idaho Association of Commerce and Industry
The Idaho Mining Association
The Food Producers of Idaho
The Idaho Rural Partnership Board of Directors
The Idaho Chamber Alliance

In the interest of full disclosure, this idea was born nearly two years ago when a client of Mr. Burgess came to him for help to get a property tax exemption for a new project. The answer at the time was no, it was not reasonable and the Legislature would not be inclined to support a property tax exemption for a single project or industry. Mr. Burgess has had some experience on rural economic challenges around the State and, in conjunction with the counties and the STC, this request has evolved to become the broader tool contained in this legislation.

Senator Langhorst asked if there is any limit on the amount of incentive? **Mr. Burgess** said there is no cap and all or a portion of new construction can be used and that is only for up to five years. At the end of the five years, the full value will go on the tax roles for assessment.

Senator Langhorst said he liked the local option aspect, but some of the urban areas would have to require these companies to build outside of an urbanized area where, if they were closer to urban areas, the infrastructure to support them might make more sense. Why is there a requirement for a rural area? **Mr. Burgess** answered that it is designed to be a rural economic tool. Also, any project would have to meet and go through all the appropriate planning and zoning requirements. **Senator Langhorst** understands that there might be some concern about competing among those urban areas. If we are going to allow local option, why can't the Commissioners in urban areas be included? **Mr. Burgess** responded that part of the motivation was to build a nexus with the USDA Rural Development Business Guaranty Program.

Senator Bilyeu said this is a rural counterpart to city urban renewal taxing and financing opportunities. Is this letting the counties do the same thing only they have a limit of five years? **Mr. Burgess** said he is not an expert on tax increment financing. An argument could be made that it is designed to be a similar kind of a tool.

Senator Corder asked why is the bill retroactive to January 1, 2008? **Mr. Burgess** said that date was set at the request of the House sponsor and

recommended by the STC simply to make it applicable to the full tax year. **Senator Corder** pointed out subsection (5) stating “The legislature declares this exemption necessary and just.” **Senator Corder** said he simply cannot get there! **Mr. Burgess** said that is about the fourth time someone asked how that line got in there and he has no answer.

Fred Tilman, Chairman, Ada County Commissioners, stated that there were two purposes for attending the Committee meeting today.
1) Appreciation for tools that have been given to the County Commissioners to do their jobs individually because of the diversity of the counties. The Small Employer Exemption that was passed a few years ago has been one of those tools.

As County Commissions, we are engaged with a small company in the process of signing a contract using that exemption to make the choice that this bill addresses. Only difference is, this company will be in an urban area. These opportunities are so competitive that the exemption was the difference that brought this small company to Idaho.

This legislation addresses a very rural need and it also gives flexibility to interested companies that don't meet all the criteria required in the Small Employer Bill. This has a much higher thresh-hold of investment that must be made. H 550 will add another tool for the counties.

2) The Association of Counties Legislative Committee has had a great deal of debate over this bill and there was a unanimous vote to support it. These are primarily rural counties. It allows them to make individual decisions in their counties for those opportunities when they do come along.

Chairman Hill said his biggest concern with this legislation refers back to Senator Langhorst's question. This could create competition among the counties—a bidding war. Who will give the most? If this happens, the “richer” counties will win because they are able to go without that revenue the longest. Was this discussed with the rural counties? Do you see that as a down side to this bill? **Commissioner Tilman** answered that they have had that conversation and the counties realize that if a major employer comes into the area, everyone will benefit. There are a lot of businesses that have a need for rural locations. Just the nature of the business would not fit into an urban setting. Bidding wars are not anticipated because the assessed value of the property is close from county to county and the investment would be the same wherever they choose a site. This is a good piece of legislation for the counties.

Senator Heinrich summarized saying that this legislation gives local governments an opportunity to evaluate the long term benefits of a business coming into an area. There are problems in urban areas with road congestion, adding education facilities, and this gives an opportunity to get people back out in the rural environment where natural resource jobs have disappeared but the infrastructure still remains. The amount of investment may not look big, \$3.0 million is a small business, but the first three to five years is a critical time for that small business to get started. This allows them the opportunity to establish an ongoing business without

the Commissioners giving a lot away.

Chairman Hill said there was a business in a city in Idaho that was struggling and the city forgave the property taxes for one year. Is that a possibility and if it is, why do we need something like this legislation if they already have the option? **Senator Heinrich** responded that, to his knowledge, the only authority the Commissioners would have to forgive property taxes is under a hardship scenario.

Senator McKenzie found the answer to Senator Corder's question regarding subsection 5. *Article 7, Section 5, Uniform Taxation, Idaho Constitution*, provided that the Legislature may allow such exemptions from taxation from time to time as it shall deem necessary and just.

MOTION:

Senator Siddoway moved to send H 550 to the Senate floor with a do pass recommendation. **Senator McKague** seconded the motion.

Senator Corder said he will support the motion but he fears what can happen in the counties but at least the bill is somewhat consistent. If we want the counties to have more authority and exercise the authority given them, then the Legislature needs to give them the authority consistently. The fear is that the counties will not have the expertise to do these kinds of negotiations. At some point in the future there may be other problems the counties create for themselves and come to the Legislature to correct. The counties should contact the University of Idaho for help from Dr. Stephen Cook (community collateral) and Dr. Allred (negotiations) before they enter these negotiations.

VOTE:

The motion carried by a unanimous voice vote.

Senator Heinrich will sponsor H 550 on the Senate floor.

H 588

Relating to Income Taxes and the Grocery Tax Credit to provide for income tax credits or refunds to certain resident individuals.

Senator Fulcher opened the discussion of H 588 which addresses grocery tax relief in the form of a credit. Idaho implemented the first tax credit in 1965 when the sales tax was first put in place. Increases were made over a period of years.

Year	Amount	Senior Amount
1965	\$10.00	\$10.00
1973	\$15.00	\$10.00
1975		\$15.00
1978		\$30.00
2001	\$20.00	\$30.00

Why is this bill a credit instead of a repeal? There are several responses:

1)Simplicity and Cost: By having the credit in place as it is now, it avoids the need to define food. There are several definitions of food; food stamp definition, streamline tax definition, health and welfare definition; and they

all vary.

2) Avoids the need for all retailers to have a specific point of sale system to track the right type of food. It is not so critical for a mega food chain but for a small store it would be major.

3) Applies specifically to Idahoans. Revenues are maintained from sources such as tourism, non-residents, and business travelers.

Senator Fulcher went through the primary mechanics of the bill. For those Idahoans with a taxable income of \$1,000 or more, the credit would increase immediately from \$20 to \$30. If the taxable income is less than \$1,000 then the immediate credit would be \$50. This is purposely geared to assist the lowest income Idahoans first. The effective date of this bill is January 1, 2008. The increase will continue at \$10 per year until it reaches \$100 for everyone; approximately 2015. The USDA estimates \$100 would offset the entire amount of sales tax paid on food. For those Idahoans who do not have enough income to file a return, there will be a form that can be filed to receive the credit. Idahoans 65 and older will get an immediate additional \$20.

There are some exclusions: food stamp recipients can only claim the credit for the months they **are not** on food stamps, those persons who are incarcerated, non-residents, and part-time residents.

Senator Stegner asked how would an exclusion on food stamp recipients be enforced? **Senator Fulcher** responded that there are records showing who receives food stamps and the amount they receive. As the tax return or Form 24 is filed, the eligible amount would be identified. **Dan John**, Idaho State Tax Commission (STC), said they will seek out a source to give them the food stamp recipients. **Senator Stegner** asked if that was current information the STC has on file? **Mr. John** answered that they do not have that data at this time.

Chairman Hill asked for further clarification on how the STC would receive the information "electronically." Would a data base of who claimed the credit be matched against those on food stamps or would it only be an electronic list to be used when there is a tax audit for other purposes? **Mr. John** said they would try and get the information in electronic format from an agency who had the food stamp recipient information and run that against the master list.

Senator Bilyeu asked Senator Fulcher where an individual who is not required to file a tax return would pick up the form and what is the form number? **Senator Fulcher** said that Form 24 is very simple. **Chairman Hill** said the current form is very simple but will be more complex because of questions regarding food stamps etc. It is available on line or from state offices. **Senator Bilyeu** stated that some of those forms have been available at other government offices and senior centers. Will Form 24 be available in those places? **Mr. John** said that State tax forms are available at all State offices and some assessors offices and senior centers around the State. **Chairman Hill** asked if the STC is allowed to do displays at other State agencies such as the Department of Health &

Welfare (H&W)? **Mr. John** said they have not done that in the past but H&W would probably allow STC to make Form 24 available there.

Senator Fulcher said this bill does not specifically address the issue of fraud. If someone chooses to file fraudulent information the ramifications exist in the current structure, this bill doesn't change anything. **Chairman Hill** asked what are the penalties for a fraudulent return and are they different depending on how much money is involved? **Mr. John** responded that all of the STC forms have the attestation "you are signing under penalty of perjury." It is a criminal penalty and would be prosecuted.

There is also the provision for a citizen to donate the tax credit. It would go to the Cooperative Welfare Fund for assisting low income Idahoans in paying home energy costs.

4) Provisions for a hold and advance clause. There are two ways to take time out before implementing the next stage of the bill.

- a) Use of a Legislative Concurrent Resolution
- b) Use of an Executive Order under certain conditions

The fiscal impact is an estimated \$22.3 million the first year. It is a little less than originally recommended and less than the placeholder for the budget. It takes until 2016 to reach the full maturity of the \$100 maximum. The total of all the years is \$122.2 million. The current amount spent on the existing credit cost today is \$27.6 million. The total cost of the grocery credit would be the total of the current \$27.6 million plus the projected \$122.2 million.

The primary components of this bill have evolved over time and they come from many sources. H 588 is not exactly what anyone wants. It is what is believed to be realistic. It addresses an issue that was exacerbated when the sales tax was increased in 2006. It helps all Idahoans with tax relief in bite size fiscal pieces.

Senator Bilyeu asked for clarification regarding the \$10 increase each year to reach \$100 and in ten years it would be the same as getting the complete exemption now instead of at the end. Is that what you said?

Senator Fulcher said the estimated calculations come from the Consumer Expense Survey. From that data, if all the qualified grocery purchases today the sales tax would be a little over \$90. By the time this bill plays out in maturity at 2016, the number stops at \$100. That will be very close to the amount spent on sales tax for groceries.

Senator Bilyeu asked if there was an inflation factor built in? **Senator Fulcher** said that there was.

Amber Comer, Legislative Advocate for the Catholic Charities of Idaho and the Roman Catholic Diocese of Boise testified in support of this bill but requested that the Legislature include food stamp recipients because the food stamps they receive do not cover all of their grocery needs and they still spend a portion of their income on groceries. (Letter on file, see NOTE above.)

Ruth Schneider, registered dietitian and concerned citizen, testified in

support of H 588. (Letter on file, see NOTE above.)

Vivian Parish, Idaho Interfaith Roundtable Against Hunger, testified in support of this bill. (Notes on file, see NOTE above.)

Chairman Hill asked Mr. John how much sales tax is collected for food? **Mr. John** responded that it was about 15% of the sales tax or \$210.0 million.

Senator Stegner asked if this bill retained the adjusted exemption for the blind? **Mr. John** says the current law contains provisions for the blind.

Bryan Fischer, Executive Director, Idaho Values Alliance, testified in support of this bill. **Mr. Fischer** discussed a study from the Center on Budgets and Policy Priorities regarding tax on food and the use of a grocery tax credit as a method of providing relief to families. They set out the following criteria:

- 1) The credit must apply to all households.
- 2) It must vary with the number of individuals in the house.
- 3) The credit must be fully refundable to offset sales tax on groceries.
- 4) It must be large enough to offset the full amount of the tax being paid by families at the poverty line with an automatic adjustment provision.

This bill meets all of these criteria and they are happy to support it.

Rick Groff, a retired citizen, testified in support of H 588. **Mr. Groff** had three primary points to make:

- 1) The current situation of not providing the sales tax relief to those most in need is an injustice.
- 2) The \$30 credit is significant to those on the margin, especially those who do not qualify at all i.e., someone earning less than \$8,750 for a single person and couples earning less than \$17,500.
- 3) Don't let the absence of removing the full amount of grocery tax be an excuse to do nothing at all.

Mr. Groff went on to tell his personal story and urged support of this bill.

Ryan Davidson, spoke in opposition of this bill. It is overly complicated and expands the tax rules. This credit is not enough. If the car registration goes up, it will completely nullify any tax relief granted from this bill. Regarding the question of fraudulent filings, the cost of prosecuting would be much more than the credit that would have been received.

Paul Venable, testified as a concerned citizen in opposition to H 588. It was a big surprise, moving from the state of Ohio, that Idaho taxed groceries. As a resident of Parma, he is a brisk walk from Oregon so he goes there to buy groceries. The people who testified talked about those in need of this assistance but it is a need for all families. If Idaho families are tightening their belts, then why shouldn't the State tighten its belt? People are looking at their budgets and spending less and looking for ways to cut back. **Mr. Venable** looked at the budget for the coming fiscal year, he is challenging why the State is asking for nearly an 11% increase in spending.

Over the last two years, there have been proposals to eliminate the grocery tax over a period of time. One of the questions asked when he testified on H 439 in the House was “where will we get the money to offset the expense of eliminating the grocery tax?” The State of Idaho has a surplus of a running \$230.0 million for the last few years. If the State is running surpluses, are State monies being saved or are the citizens being overtaxed? Please consider that question. Our State should be setting an example and cutting its budget.

Senator Stegner asked to explain a unanimous consent request of the Committee that we hold the vote until the next meeting. There is no intent to kill the vote on this bill, it has no bearing on the merits of the bill whatsoever. The bill deserves time for the Committee to debate. The Committee is supposed to be on the Senate floor right now.

Chairman Hill ruled that the vote on H 588 will be held until the Committee meeting on Tuesday for the reasons Senator Stegner stated the vote would be held until all members of the Committee were present. **Chairman Hill** has requested revenue projections for the next five years and Kathy Hollings Smith will present those on Tuesday. All public testimony is completed.

ADJOURNED:

Chairman Hill adjourned the meeting at 4:35 p.m. until Tuesday, March 18, 2008 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** March 18, 2008
- TIME:** 3:00 p.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu
- MEMBERS ABSENT/
EXCUSED:**
- 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 Hill** called the meeting to order at 3:04 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.
- MINUTES:** March 5, 2008 and March 6, 2008
- MOTION:** **Senator Langhorst** moved to accept the March 5, 2008 minutes as written. **Senator McKenzie** seconded the motion.
- VOTE:** The motion carried by unanimous voice vote.
- MOTION:** **Senator Heinrich** moved to accept the March 6, 2008 minutes as corrected. **Senator Corder** seconded the motion.
- VOTE:** The motion carried by unanimous voice vote.
- Chairman Hill** welcomed two members from Legislative Services. Cathy Holland-Smith is here to talk about some budget projections. It is important that decisions are not made in a vacuum. The Joint Finance & Appropriations Committee (JFAC) has been very good about considering and tracking what the Legislature does from a policy standpoint and it is important that we understand the fiscal impact of what we do on the budget. The invitation to Ms. Holland-Smith is only to bring information. It is not to encourage or discourage support in any particular policy or bills that have fiscal implications. That is not the intent of the Chair. In order to make wise decisions and fill our responsibilities to people of Idaho, it is important that we understand all aspects before making a decision. Ms. Holland-Smith will review the budgets where we are and where we may be.
- Ms. Holland-Smith** explained that this information was prepared in response to several requests from various legislators who began to look at the out years and some of the challenges faced from the budgetary side

this fiscal year as in many fiscal years. The change in the economy and the change in the revenue forecast shortly after receiving the Governor's budget extended those challenges.

Ms. Holland-Smith referred to a handout (On file, see Note above.) The first page is the 20 Year Annualized Revenue with 5% Limit on Expenditures. Similar methodologies are used throughout the schedule.

Ms. Holland-Smith explained the information begins with data they already have, what JFAC has already made decisions on, some of the outstanding issues, how they need to be decided, how they may impact over time, and what they are looking for. The 2.79% target revenue number for 2009 is the Governor's revenue projection for fiscal year 2009. The target rate for 2010 is 3% and 6.2% for the following years through 2015. The 6.2% is projected based on prior history. It is very unlikely that, under current circumstances, the rates at 2010 will change dramatically on the positive side. Therefore, the assumption is that the ongoing revenue increase would be a factor in these years resulting in the increases shown.

What does that mean for other Idaho agencies being considered? JFAC chose a spending level that was less than the ongoing projections of approximately \$39.0 million less than the original revenue projections. **Ms. Holland-Smith** further explained the methodology used to calculate the projections from 2009 to 2015 without projecting any one time revenue dollars. Under the grocery tax credit proposal, the impact would be from 2009 with a \$22.3 million impact to the general fund to 2015 with a \$99.8 million impact to the general fund.

H 599, the proposal to remove personal property taxes, triggers a 4% revenue figure. If the State would enjoy a revenue number of 4% that would trigger that bill to go into force and, based on 2.79% in 2009 there would be no impact because the effective date is 2010. There is no impact until 2012 at which time it will be a \$24.0 million impact on revenues. The full impact of the \$120.0 million impact goes into effect in the year 2015.

Ms. Holland-Smith outlined other bills and items that would affect these projections.

Chairman Hill asked for questions from the Committee.

Senator Langhorst referred to the Budget Stabilization Fund in 2012 and asked if the \$14.9 million became available because of previous years?

Ms. Holland-Smith responded yes. **Senator Langhorst** asked how much is in the Stabilization Fund now? **Ms. Holland-Smith** said there is \$140.6 million in assets.

Ms. Holland-Smith explained that there are two types of appropriations; onetime and ongoing. It is important that they do not spend onetime money for ongoing efforts. Even though there are cash balances that are carried over, there are some revenues characterized as onetime. It is important to dedicate ongoing money to ongoing efforts.

Chairman Hill asked to have structurally balanced and imbalanced explained. **Ms. Holland-Smith** stated that the term structurally balanced relates to whether or not there is sufficient ongoing revenue to take care of

the items defined in Idaho Code and historically defined as ongoing expenditures.

Ms. Holland-Smith said that when looking at the appropriations, it is a review of what has happened since 2002. The original appropriations were used as a guideline. There has been an average 6.5% increase in ongoing expenditures from 2002 to 2009. It fluctuates dramatically from year to year. There was a 3.8% increase budgeted for 2009 for ongoing but there was some onetime money scheduled to be used for those ongoing items. That included the Governor's recommendations for Medicaid, substance abuse to restore those funds, universities and K's (a partnership in Idaho Falls), and water resources. Even though there has, over time, been a 6.5% increase in original appropriations, a 3% increase is targeted for 2010 and 5% for the following years to 2015. The schedule also shows the dollar amounts associated with the percentage each year. There is also capital outlay which is onetime spending but it does reoccur so each year there is an expectation for those requests. This scenario is based on the long term historical approach.

The statutory budget, meaning items in the budget that are driven by statute are public schools, H&W nondiscretionary, and correction growth. These are nondiscretionary items. There is extreme pressure to spend money on other items such as higher education and other state agencies.

The nonstatutory adjustments are an increase in employee benefits, changes in employee compensation, and public schools salary increases.

Chairman Hill asked how the 8% increase in employee benefits was derived and what was it this year? **Ms. Holland-Smith** said this year was 29% but that included three years catchup. The current amount is estimated at 8%-10% increase due to increased medical costs.

For the past 20 years, the average annual increase for the change in employee compensation has been 3% and this year there is a 1% placeholder. It is not likely the Legislature will pursue additional compensation for public employees.

This is an example of using a particular level of spending and how much of those ongoing expenditures the State would be able to accommodate. You can't end up with a negative balance. Rather than guessing what the Legislature will do, the schedule only shows what the numbers represent based on a long term, historical view.

Chairman Hill asked for questions on the first page of the schedule.

Ms. Holland-Smith began her analysis of page two of the schedule Cyclical 2002-2008 Actual Revenue and Expenditure % Change by replicating what happened between 2002-2008 to help understand what will happen again because there were good years and lean years in that cycle. That approach was used with an annualized percentage increase in revenues and actual expenditures from the data base except 2009 which is currently going through the appropriation process. This tells us that this schedule is not necessarily helpful to make decisions because it is so far out of the realm of possibility. What it does show is what happens in this

setting when trying to replicate what has occurred in the past. Is the current downturn the same type of slowdown? The economists say that is not the case, that was an investment driven slowdown and this is a housing and credit driven slowdown.

This schedule shows that there were some very rough years and the response to those changes was very slow. However, there were resources from other funds that were used to backfill expenditures. Then changes in funding occurred like the temporary sales tax that ultimately became permanent because of the change in the way schools were funded—property tax versus sales tax.

The first page is the most useful and more than one or two years out the information is less useful. Looking at long term trends and the changes that have occurred would be more helpful and not look at the details.

Senator Corder asked if the statutory and non-statutory items listed were included in the revenue and appropriation amounts? **Ms. Holland-Smith** said they were implied.

Chairman Hill handed out two graphs related to the Economic Index that was published by the Federal Reserve and just released today. This index is used to determine interest rates. One graph, Percent Change in Cointegrated Economic Index for the U.S. and Idaho 2000 - 2008 shows Idaho in relationship to the U. S. as an annualized percent change month-to-month. The second chart, State Coincident Indexes, shows economic growth over the last three months. Idaho is one of the five states poorest in performance over that period. The index uses five factors: non-farm, payroll and employment, average hours worked in manufacturing, unemployment rate, and the wage and salary disbursement.

H 588 continued:

Relating to Income Taxes and the Grocery Tax Credit to provide for income tax credits or refunds to certain resident individuals.

Chairman Hill announced that discussion today will not include public testimony. Senator Fulcher will give a brief overview of the bill and then the Committee will discuss it.

Senator Fulcher stated that during the two year generation of this bill, virtually every viewpoint has been discussed. This is a crossroads and this is the scenario:

- Potential of passing this bill.
- Potential of doing nothing and explaining why.
- Potential of sending it to the 14th Order and it dies.

There have been more spreadsheets reviewed in the last week than can be counted and every detail cannot be understood. Two years on JFAC have proven that if there is money, it will be spent and this year JFAC just wrote the first \$3.0 billion budget. There are concerns about fiscal ramifications. This bill was criticized for not doing enough, the whole grocery tax is not being repealed and now the view has changed to doing too much. There are provisions in this bill to hold it and they are there for a reason. It is not known what the next few years will bring.

It is said it is tough on the Finance Committee; it should be tough on the Finance Committee. If there is money it is spent. And when that spending is at a rate of \$3.0 billion in a fiscal year it is a reminder that when there are non-zero based budgets where last year's numbers are used and a percentage is added on, the base number is larger so the projections are much bigger numbers.

No one is talking about cutting anything to remain whole. What might happen, the rate of growth might be cut. When this bill was discussed, there were four requirements to give it a chance of passing:

- 1) It must have a credit.
- 2) The greatest benefit must go to the lowest income residents.
- 3) It must get relief to all Idahoans eventually.
- 4) It must be done in fiscally prudent pieces.

This is not a perfect bill. The authors of this bill attempted to satisfy the primary tenants of all the major stakeholders. No one was satisfied completely.

This bill does what is thought to be necessary. It has provisions that if the economy dictates, the bill can be backed off. We urge you to support this bill.

Chairman Hill asked if the provision to adjust required a concurrent resolution or executive order or both? **Senator Fulcher** said it required either/or, not both. Senator Fulcher read the appropriate section that fully explained the process.

MOTION:

Senator McKague moved to send H 588 to the Senate floor with a do pass recommendation. **Senator Langhorst** seconded the motion.

SUBSTITUTE MOTION:

Senator Stegner moved to send H 588 to the 14th Order for amendment. **Senator Corder** seconded the substitute motion.

Senator McKague inquired what the change might be. **Senator Stegner** explained that there could be any number of changes. Senator Stegner is interested in adopting the first year. It is in the budget already and then he plans on amending out the automatic increases in the bill to the point that they would be made separately in future years and not obligating future Legislatures to consider the proposals that are built into the bill.

Senator Langhorst said he agrees with the sponsors. If this goes to the amending order, it will likely kill the bill for the second year in a row. This bill has been attempted for two years and something needs to be done. It is not realistic to get rid of the grocery tax altogether. This Committee recently dealt with exemptions.—there is \$1.7 billion in exemptions on the books. Idahoans need some relief. The sponsors have tried in good faith to craft this bill. Senator Langhorst urges the Committee to vote against this motion and not kill this bill.

Senator Bilyeu said she would like to commend Senator Fulcher and those who put together this bill. It isn't a perfect bill but it is a very good bill. The fact that it extends into future years will be helpful and hopeful to people who need this credit. Please do not vote for the substitute motion.

**VOTE/SUBSTITUTE
MOTION:**

The substitute motion failed by roll call vote.
Ayes: Senators Corder, Stegner, Siddoway, and Heinrich
Nays: Senators McKenzie, Langhorst, Bilyeu, McKague, and Hill

**VOTE/ORIGINAL
MOTION:**

The original motion passed by roll call vote.
Ayes: Senators McKenzie, Langhorst, Bilyeu, Siddoway, Heinrich, McKague, and Hill
Nays: Senators Corder and Stegner

Senator Fulcher will sponsor H 588 on the Senate floor.

Chairman Hill will be presenting the next three bills and turned the gavel over to **Vice Chairman Corder**.

H 563

Relating to Income Taxation to revise Capital Gain exclusion in pass-through entities.

Chairman Hill stated that H 563 relates to Capital Gains. In Idaho there is a capital gain exclusion. 60% of gain on long term capital gains are excluded from tax for certain tangible property. To qualify for long term capital gain, the asset needs to be held for twelve months. **Chairman Hill** used an example to demonstrate the effects of capital gains. If there is a land purchase for \$10,000 twenty years ago and now is sold for \$100,000, there is a \$90,000 long term capital gain and only 40% of that is taxable. Now that land is given to someone else, that person gets the carryover holding period and the carryover basis that is the same basis and holding period as the original owner—the new owner basically replaces the original owner. If the new owner sells that piece of land the day after he receives it, it is a long term capital gain having been held twenty years and has the same basis of \$10,000.

If the land is put in a limited liability company (LLC) and the owner gives someone a percentage of the LLC, the LLC sells that piece of land, it is a capital gain because it was held in the LLC. For Federal purposes, it is a long term capital gain because it is an asset that met all the criteria from the original owner. In a non-taxable transaction, the rule is that the new owner gets the carryover in basis and the carryover in the holding period. So when the LLC sells the land it is considered a long term capital gain asset that has been held 20 years and has a capital gain of \$90,000. The tax will be split between the two owners of the LLC.

Under Idaho law, when the gift of 50% of the LLC was given, in order to qualify for long term capital gains, the property could not be sold for 12 months so that the new member of the LLC could get the deduction. That does not match Federal law.

This legislation changes Idaho law to match Federal law.

Senator McKenzie asked if the fiscal impact would be a \$1.0 million decrease? **Chairman Hill** agreed it would decrease the revenues coming into the general fund.

MOTION:

Senator Heinrich moved to send H 563 to the Senate floor with a do pass recommendation. **Senator Siddoway** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Chairman Hill will sponsor H 563 on the Senate floor.

H 564

Chairman Hill brought H 564 before the Committee. This bill has to do with part-year residents. When someone is a resident of a state, they report all of their income in the state of residency regardless of where that income is earned. The taxpayer files a return in the state where the income was earned and they get a credit in Idaho for the taxes they have to pay on the income that is earned in another state. This prevents paying the tax on that income twice.

Part-year residents would theoretically be treated the same way. However, current law only states that the part-year resident is domiciled (not residing) in Idaho and the part-year residents do not get the credit for taxes paid in another state. They are paying taxes on that income twice; in the state where it is earned and in the Idaho. This was not the intention of the statute. This bill will correct that oversight.

Rick Smith, Attorney, Hawley Troxell Law Firm, stated that this bill has had input from accounting firms, input from and support of the Idaho Society of Certified Public Accountants, and the Idaho Tax Commission to correct this problem. This is a technical correction that is needed to eliminate a possible constitutional problem of double taxation. Part time residents are taxed once in the state where income is earned and again in Idaho because they are not given credit for the taxes paid where the income was earned.

There are two types of part year residents:

- 1) There are residents who were full time residents during part of the year and then moved out of state. During the portion of the year they were full time residents, they were considered domiciled in Idaho.
- 2) There is another type of resident who was never domiciled in Idaho. They lived in another state part of the year and in Idaho part of the year. Those people would still be considered part year residents of Idaho and would be subject to the part year resident requirements and for the part of the year they are in Idaho they would have to include all of the income including income earned out of state. However, the part year credit statute gives a credit to the class of resident domiciled in Idaho and eliminates the second group which do not get the credit because of the way the statute reads.

This bill will correct the constitutional problem and the basic inequity of the law.

MOTION: **Senator McKenzie** moved to send H 564 to the Senate floor with a do pass recommendation. **Senator McKague** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Chairman Hill pointed out a typo error in the fiscal note and it will be corrected. Chairman Hill will sponsor H 564 on the Senate floor.

H 615

Relating to Income Taxes to provide for compliance with the Economic Stimulus Act

Chairman Hill presented H 615 to the Committee. The Economic Stimulus Act was signed by the President on February 14, 2008. That is the act that gives everyone a \$600 rebate. Included in that act were some business incentives in the form of accelerated depreciation. Currently, an election is available to write off up to \$125,000 worth of equipment for business in the year it is purchased. The Economic Stimulus Act doubled that amount to \$250,000 but only for 2008. In addition, they allowed for a bonus depreciation. History has shown that it is a mistake not to take the bonus depreciation when it is available. The State would ultimately receive less revenue. There were several other negative effects resulting from the decision to disregard bonus depreciation on the state level in the past. There was no end to the problems when Idaho did not comply.

This bill complies, in total, with the Economic Stimulus Act. It adopts the increase in the Section 179 deduction, and bonus depreciation—**this is only for 2008**. This is strictly a timing thing. Timing is important when there is a State budget that must be balanced every year. It will be \$38.0 million less revenue to the State in fiscal year 2009 and \$1.5 million less in 2010, and then there will be about \$20.0 million total extra revenue over the next five years, 2011-2015. If the taxpayer elects to take the 179 deduction rather than depreciation, he will forgo the investment tax credit. This bill also eliminates the tax credit for the bonus depreciation provision which will reduce the fiscal impact as much as possible. It is an election that the taxpayer makes, he is not forced to do any of these things. The State comes out ahead in the long run but is hurt in the short term.

Vice Chairman Corder stated that the \$38.0 million on the fiscal impact statement is potentially that much and depends on the number of people that elect that option. **Chairman Hill** said that is true. It depends on whether or not the taxpayer used that election. These numbers are in the JFAC plans.

Senator Langhorst asked if 2011-2015 revenues of \$59.5 million would be net revenue that would come in if this bill were passed but wouldn't be there if the bill did not pass? **Chairman Hill** stated that was correct. That can be verified on Cathy Holland-Smith's schedules.

MOTION:

Senator Siddoway moved to send H 615 to the Senate floor with a do pass recommendation. **Senator Heinrich** seconded the motion.

VOTE:

The motion carried by unanimous voice vote.
Senator Hill will sponsor H 615 on the Senate floor.

Vice Chairman Corder returned the gavel to **Chairman Hill** who thanked the Committee for their support of the three bills.

H 577

Relating to Local Improvement Districts to require written approval for bonds, registered warrants or interim warrants by resident owners within the district.

Representative Labrador explained the purpose of H 577 is to address an issue in the Local Improvement District (LID) law. LIDs are created in

one of three ways: A group of citizens get together and either 60% of the property owners of the taxable property within the district, or 2/3 of the resident owners of taxable property within the district decide they want an improvement, or a city or governing council gets together and decides an LID needs to be created. The majority of the LIDs are initiated by a petition by the owners of the property.

The original version of this bill (H 535) was too broad. Many comments were received on this initial bill. Input was gathered from many stakeholders to redo the bill that became H 577. This bill is a simple bill that makes a minor change.

In the case where a city initiates the LID without a petition from the people, in one of the final steps, they must receive signed consent or approval from the owners. Also, before the city can bond for the LID, there must be a petition or consent signed by the property owners.

The history of LIDs is extensive. Initially LIDs were created for a specific list of purposes. That language was broadened and a way was found to get around the 2/3 constitutional requirement to bond in a city. It was not the intent of the LID process to go around the constitution to remove the requirement for a vote for bonding purposes.

This bill puts the petition and the 60% requirement at the end of the process. By then, the city should be aware of whether or not they will get enough signatures for approval.

There is an emergency clause that addresses the concerns raised by the cities. This scenario was tried in one city and if it works in that city, it will work in any other city. It is incumbent upon state legislatures to make sure the LID process is not being abused in any way.

Senator Bilyeu asked if the 60% resident owners were all owners or just 60% of those voting. **Representative Labrador** answered that there are two ways to do a LID without the city. It is 60% of the resident owners meaning 60% of the actual residents or 2/3 of the owners of taxable property. There is not a vote, this legislation requires a signed petition.

Senator Heinrich said that the discussion is about a petition and not a vote. When reading this bill, it says "consent in writing" and that would be open to interpretation as to whether it is a petition or an election. Would you explain? **Representative Labrador** stated that there is nothing in the bill that prevents an election, it is just not a requirement. There is a requirement for written consent. **Senator Heinrich** asked if Representative Labrador was saying that if there were 60% of the signatures on a napkin, it would qualify? **Representative Labrador** responded that if that is the way they get those signatures--yes.

Senator Corder asked if there are other LIDs in place in Eagle and if so, how many? **Representative Labrador** said there were but he was not aware of how many. **Senator Corder** said that the one they were discussing was apparently contentious for other reasons. It wasn't a problem until something happened recently to make it a problem. **Representative Labrador** responded that it became an issue when the

city initiated the most recent LID. In most every other instance, they have done it through petition. In the past, once the LID was initiated, they have only proceeded with the LID process if they could get the 60% consent.

Senator Langhorst said that he thought he heard that the original proposal was not to allow bonding authority without a 2/3 approval. Is there another place in statute that requires the 2/3 vote? **Representative Labrador** said he relied on what the cities told him which was that the initial purpose of the LID was very narrow and it has now been broadened. He did not know of anywhere else in statute that referred to this 2/3 approval.

Senator McKenzie said that the only purpose for forming an LID is to raise money. It seems odd that a city council can form an LID or use these two other methods but that there must also be the two other methods to raise money. Why not amend 50-1706 to take out the authority of the elected council to form them if that is the intended effect of the bill?

Representative Labrador said that, in many instances, it made sense for the cities to start the initiation process because that is the way to get the public educated on the benefits of the LID. If the ability of the city to create the LID was removed, then in some of the bigger projects, they will not have the opportunity to educate the public. There were several options offered that would limit the cities ability to initiate LIDs. Some opponents to the bill say that it should be left alone and let the cities face the voters.

Randy Grove, City Attorney, City of Kuna, is speaking in opposition to H 577. **Mr. Grove** said they currently have an LID in place that is very large for the size of Kuna—\$30.0 million to fund a wastewater treatment project. **Mr. Grove** provided some background about the Kuna LID. They looked at other funding mechanisms before starting the LID process. Any other options put the burden of funding this project on the local taxpayers to pay for growth. That was not good so they selected the LID.

As Kuna went through the process, the 26 landowners involved did not object although there were several opportunities to do so and now they are about one half the way through the project using interim financing. Then there was a significant downturn in the market and those landowners (mostly developers for speculation) are complaining about the amount of money the project is going to take. Fortunately, Kuna's LID will not fall under this act because of the emergency clause and it already exists. If they had to go forward and get 60% approval at this point in time, they probably would not get it and there is \$30.0 million outstanding in interim warrant that, at some time, has to be repaid. The only difference between an LID and bonds is that the LID is not the obligation of the municipality, it is strictly an obligation of the landowners in the LID.

Senator Heinrich asked if there is any possibility that if you were doing a petition to form an LID, at that point in time you would know what you want as far as total dollar values for the project, then you and the landowners can get an agreement at the same time to get the buy off from 60% of the landowners to form this LID. **Mr. Grove** said that when a LID is formed, it is required to give an estimated dollar amount if the actual amount is not known, of what the assessment is likely to be and Kuna did that. There is

no written consent—this legislation does not require written consent to create the district, it is simply to finance the project. The problem with the bill is that the method of finance comes at the very end of the process. They had to create the LID, get interim financing and they could have gotten that. The problem is the longer term bond financing to replace the interim financing. If the intent is to make it more difficult for cities to use LIDs, make that difficulty up front not at the end.

Senator Heinrich asked if a project is estimated to cost \$40.0 million, then after the landowners agreed, the actual cost was going to be \$50.0 million, is there some point that there is a “time out” to say wait or just proceed forward? **Mr. Grove** said there is a provision in the LID statute that there can be a 20% variance from what the estimates were so a \$40.0 million estimate could go up to \$50.0 without stopping it.

Senator Bilyeu asked how it would be made more difficult at the front end? **Mr. Grove** said it probably should not be more difficult at the front end. This is a good way for cities to finance acquisitions and construction of a facility. These are not general obligations of the municipality, they are obligations of the landowners in the districts. It is not prudent for a city to push a LID if there is not 60% of the landowners that agree. The problem with the change is that it comes after everything is pretty much in place.

Chairman Hill said he has researched LIDs and they have been around since colonial times. They are basically set up for the convenience of the taxpayer and these are improvements that are paid by the taxpayer/landowner. The LID is simply a funding mechanism to allow that landowner to spread their payments over time through bonding rather than borrowing the money on their own. They get preferential interest rates and preferential tax treatment. **Chairman Hill** said this bill would not prevent going ahead with doing the improvements but it would prohibit them, without a vote of the people, to finance them through this method thus making the people mad enough to vote against it. **Mr. Grove** stated that for most LIDs, this language would be fine. The projects are short enough in duration, the amounts small enough, or the costs are known up front so that it would not cause a problem. When the project is larger, there could be trouble.

Representative Labrador said he thought Mr. Grove was really testifying in favor of this bill. Kuna did exactly what this bill required. The only thing they did not do is get a petition signed because it was not required and that is why the emergency clause exempts them to give them protection. They got all of the landowners to agree to the LID. This is for the convenience of the taxpayer and when they can come forward and say they need an improvement for a specific locality, they can get a better financing mechanism. What is happening now is that some people are trying to interpret the law so it will not be for the convenience of the taxpayer but for the convenience of the city and avoid getting the taxpayers involved with the process.

Senator Langhorst asked Representative Labrador if it is true that if Kuna had put the LID in place after this law went into effect and they initiate the district and then go to do the assessment but the people have changed

their minds, they would still have to get the 60% consent and they may not be able to do that, is that correct? **Representative Labrador** said that all they would have to do is get the petition signed in the beginning of the LID formation process. It doesn't matter when they sign it.

Mr. Grove said that one of the problems with the language is that it reads "no bonds, registered warrants or interim warrants may be issued unless such issuance is approved by consent." This particular mechanism of financing must be approved in advance. There is no guarantee that the bonds will get sold and the agreement with the bank is that they may be responsible for financing long term. It may not always be obvious what ultimate financing is used so the consent up front may not be valid.

Roger Simmons is representing himself as a resident of Eagle in support of this bill. He is also a lobbyist and consultant. He is testifying as a former official on the Ada County Commission. **Mr. Simmons** went on to explain the issue in Eagle. The issue is whether to use a LID to buy a \$7.5 million water system was appropriate. It is not nor is it appropriate for a city to initiate a tax **without** the approval of the people. That is abuse and if one city's abuse comes to light then there will be other abuses. What should be asked is "does H 577 bring the law governing LIDs in line to do what an LID is supposed to do?"

Chairman Hill stated that both Mr. Simmons and Representative Labrador have indicated that this may be the beginning of a bigger problem. That sounds a little suspicious of the city officials who are elected by the same people the legislators are elected by. Why are you so suspicious of city leaders? **Mr. Simmons** said that he was not trying to say that anyone serving the public was out to hurt the public. The people who are serving on the City Council of Eagle probably think they are doing the right thing. But, when a loophole is found, others look at it and say "we need" water or sewer or some other system and it probably will not get past the voters. How can we get the project done?

Senator Langhorst asked Mr. Simmons if, during his history at the Commission, bonds or warrants were ever issued that didn't go to the people for a vote. **Mr. Simmons** responded that he did not remember ever doing so. They did do projects without a vote but the funds were already there.

Garret Nancolas, Mayor, City of Caldwell and a Board Member representing the Association of Idaho Cities spoke in opposition of H 577. First, he wants to thank Representative Labrador for taking the time to talk to all of them and get their input. However, the language in the bill damages the ability of local municipalities to serve their citizens. Senator Bilyeu asked about the ability of the city council to start the LID process. There are times when that is the only way that it works. Sometimes, from a health and safety standpoint, a city must make the decision to correct a situation. **Mayor Nancolas** gave some examples to demonstrate how that would occur. The LID is a very valuable tool. Caldwell has used this tool wisely to benefit our citizens. I urge you to hold this bill.

Senator Siddoway asked if the city council was initiating the LID, why don't they get approval up front instead of waiting until later? **Mayor**

Nancolas said that there are times when a project is needed for the safety of the citizens and the property owners will not agree to do it. It then falls to the city to get a “forced” LID and go ahead and fix the problem. With this bill that would not be possible. **Senator Siddoway** asked if it is the obligation of the city to make those improvements and the landowners are not willing to take on the obligation, then isn't it the obligation of the city to tax the residents of the whole city in order to meet the obligation of the city to make sure that those safety concerns are corrected?

Mayor Nancolas said the rights of way are still owned by the property owners. The obligation to maintain them clearly rests with the property owner. It is the city's job to see that they are maintained. If the city made a practice of repairing every sidewalk, curb, gutter, or sewer the cost would be prohibitive and if it is done for one then it must be done for all. Caldwell does pay a portion of certain expenses.

Chairman Hill stated that some people have already paid for their amenities either themselves or through the developer. If all the people are taxed, some of them will be taxed twice. **Mayor Nancolas** responded that is correct.

Mike Stoddard, Attorney, Hawley Troxell Ennis & Hawley, testified in opposition to H 577. He is not representing anyone but wanted to make some technical comments on the bill. This bill probably is not correct as drafted. It doesn't prohibit the city council from doing the LID and the improvements but they just have to be assessed up front which would mean that technically the city of Eagle could do what it is doing. If the intent is to require a vote or consent before someone is supposed to pay for something, this bill doesn't get there. **Mr. Stoddard** referred to a letter from the Attorney General regarding another bill that has similar voting issues and how they were getting a 60% consent requirement. The constitution does not let non-residents vote and this bill would let taxpayers vote who may be non-residents of Idaho. There should be a request to the Attorney General to get some consensus about the voting approval mechanism.

Representative Labrador summarized by stating that this is not a vote, it is a consent in writing. The Community Improvement District (CID) bill has nothing to do with this bill. Technically a city may choose to go ahead without a bond vote. The city could go in and do a LID if necessary.

The bottom line is, do we want the citizens to have a say in their taxation?

If I were cynical of city government, I would not have listened to them and would not have made the extensive changes to this bill after very valid issues were raised by them. It has been a pleasure working with them on this process.

Representative Labrador closed by stating that if it is for the public good, the public should pay for it and if it is for a specific group of people, they should pay for it. There is nothing in this bill to change that.

MOTION:

Senator Corder moved to hold H 577 in Committee. **Senator Stegner** seconded the motion.

Senator Langhorst acknowledged the work Representative Labrador put

into this bill, it just goes a little too far. He is concerned it might tie the hands of cities and it may not fix the city of Eagle. This bill may have unintended consequences in other cities.

VOTE:

The motion carried by unanimous voice vote.

ADJOURNED:

There being no further business, **Chairman Hill** adjourned the meeting at 5:35 p.m. until Wednesday, March 19, 2008 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: March 24, 2008

TIME: 3:16 p.m.

PLACE:0 Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu

MEMBERS ABSENT/ EXCUSED:

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 Hill** called the meeting to order at 3:16 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.

MINUTES: **Senator McKenzie** moved to accept the minutes of February 27,2008 as written. **Senator Siddoway** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

H 661 ***Relating to the Corporate Headquarters Incentive Act of 2005 to repeal tax exemptions on corporate headquarters.***

Representative Lake said that H 661 repeals *Chapter 29, Title 63, Idaho Code* called the Idaho Headquarters Incentive Act of 2005. This legislation was created for a specific purpose and it has never been used.

Representative Lake went through a handout explaining each section of the Chapter.* Items that were repealed:

- 2902-Definitions
- 2903-Additional 6% Income Tax Credit for Capital Investments
- 2904-Improved Property Tax Credit up to \$500,000
- 2905-Additional Tax Credit for New Jobs
- 2906-Eliminates Mechanics of Process
- 2907-Recapture
- 2908-Rebates of Sales and Use Tax
- 2909-Eliminates payment of up to \$2.0 million of property taxes
- 2910-Administrative Rules

The Department of Commerce agrees this bill can be repealed because of lack of use. This falls under the Tier One criteria set out by the Interim Committee.

Senator Corder acknowledged Representative Lake's diligence in bringing exemptions to this Committee.

MOTION: **Senator Corder** moved to send H 661 to the Senate floor with a do pass recommendation. **Senator Siddoway** seconded the motion.

VOTE: The motion carried by voice vote,

H 599aa ***Relating to Taxation of Personal Property to provide for the listing/removal of certain property and to provide that personal property will be exempt.***

Alex LaBeau, Idaho Association of Commerce and Industry (IACI), presented this bill to the Committee. This legislation deals with the elimination of the personal property tax on tools, machinery, furnishings, and equipment and is part of an ongoing effort which started in 1901. Until now, the most recent step was in 2000 when personal property tax on agriculture (ag) equipment was eliminated. This is a policy change to make Idaho more competitive, improve opportunities, and expand the incomes of the State's citizens. Citizens own these businesses and are employed by these businesses. The fiscal note indicates that, when completed, it will return dollars back to the State General Fund. This legislation is important to both large and small employers and there are many supporters. There is an economic upside to eliminating this tax. When business has more money, that money doesn't set idle. It goes to work through investment and employees.*

Mr. LaBeau went through the bill and highlighted the changes.*
-Definition of Fixtures, Floating Homes, Improvements, Operating Property, Personal Property, and Real Property. There were changes to all personal property definitions.

-Procedures were outlined in section 63-302. This section sets the time frames in which personal property can be claimed for an exemption and when it cannot.

-Alignment processes, similar to the Budget Stabilization Account, outlines a 4% growth factor in section 63-602KK.. This section also address Urban Renewal Districts and district consolidations.

-Distribution of replacement funds from the state refund account will be by the Idaho State Tax Commission (ISTC). These funds will come from sales tax. This section also addresses the allocation to the schools for bonding purposes.

-Severability and emergency clauses are included.

Mr. LaBeau addressed some anticipated questions relating to school budgets, local governments reliance on personal property taxes, how much the counties will be reimbursed for the loss of these taxes, and what the impact will be on local government budgets.* The report uses the total local budgets for all counties for all revenue sources and applies the personal property tax amount for that same year to get the Percentage of Total Budget to determine the impact. The intent was to hold counties harmless

and it is IACI's belief that was accomplished.

"This is an unfair, onerous tax on businesses in Idaho and it is time for it to go away."

Senator Bilyeu asked: How would you address the transient personal property from one county to another? **Mr. LaBeau** answered that the current assessment will not change. **Senator Bilyeu** said that it is often in several counties in the same year. **Mr. LaBeau** said that the place of the assessment in that year in which it will be frozen is where the assessment stays no matter where it may be moved. That is a current problem and they have not tried to fix the current problems with transient personal property.

Senator Bilyeu asked if all docks, slips, etc., would be exempted. **Mr. LaBeau** deferred to **Bill Roden**, owner of a dock and one of the crafters of this legislation. **Mr. Roden** said that any docks that are attached or affixed to land become taxable as real property. The explanation can be found within the bill in the definition of legal fixtures and, secondly, in the definition of improvements.

Senator Bilyeu asked which of the surrounding states exempt personal property and why that would make us more competitive. **Mr. LaBeau** said that what he meant as competitive is: 1) Attracting new businesses to Idaho and, 2) Existing businesses will have more of their dollars available to invest in their companies. Other states vary widely, Utah has a percentage. There are also varying ways of tracking personal property and some states don't tax it at all but may have other methods of taxing. It is not the same in every state so it wasn't prudent to investigate to deeply.

Chairman Hill announced the rules of testimony. Due to the limited time available and the number of people who want to testify, there will be a limit of 3.5 minutes. Questions will not count in the timed testimony.

NOTE: If notes and handouts were provided, they are on file. See NOTE above.

Opposition:

The following people testified in opposition to H 599aa:

Former Senator Wheeler*

- Determination by ISTC if this bill will be revenue neutral.
- Definitions are changed so classifications will have to be reassessed.
- Attorneys disagree about transfers of property.
- Risk for deadline of 2014-2015 to zero out payments.

Vicki Meadows, Chairman, Power County Board of Commissioners*

- H 599aa does not keep counties whole.
- Definitions are too broad.
- Reclassification of property takes property off the tax roles.
- Shift of taxes to real property.
- Removes tools to provide services to attract business and industry.

Senator Siddoway said he understood that Power County's loss of one industry caused \$100 million worth of value to leave the county. This proposal would have eliminated that risk if a county was held harmless by the provisions of this bill. Is that correct? **Commissioner Meadows** said that

was right, the county would have been held harmless with the replacement money. The replacement has no inflation clause so it will be worth 3% less every year. She agrees that the State is going to grow and that growth needs to be shared by the counties and with the taxpayers of Idaho. This bill prevents that from happening.

Richard Bauscher, Superintendent, Middleton School District

- Adverse effect on bonds as market values decrease.
- Tax rates will not increase.
- Tax shift from business to property owners.
- Undo positive effect of homeowner's exemption (HOE).

Chairman Hill asked Mr. LaBeau if the Middleton School District could get additional "angel money" by passing a bond between now and the completed phase in of the property tax phase out period? **Mr. LaBeau** said it would be frozen right now.

Paul Laggis, Prosecutor, Power County

- Concerned with the legal ramifications of this law - set up holding companies to avoid paying the tax.

Chairman Hill clarified that Mr. Laggis is talking about an independent third party setting up a holding company rather than a related party which this legislation is supposed to cover. **Mr. Laggis** concurred.

- Issues are not addressed for revenue allocation areas or urban renewal as **identified** by the Deputy Attorney General.
- Idaho is in the top four states as a good place to do business, this bill is not that important.
- Eliminates money counties rely on for day-to-day business.

Christine Steinlicht, Clerk, Power County*

- Provided examples that dispel assertions that counties will be "made whole."

- 1)Power County Highway District*
- 2)Harms Memorial Hospital District*

Senator Heinrich asked: In your opinion, are levy limits the reason they are losing money? **Ms. Steinlicht** answered yes. As the market value goes down, levy rates increase. Idaho law caps all funds within districts with levy limits. The lower the levy limit, the higher the levy rate until the cap is reached and the county loses the 3% budget increase. This legislation does not compensate for funds that reach the levy limit.

Chairman Hill asked Mr. LaBeau if that would be resolved with the amendments. **Mr. LaBeau** responded that they did not approach that issue within this legislation. Potentially, there could be unreimbursed dollars but that would occur because of the homeowner's exemption increases.

Dallas Clinger, Administrator, Harms Memorial Hospital District in American Falls.*

- Confirmed the information the County Clerk distributed and elaborated on that information.
- The hospital district is losing operating money.

- Lack of timely information available about this bill - very little press.
- Reduces tax base and bonding capacity.

Jim Jeffries, Sheriff, Power County, Idaho Chiefs of Police Association

- Read letter* for the record from **David Kramer**, President, Idaho Chiefs of Police Association and Chief of Police in Bonners Ferry, stating that:
 - Reduces funding.
 - Members do not support this bill.
 - Needs more thorough review of long-term impacts.
- Power County is a transportation hub and resources will be challenged.
- Lack of funds to control crime - slowing economy means higher crime rates.

Joy Rapp, Superintendent, Lewiston School District

- Current market value for district is \$2.0 billion, personal property tax portion is \$325.0 million or 16%.
- Ability to recapture \$325.0 million will be a tax shift to other taxpayers.
- Levy rate will increase from \$1.47 to \$1.74 to build a new school.

Chairman Hill commended Ms. Rapp for taking a job in a school district that has not passed a bond in fifty years. **Superintendent Rapp** stated that previous superintendents had been diligent in the maintenance of the facilities and tax dollars were well placed to extend the life of those facilities.

Senator Stegner reviewed the reasons this is a tax shift. Once the personal property tax is frozen, any replacement money coming from the State goes to the districts that are frozen. If a new bond levy is being contemplated after the frozen date then all the other taxpayers now must pick up the value of the personal property tax that has been eliminated.

Superintendent Rapp said there is a bond guarantee fund and lower market values could influence that fund. Shifting taxes to fixed income or young families needs further consideration.

David Swindell, Chief Financial Officer, Pocatello

- Must be respectful of local revenue basis and the State's future responsibilities.
- Replacement dollars are not indexed for inflation and creates a tax shift.
- Replacement dollars are inadequate for future growth. Companies cannot be recruited without being able to expand fire, police, and infrastructure.
- Doubts that the State can afford this legislation - 5% is not enough. This bill will affect ability to fund other state functions.

Chairman Hill pointed out that personal property depreciates in value as opposed to real property. Bannock County has had very little change over the past seven years. **Mr. Swindell** responded that was partially due to the effects of the investment tax credit.

Roger Chase, Mayor, Pocatello

- Explained that Pocatello went from a city with high unemployment and a deficit budget to a town with new companies and employed citizens.
- Six of top ten employers in Pocatello do not pay property taxes.
- Pocatello has grown because of recruitment abilities.
- Removing this money from cities will endanger the quality of life that brings companies to Idaho.

Jim Reed, Superintendent, Weiser School District

- School District has lowest levy rates, lowest cost per capita, lowest cost per student, and lowest cost per thousand.
- Do not advance this legislation until questions and concerns about the long term effect can be answered.
- Legislation comes at time of an economic downturn with subsequent budget reductions for the State.
- Allocates the responsibilities of paying levies on homeowners - tax shift.
- Should not help one sector at the expense of another.

Geoffrey Thomas, Superintendent, Madison School District

- Supports testimony of colleagues.
- School District is challenged with growing student body and ancient buildings.
- Concerned because this bill decreases market value and raises the cost per thousand which depresses the amount of public support and makes it very difficult to pass a bond.
- Community has growing infrastructure needs.
- This is not the right time with economic uncertainty.
- Do not know what unintended consequences will be.
- Idaho may be more attractive and competitive if it's schools had more ability to pass bonds for needed improvements.

Chairman Hill said he has heard that more time is needed to study this issue but this bill was before the Legislature a year ago. What kind of input and what kind of changes would you see as amenable? **Superintendent Thomas** responded that there is a lot of uncertainty: The concern is when changes of this magnitude are made, there are unintended consequences. As a citizen, he doesn't enjoy paying taxes but he supports paying taxes because it is an investment into the community. His personal preference would be a reduction in sales tax on food because that tax hits the poorest the hardest.

Chairman Hill said that the Chambers of Commerce in the school districts here today are supportive of this legislation. How do you reconcile that? **Superintendent Thomas** said that if he received a questionnaire asking to reduce taxes he would say yes, of course. However, if those people knew the full ramifications of this bill, they would give that questionnaire far more consideration.

Terry Donicht, Superintendent, McCall Donnelly Joint School District and Meadows Valley School District.*

- H 599aa** impacts school's limited ability to raise revenues.
- Why this legislation now with reports of a darker economic outlook in the future.
- Idaho is already known as business friendly, why must it become friendlier.

Ken Estep, Commissioner, Power County

- Provided a list of required services a county, by law, must provide and also a list of functions that are not mandated.*
- Consider an amount between \$60,000 and \$75,000 which is higher than the ag exemption. Add a small dollar amount for deminimus items.

Chairman Hill said that suggestion has been proposed but it doesn't

eliminate the extensive bookwork to track everything.

Ron Bolinger, Superintendent, American Falls School District

- Bonds are very difficult to pass.
- Suffered loss of revenue with loss of large corporation.
- Another loss would be devastating.
- Market value will be decreased by 42% in this school district which would increase taxes on all other real property making it impossible to get increases in levies or bond passage.
- Lack of services would prevent future growth.
- Tax shift will happen.

Matt Beebe, Commissioner, Canyon County

- Canyon County is fortunate with economic growth, population growth, and increases assessed valuations. However 1/3 of the property tax values come from personal property.
- Businesses do not come to Idaho because of tax issues, they come for a skilled work force and quality of life.

Georgia Plischka, Assessor, Washington County and Legislative Chair for the Association of Idaho Assessors

- Agrees with points that have been made.
- A study by Idaho Association of Counties (IAC) showed an estimated 80% of Idaho businesses have personal property with assessed value of \$50,000 or less. The computes to \$5.0 million of the \$110.0 - \$120.0 million cost. That is not a large percentage for small businesses.
- Questionnaires would have different response if worded differently.

Senator Bilyeu referred to the fiscal note of the bill where it states that there would be an immediate savings to counties that will no longer have to track and assess many of these depreciating assets of the businesses in the State starting in 2009. Do you see that it would be less for the counties and assessors to keep track of the personal property? **Ms. Plischka** said there would be some savings. **Senator Bilyeu** asked if the additional responsibilities and reprogramming may cost more money, especially during the phase-in and phase-out periods. **Ms. Plischka** said that new software and programs are made to handle the current process and that would have to be changed and could be a substantial cost.

Mark Mitton, City Administrator, Burley

- There is some revenue that this bill will not replace.
- City has been successful in rebuilding since Simplot left.
- New construction will result in \$175.0 million of assessed value for companies that are personal property intensive and that will never go on the tax rolls. That will be about \$780,000 of tax loss that will never be replaced.
- City borrowed money for infrastructure that will take a longer time to pay back because of the loss of the tax increment.

Senator Stegner said that issue in particular, is one of the problems with this bill. When things are frozen in time, it doesn't take into consideration economic changes over a period of time. It could also work in reverse. It has been a struggle to find an equitable way to address this issue and population growth is not satisfactory in terms of a formula. Any number of factors could be included in a formula. What would be an equitable formula? **Mr. Mitton**

said he has considered that question. The investment by a community must be made for a new company to come into an area before it arrives. One idea is that taxes go into effect at the time the building permit is issued. That will capture activities that are in process but will never be replaced on the tax rolls at completion date.

Doug Manning, Chairman, Burley Development Authority and Director of Economic Development in Burley

-Agrees with prior concerns.

-No. 1 question prospective business investors ask is "how are the schools?"

Other questions involve land prices, utility rates, and local incentives.

Personal property taxes has never been an issue – the question was never asked.

Max Vaughn, Assessor, Minidoka County, and Chair of the IAC Legislative Committee which voted to oppose **H 599aa** as written.

-Concerned about unintended consequences.

-All concerns that have been stated are valid.

-Better scenario would be to replace this all in one year to avoid complicated issues.

-Major policy change for State and commends Mr. LaBeau for tackling this issue.

-Remember exemptions are always a tax shift.

-Urban renewal transcends county boundaries.

-Diminishes the ability to service bonds for urban renewal areas.

J. R. VanTassel, Commissioner, Nez Perce County

-Concerns have been covered.

-Relief on levy limits must be addressed at some point in time.

-Code required services cannot be met.

Valencia Bilyeu, Attorney representing herself.

-Narrow issue of Section 42 housing credits.

-Handout of definition of real property under Idaho Code 63-201 (18).*

Section marked in gray is omitted in this bill and that applies to Section 42 tax credits.

-Reattach that language to definition of real property.

Support:

The following people testified in support of H 599aa:

John Watts, Idaho Chamber of Commerce Alliance sent out a questionnaire* to get information from it's membership.

-Chamber members provided information about the nature of their business, amount paid in personal property tax, and use of money saved.*

-This bill makes sense to the Chambers represented today.

Senator Corder asked: What would you expect the response to a questionnaire that asked: Would you like your taxes reduced and what would you do with the savings? A more appropriate question might have been one that would help them to understand all the implications if this bill was enacted. **Mr. Watts** responded that there would be a bias no matter what questions were asked. Other questions would have generated speculative answers.

Chairman Hill, for full disclosure, read the statement requesting the information on the questionnaire. The questionnaire asked a leading question. **Mr. Watts** stated they asked the question to see what businesses would do if they didn't have to pay this tax. "We didn't ask them if they liked the tax or what tax they rather pay. We set out to provide information for this Committee."

John Eaton, Idaho Association of Realtors

- Opportunity for investment in business expansion.
- Unfair and unbalanced tax, for example investment banker with very little personal property making \$350,000/year vs. a contractor making \$80,000 a year with a large amount of personal property.
- Today there is a tax shift, this bill will reduce that tax shift.
- This bill provides consistency by reimbursement from the State so counties can plan for budgets.
- Idaho is attracting new business but this will enhance those efforts.

Chairman Hill asked: When this legislation is phased in, it will cost \$110.0 - \$120.0 million. For that amount of money the sales tax could be dropped by ½ penny; sales tax on food could be dropped to 3¢; there is a lot of things that could be done with that money. Why do you think this tax reduction is better than those other reductions? **Mr. Eaton** responded that there are a lot of alternatives. This only occurs when there is a 5% gain which, in this budget year, is \$150.0 million of one-time money and that would equate to 20% of overall cost equaling \$25.0 million. There is still extra money there to do the other alternatives. Citizens might look at this as something to do, but the bill we are looking at today is for personal property tax exemptions.

Billy Knorpp, President, RVP Business Systems and National Federation of Independent Business (NFIB) Member

- 75% of the 5000 NFIB members support **H 599aa**.
- Personal property tax is ill-conceived and inefficient.
- No limit to what has to be on list for taxable purposes.
- Personal property tax has been removed from individuals and agriculture. Original plan was to take it off business as well.
- Lists have to be maintained at the business level, at the county level, and at the ISTC.
- Business, existing and new, will reinvest moneys saved through this bill.

Senator Corder said it is significant how a question is asked. Several NFIB members contacted him and when some of the ramifications of this bill was explained to them, they changed their minds about supporting it. It is important that this whole group of people would have had all the facts before they made the decision about whether or not to support this bill.

Chairman Hill said there have been several questions about a deminimous rule. Is there such a rule by default when there are personal property audits?

Ms. Plischka said there is a *deminimous* rule whether it is stated or not. Small items like pens and pencils and contractor's miscellaneous hand tools are not counted. They are looking for larger items that are used to make money.

Neutral: The following testimony was neutral:

Randy Nelson, Associated Taxpayers of Idaho is neutral and provided numbers that showed the history of personal property taxes from 1999 - 2007. * This information is to provide some idea of what is happening between assessed values and the *measured* exemptions.

Rick Smith, Attorney, Hawley Troxell

-Discussion of technical/legal concepts

-Responded to letters from **Carl Olson**, ISTC, written to Senator Little raising questions about constitutionality of **H 599aa**.

-March 21 and March 24

-They do not believe there are constitutional problems with **H 599aa**.

-Concerns regarding impairment of contracts:

1) If a taxing agency has a contract with bondholders, that contract will not be impaired under the constitutional contract clause if there is potential reduction in revenue flowing to the taxing district as a result of this exemption. The revenue will be replaced.

2) If there was some modest impairment, which he does not believe there will be, that does not result in an impairment of the contract sufficient to impair or invoke a constitutional problem. -

Concerns about selling personal property that a taxpayer owns on 1/1/08 to a personal holding company which then leases the property back to the taxpayer:

1) A taxpayer cannot sell property to an affiliated party, it would have to be a third party on an arms length basis at full market value and leased back at full rental value. It would not be practical to do this.

2) If that does occur for tax purposes, any taxing agency can challenge that transaction as a "sham transaction."

Senator Bilyeu asked who Mr. Smith was representing. **Mr. Smith** said he was asked to respond to Mr. Olson's letters by IAC. **Senator Bilyeu** asked: If there is a revenue allocation area already committed to a company in the process of coming to Idaho, how do they get the dollars recaptured from the State? **Mr. Smith** said if the property was there on 1/1/08, then it will be eligible for the replacement funding. If it was coming on line sometime later, it won't count. **Senator Bilyeu** said that there are companies that are personal property intensive but have not built the plant yet; how do they get the funding on that personal property? **Mr. Smith** stated after 1/1/08, it won't count.

Senator Langhorst asked a followup question. Do you believe this bill would be better if it was amended to allow for the contracts that are in place but not yet built? **Mr. Smith** said he had not studied that issue so could not answer.

Senator Heinrich asked if the money generated for a revenue allocation area is the sum of the levies of the taxing districts within that area. **Mr. Smith** said that was his understanding. **Senator Heinrich** referred to the testimony heard today, that, with the exception of levy limited taxing districts, these levies are going up a proportionate share; wouldn't that increase the revenues to the revenue allocation areas? **Mr. Smith** agreed that it would. The replacement money should be available to the urban renewal agency just as it is to any other taxing district.

Senator Bilyeu asked if Mr. Swindell could answer that question. **Mr. Swindell** stated that the levy is applied to increment value of the urban renewal district. The levy rates may rise, but they may be applied against an diminished increment value because there is no personal property.

Keith Allred, The Common Interest

-Set up some criteria to evaluate this bill:

- Feasibility, efficiency, and fairness: inefficient, unfair tax.
- Equity: Who shares tax burden of shift. Haven't done extensive analysis as to shift back on home owners. Do not undo progress made on the Home Owners Exemption (HOE).

Chairman Hill said one of the problems with tax policy is the ag exemption and it doesn't seem like good, sound, tax policy that one business would be exempt and other businesses would not. Have you analyzed this issue and would eliminating the ag exemption be a way to avoid the shift to home owners? **Mr. Allred** said studying tax policy is humbling because of the consequences of any change. If this bill constitutes a tax shift, then that requires the kind of policy finding on the part of this Committee that there is an unfair allocation of the tax burden. Is business paying more than it should relative to other sectors? There could be legislation crafted that would address the first criteria but not at the expense of the second.

Mr. Bill Roden, Legislative Advisor, responded to Ms. Bilyeu's question on Section 42. Current law provides that real property is whatever the courts decide and personal property is the same. In the past, there was no definition of fixtures and the renovation improvements was a convoluted definition. In drafting this legislation the intent was to encompass the essence of what court decisions have incurred in the past and put those into the definitions of fixtures and improvements. There was no intention to ignore that definition.

Senator Corder asked for a clarification on Mr. Roden's comment that the intent was to avoid judicial activism but then state that the court could decide....that seemed to be a contradiction. **Mr. Roden** said that was not his intent. The current law lists a few things for real or personal property and then goes on to say that real or personal property is whatever the courts say it is in the future. There is nothing in this bill to keep the courts from making those decisions.

Chairman Hill asked why the language "all rights and privileges thereto belonging or any way appertaining" was struck. **Mr. Roden** said that language was taken out because no one fully understood what it meant. He does not believe anything has been omitted by leaving out that language.

Senator McKenzie asked how a right or privilege that pertains to land like an easement or the section 42 credits would be affected by omitting that language? **Mr. Roden** said it does not affect anything. There is no intention to omit any rights pertaining to real property. **Senator McKenzie** said, using the example of section 42 credits, would those still be taxable after this passage. **Mr. Roden** responded absolutely.

Mr. LaBeau summed up the presentation of this legislation. There have been many questions about the future of the State. This legislation is drafted

to deal with that future. This legislation exempts personal property tax based on the anticipated growth in the State with a specific trigger. This legislation is designed to help existing businesses and could attract new businesses. This is a bad tax, please send this legislation to the floor with a do pass recommendation.

Senator Corder explained that there are some serious flaws in the legislation:

- Doesn't change with time because it can increase or lose value.
- Correct in policy to adjust for the HOE - data showed it was the right thing to do and this legislation is undoing that effort.
- Contradictory policy of one business being exempt and another is not, and both must be addressed at the same time.

MOTION:

Senator Corder moved to hold **H 599aa** in Committee. **Senator Stegner** seconded the motion.

Senator Stegner said, in his opinion, there is a lot wrong with this bill:

- 1) It takes the tiered funding mechanism into years far into the future and it is done because there is no funding issues this year and that is less than a forthright manner in addressing tax policy.
- 2) There is no method to re-evaluate the distribution of the locked-in money either in terms of an inflationary cost or fairness on county basis. County values will change over the next 25 years and this is locked in time.
- 3) How can we accept a tax policy that will treat taxpayers differently? Particularly, in distribution of some of the replacement revenues based on an arbitrary freeze where revenues are paid off in a short time but they continue to receive the money referenced as the "angel money" compared to those districts passing levies and don't have the benefit of replacement money after the freeze and will have a redistribution of the levy obligation to the existing property taxpayers which represents a significant tax shift. **Senator Stegner** favors some kind of consideration of personal property taxes and has for years but he is not willing to do it at any cost. This bill seems to be crafted by people who benefit and not all interested and affected people were consulted.

Senator McKague asked for an explanation of the trigger mechanism. **Mr. LaBeau** stated that there will be a process of applying a target figure established on all personal property on the tax roll prior to 1/1/08. Everything after that date is exempt. If revenues come into the State at a 5% or more growth rate, then 20% will be exempted and those moneys will be replaced by State dollars. That will continue until 2015 at which time it will be 100% of the target figure originally established. If there is a year that does not meet the 5%, that year is added back.

Senator Langhorst said he will support the motion and added that **Carl Olsen's** letter pointed out some significant issues with the bill. It says that the new bill creates a business opportunity for someone to form a personal property holding company and does not cure that problem. We mandate all the responsibilities the counties have talked about and then pass legislation like this that force them to shift their shrinking tax base to other taxpayers. We are shifting tax payments to the sales tax fund. The theme this year has been that we don't have money and have given up other things and then

there is this legislation that uses sales tax dollars. One other issue that is unfair is the situation in Burley where they are already committed but the project is not completed and will lose all tax dollars on a personal property intensive business and they are left without the ability to pay their obligation.

**SUBSTITUTE
MOTION:**

Senator McKenzie made a substitute motion to send **H 599aa** to the Senate floor with a do pass recommendation. **Senator Siddoway** seconded the motion.

Senator McKenzie stated that he has heard good testimony today from taxing districts on this bill. This is not an easy issue for anyone on this Committee. He shares Senator Stegner's opinion on personal property tax. It is an unfair, inefficient tax. We have been eliminating personal property tax over a period of decades and it has been removed from some taxpayers already and shifted to everyone else. The intent was to take it away for everyone eventually but there has been a lot of demands and the tax still remains on businesses. Senator McKenzie said he is not bothered by the phase in process because it would be hard to do it all at once. This is a good use of surplus money - to get rid of this tax. If we wait for the perfect way of doing it, nothing will be done. It is the right tax policy for the State to get rid of the personal property tax for everyone.

Senator Siddoway said this is a horrible tax. He committed to his constituents that he would do whatever possible to eliminate it. This is just a start and there will have to be changes. The legislation will have to be changed so it doesn't injure the counties. There are always corrections to be made. Phasing this in makes it less injurious. He has empathy for all those who think they will be hurt. Trust us to get the changes made that will make it right and hold counties harmless. He applauds the folks who crafted this legislation. It is unfair to pay tax on personal property for as long as you have it. He will be supporting the substitute motion.

Senator Corder spoke against the substitute motion based on the testimony heard today. We can disregard those county people who came prepared and showed the Committee how this change would affect them. This is not a phase-in. January 1, 2008 is the date it starts to hurt people. There will not be time to fix this until next year. This could have come with a funding source but it didn't. We all want to get rid of this tax but not by penalizing the counties and cities and taxing districts. This tax is not declining, it is increasing. There has been a growth in exemptions and now we are adding some more and that doesn't count the exemptions added during this session. Those dollars will shift back to the taxing districts. It is not fair to consider this without a funding source. Just can't support that.

Senator Bilyeu recognizes the concerns with personal property tax but she cannot go along with this particular bill because it harms the new businesses that have committed to some of our communities. This will hurt those businesses in Pocatello and Burley. This will cause huge harm to cities and counties and the shift to home owners and small businesses. She will vote no on substitute motion.

Senator Heinrich said last year was a tough one on this issue and it isn't any easier this year. However, he is optimistic. Schools maintenance and operations was shifted off the property tax. The next thing to do is shift the

tax off of personal property. The final property tax relief should move all the counties Justice Funds to the General Fund. This is a phase in process and we have to do something to address the levy limited counties and the only way to do this is to start now. This bill is the first step to ease into this process. The percentage of personal property taxes has been reducing over the years. This will freeze, there will be winners and losers. That was true with the ag replacement. We can work this through by making the steps to help the counties. In addition, we need more than tokens to supplement this exemption. He supports this motion.

Senator Siddoway said this is an opportunity to ease into this and if we believe that growth will be 5%, which probably won't happen, we can look at this again next year and come up with changes with input from all those concerned. This is not written in stone. Lets just get started.

Chairman Hill thanked everyone for being there and participating in the process. This is a difficult issue and there are some passionate feelings on both sides but tomorrow we will still go to lunch together and he hopes everyone here feels the same way. Your constituents are the Committees' constituents and their best interests are foremost regardless of what happens here.

**VOTE ON
SUBSTITUTE
MOTION:**

The substitute motion carried by roll call vote.

Ayes: Senators McKenzie, Siddoway, Heinrich, McKague, and Hill

Nays: Senators Corder, Stegner, Langhorst, and Bilyeu

Chairman Hill took the prerogative to explain his vote. There are definitely many sides to this issue and he recognizes and appreciates those sides. He is supporting the substitute motion because this is an unfair tax. Mr. Allred's testimony was an influencing factor. We have to look at the burden everyone has to bear and we have responsibility and commitment in this state to give home owners some special privileges; that is why we instituted the HOE and why it was increased. Are they paying their fair share? He doesn't know what that fair share is. They aren't paying any personal property tax. This is an unfair, onerous tax and it is a tax easy to manipulate and a tax that honest people pay and dishonest ones do not - it is not a good tax.

The only way to get rid of the personal property tax is to reduce property tax. Every effort has been made to soften the blow as much as possible on the counties and all other taxing districts and on the State. But there is no way to get rid of it. We will never know for sure if this is good or bad because it will improve business in the State and it will never be tracked. Unless it is shifted to income or sales tax, there is no other way to do it. The Chairman votes aye and the substitute motion passes.

ADJOURNED:

There being no further business, **Chairman Hill** adjourned the meeting at 7:20 p.m. until Wednesday, March 26, 2008 at 3:00 p.m.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

- DATE:** March 28, 2008
- TIME:** 8:30 a.m.
- PLACE:** Room 211
- MEMBERS PRESENT:** Chairman Hill, Vice Chairman Corder, Senators Stegner, McKenzie, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu
- MEMBERS ABSENT/
EXCUSED:**
- 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 Hill** called the meeting to order at 8:35 a.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.
- PRESENTATION:** **Chairman Hill** presented Austin Porter, Committee Page, with a letter of appreciation signed by all members of the Committee, a letter of recommendation, a book autographed by the author, and a memory book of his days spent at the Legislature in appreciation of a job well done.
- MINUTES:** **Senator Bilyeu** moved to accept the March 11, 2008 minutes as written. **Senator Langhorst** seconded the motion.
- VOTE:** The motion carried by a unanimous voice vote.
- H 664** ***Relating to Income Tax Credits for Research Activity to repeal a tax credit for research activities.***
- Representative Dennis Lake** explained that the Research and Development Tax Credit went into effect in 2001. The purpose of this bill is to repeal that credit as a result of the recommendations from the Interim Committee on Exemptions.
- MOTION:** **Senator Heinrich** moved to send H 664 to the Senate floor with a do pass recommendation. **Senator Siddoway** seconded the motion.
- Senator Heinrich** stated that there will be approximately \$2.0 million in savings to the State and removing the credit will not prevent any company from doing research.
- Senator McKenzie** said this is part of the work on the personal property tax bill to get it through the process. This bill was the bait and switch bill.
- Senator Langhorst** said he appreciates that this bill will remove some exemptions and it does have a positive fiscal impact. However, this is not

the way to do it. He believes that our system of exemptions favors the wrong kind of businesses, ones that are declining and don't pay well. But this exemption could have helped new types of businesses that are growing and which pay well. He will vote against the motion.

VOTE: The motion carried by voice vote.

Senator Langhorst is on record as voting no.

H 656

Relating to Development Impact Fees to clarify that the definition of "development" does not include public facilities constructed by taxing districts.

Representative Mark Snodgrass presented H 656 to the committee stating that this bill excludes any public utility from falling under the definition of "development" under the Idaho Development Impact Fee law. This would include: 1) Water production, treatment, storage and distribution facilities; 2) Wastewater collection, treatment and disposal facilities; 3) Road construction and associated components both state or federal; 4) Storm and flood water containment; 5) Parks and recreation areas and related capital improvements; and 6) Public safety facilities i.e. law enforcement, fire, medical/rescue, and street lighting.

This bill is basically a clarification of the definition. It has no fiscal impact to the State and very little for local jurisdictions. The impact fees that are received are offset by the impact fees that are paid out.

Chairman Hill recognized Mayor Tammy deWeerd from the City of Meridian as being present.

MOTION:

Senator McKenzie moved to send H 656 to the Senate floor with a do pass recommendation. **Senator Stegner** seconded the motion.

VOTE:

The motion carried by unanimous voice vote.

Senator Fulcher will sponsor H 656 on the Senate floor.

H 680

Relating to Community Infrastructure Districts to create a taxing district comprised by the boundaries of a new development and to allow for funding within that development district.

Jeremy Pisca, representing the Idaho Building Contractors Association, Idaho Association of Realtors and M3 Eagle, presented this legislation to the Committee. Idaho is a high growth state and the citizens of Idaho want growth to pay for itself and H 680 will provide an economic development tool to do that. It is impossible to decouple residential growth from economic development. Roads are congested and something must be done to address this issue. Up to this point, tax dollars and impact fees have been appropriated but these methods come too late in the process.

Developers do not pay these fees, builders pay fees at the time permits are issued and as homes are built and sold the money trickles in after the roads, water and sewer systems have gone into the subdivisions and nothing has been done to upgrade the arterial infrastructure. A Community Infrastructure District (CID) will provide a mechanism that will alleviate these problems by creating a special taxing district that pays for

“regional community infrastructure.” This is a tool to prepay development impact fees and it is directly related to the residents moving into the development. Existing residents would not be responsible to pick up these costs. A taxing district is established, bonds are secured and that bonding capacity allows for the prepayment of the construction of the infrastructure to a jurisdiction prior to the construction of the development.

A CID is a flexible tool in that it allows a jurisdiction to choose any combination of three types of financing:

- 1) General Obligation Bonds limited to 12% of the assessed value of the lands within the district.
- 2) Special Assessment Bonds at a ratio of 3 to 1, land value to debt.
- 3) Revenue Bonds using future user fees (water/sewer) as security.

The formation of a CID **is optional at the local level**. No jurisdiction will be forced to use a CID, it only gives them a tool. A CID can only be used to fund “regional community infrastructure” meaning infrastructure that is impact fee eligible. A CID cannot fund private infrastructure, only community infrastructure which will be owned publicly by the State, city, or county; a city in its incorporated area and a county in an area contained within a city’s comprehensive plan but only with that city’s approval. A CID is subject to all applicable municipal/county codes.

When a CID is formed, the users of the infrastructure will have a slightly higher tax than existing users. A notice of the CID must be recorded on the title of each parcel that is associated with the CID. The notice must include the current financial obligation of the property owner, future obligations, and the estimated maximum tax or assessment. There must also be a statement of disclosure of the CID signed and acknowledged by a purchaser. The governing agency may add more requirements above what the law requires.

A landowner/developer or 2/3 of all landowners would petition the local unit of government who would then have a hearing. If an infrastructure district was created it would define what kind of infrastructure should be built and how it should be built.

Mr. Pisca proceeded to go through the bill by page and line numbers to describe exactly what the bill will accomplish. There were intermittent questions as follows:

Senator Heinrich asked if a city’s comprehensive plan was the same as the area of impact? **Mr. Pisca** said it was not. The comprehensive plan is more detailed and would most likely be within the area of impact.

Senator Bilyeu asked for confirmation that the comprehensive plan is not in the area of impact. **Mr. Pisca** said that most plans are contained within an area of impact.

Senator Bilyeu said that if there are many cities, do they all approve of the CIDs? **Mr. Pisca** said that with the CID, the landowner must petition the city and the city must approve.

Senator Bilyeu asked if it is possible to have competing cities with comprehensive plans that overlap one another? **Mr. Piskan** said yes.

Senator Bilyeu asked if there is more than one comprehensive plan, who decides which one will apply? **Mr. Pisca** said that one way would be whichever city approved the petition or they may come to some agreement between the two cities.

Senator Bilyeu asked if a petition required 2/3 of the landowners, could there be just one owner? **Mr. Pisca** responded yes.

Senator Bilyeu referred to the bonding issue, and asked who holds the elections and who votes? **Mr. Pisca** read from the bill: "Any election pursuant to this chapter shall be a nonpartisan election, and in regard to election dates, shall be held in compliance with Idaho Code."

Senator McKenzie asked if, under the general obligation bonds, do only those in the district vote? **Mr. Pisca** said that only those in the district would vote and the CID would be the same as the boundaries of the development.

Chairman Hill asked if the bonds are only for the district. **Mr. Pisca** concurred. **Chairman Hill** asked if the petition could only be initiated by the landowners or residents, not a city? **Mr. Pisca** stated that only landowners or residents could petition.

Senator Langhorst stated that if a city wanted to prioritize infrastructure improvements, the city could propose the idea of a CID to a landowner/developer but the city could not use a CID as a tool by itself.

Chairman Hill asked for an explanation of the difference between a general obligation bond and a special assessment bond. **Mr. Pisca** described a general obligation bond as a levy which had to be voted on and a special assessment bond as one that occurs after a petition is submitted. A hearing is held to determine whether a special assessment should be imposed. Again, **Mr. Pisca** emphasized that this is a local option, a city or county can say yes or no to the petitioner.

Chairman Hill asked whose obligation is it to pay the debt incurred by the bonds? **Mr. Pisca** responded that the bonds were not paid by the city or county. The bill states "Bonds issued by a district shall not be a general obligation of this statecounty or city in which the district is located and shall not pledge the full faith and credit of this state.....county or city in which the district is located. The property owners within the district pay for the debt incurred.

Chairman Hill asked what would happen in the case of default? **Mr. Pisca** responded that cases of default are diminimus. **Carter Froelich**, representing Idaho Board of Realtors and M3 Eagle, interjected to answer this question. In the case of revenue bonds, the security is the asset, water/sewer fees. Security for the general obligation bonds would be the land itself.

Senator Bilyeu asked if there is a large piece of land being developed, and it goes into default, will the remaining people be obligated to pay? **Mr. Froelich** said yes that could happen at the target tax rate.

Chairman Hill asked when ownership transferred to the community? **Mr.**

Pisca referred to the bill, “ultimate public ownership of the community infrastructure financed by the district.” The community would be the owner from the initial contract or agreement.

Senator Bilyeu requested an explanation of the estimated tax rate and how it is determined. **Mr. Pisca** responded that the estimated tax rate would be determined using the fair market value.

Senator Bilyeu questioned the reason for not including personal property for taxation purposes within a CID. **Mr. Pisca** stated that loans are not available that include personal property.

Senator Stegner asked if the bonds would be able to participate under the State Bond Bank? **Mr. Froelich** responded that these are known as “dirt bonds” and would not qualify.

Chairman Hill asked the will of the Committee because time was short. Senator Corder was excused. Discussion continued.

Senator Bilyeu asked why a city would not favor this bill? **Mr. Pisca** said that he couldn’t say exactly why they wouldn’t but it is a choice. It is a local option. There have been three cities that objected to this bill and it is only speculation as to the reason.

Senator Stegner said these kinds of development costs have been traditionally born by the private developer and passed on to the buyers of property would now be financed through other vehicles and passed on to the buyers of property and then attaching liens to the property. Why is this change in the financing mechanism for development good public policy?

Mr. Pisca stated that no matter how it is financed, it is passed on to the buyer. This method makes it more transparent and the development pays for the main arterial infrastructure. The CID becomes a political subdivision of the State and must comply with all the statutes of the State.

Senator Bilyeu asked if these parcels were going to be a subdivision, then how does the city get property taxes from that subdivision? **Mr. Pisca** stated they would pay the property tax the same as anyone else, the CID amount would be added on.

Chairman Hill stated that this will not affect anything else in any way.

Senator Bilyeu asked if this is a “sneaky way” to annex property? **Mr. Pisca** said that annexation could not happen unless both sides agree. Sometimes the developer and city have an agreement before the development is started.

Senator Langhorst stated that as far as annexation goes, this gives cities one more bargaining chip.

Senator Siddoway asked if there is a question of double taxation, would the city agreement avoid that? **Mr. Pisca** said that if the developer is paying impact fees, he would be getting a credit.

Senator Bastion emphasized that this is for regional infrastructure.

1) To overbuild trunk lines on water/sewer and improve streets/roads.

- 2) This is done with all parties consent and goes through public notification.
- 3) Development is done when it is needed not later.
- 4) There are caps that prevent incurring debt beyond the ability of the security to cover it.

Senator Bilyeu asked if this is market value or assessed value? **Senator Langhorst** stated market value is assessed value. **Senator Bilyeu** concurred that it was fair market value as appraised by a Master Appraiser of Idaho (MAI).

Senator Bastion stated that this is a good tool for communities and urged support of this bill.

MOTION:

Senator Heinrich moved to send H 680 to the Senate floor with a do pass recommendation. **Senator Siddoway** seconded the motion.

VOTE:

The motion carried by voice vote.
Senator Bilyeu is recorded as voting no.

ADJOURNED:

There being no further business, **Chairman Hill** adjourned the meeting at 9:45 a.m. until announcement of the next meeting place and time at the call of the Chair.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: March 31, 2008

TIME: 9:00 a.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Corder, Senators Stegner, Siddoway, Heinrich, McKague, and Bilyeu

MEMBERS ABSENT/ EXCUSED: Senators McKenzie and Langhorst

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 Hill** called the meeting to order at 9:15 a.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.

H 655aa ***Relating to a Sales and Use Tax Rebate to Certain Developers of Certain Retail Commercial Complexes to revise eligibility criteria and to further define the term "highway improvements."***

Representative Nonini presented H 655aa to the Committee. He gave a brief history of last years bill known as the STARS bill (State Tax Anticipation Revenue). The bill allowed a private developer to expend their own funds for needed highway/roadway infrastructure improvements and then, under certain conditions, a portion of the sales tax revenue from the new retail outlets in the development could be rebated back to the developer to offset some of the cost. In the case of last years bill, the discussion revolved around a freeway interchange. It was a needed interchange but the Idaho Transportation Department (ITD) did not have it scheduled for the near future. This method of funding provided the means for the construction of the interchange to begin in 2007.

This year, H 655aa provides for some proposed changes to last years bill. Senator McGee will explain the changes.

Senator McGee stated his support of this bill. It is a good piece of legislation that helps private and public entities become partners to create transportation infrastructure.

Senator McGee said he has been exploring different ways to come up with needed funding for roads across the State but that has not been very successful. These types of partnerships are really important to do something immediately on major infrastructure. These are new dollars. Companies are attracted by this mechanism. They can come to a fast growing area and build a needed interchange or major piece of thoroughfare that the State is unable to provide at this time.

The changes to this bill involve the 60/40 split ensuring that 40% of the new money generated by the new commercial enterprise is transmitted to the general fund and 60% will reimburse the development for the road investment and then, after the

reimbursement is completed, the sales tax will go to the general fund. This language clarifies that the developer or business will receive the benefit of the sales tax reimbursement.

Senator McGee said he is here in support of this concept and tool.

Tammy deWeerd, Mayor, City of Meridian, spoke on behalf of H 655aa. This bill is constructed to clarify some language for a bill passed last year giving cities and counties a critical tool to help plan and construct transportation infrastructure.

The Attorney General (AG) was asked to review H 250, last year's law. In his opinion, the AG states "the ambiguities in the existing language exposes both potential investors as well as the State to certain risk." His opinion has prompted the City of Meridian, a potential investor, and ITD to craft language to address the inconsistencies in the current law. The clarifications are not intended to change last year's law but to assure that this tool can be used without risk to the participants.

Meridian has a project that appears to qualify under the current law. They have worked with ITD, the Tax Commission, and notified the Governor's Office about this project. The project applies to a State highway (Highway 55) known as Eagle Road that connects to an interchange to I-84. Eagle Road currently has a non funded plan. The proposal is to add a third lane going both North and South from the development to I-84, about 2 ½ miles. They would use interest free, private dollars, up front to build a much needed corridor improvement. Most projects that would be considered by the State would be unique and high generators of tax dollars minimizing the payback schedule. The current law sets the thresholds at \$4.0 million in new development investment generating new retail sales tax. Investments must be a minimum of \$8.0 million and a maximum of \$35.0 million. The State has the final decision on the projects that qualify.

This law was intended to give cities and counties a tool for development. Please recommend a do pass for this bill and allow it to be the tool it was intended to be.

Senator Stegner asked for the specifics of the plan for Eagle Road. Is it your intention to widen Eagle Road using this type of financing? **Mayor deWeerd** stated they do have a developer interested in building an offsite improvement from their development to I-84. There would be a third lane added for Northbound traffic and one for Southbound traffic plus a center median to help control access. **Senator Stegner** asked if this improvement would go from State Street to I-84. **Mayor deWeerd** responded that no, the project is 1/4 mile North of Fairview and so it would be about 2 ½ miles of improvement. That is basically the first phase intended by the corridor plan. **Senator Stegner** asked if the whole corridor was about five miles long? **Mayor deWeerd** said it would be about 5-6 miles. **Senator Stegner** asked if the concept is about one-half that distance. **Mayor deWeerd** agreed it would be 2 ½ miles.

Senator Stegner said this type of financing was designed to put in an interchange that would then accommodate a new commercial center. It is my opinion that this is a significant broadening of the authority that STARS financing was designed for. This bill is extending the definition of highway improvements to the construction of improvements or upgrades to arterial or collector public roads. This is no longer talking about just the interchange, it is talking about the potential construction of new highways or, at least, the improvements to those highways that would include any number of improvements far beyond the construction of the highway. Existing commercial enterprises will not be contributing to this highway construction project.

Taking in 2 ½ miles of road means a significant obligation for anyone who develops along that corridor now contributing a large portion of the sales tax to highways. That is a complete change of the concept of STARS financing. Is the purpose of this bill to now have anyone who locates on that 2 ½ mile corridor contributing their sales tax dollars to that purpose? **Mayor deWeerd** said that was not the case. This is for one single project. This one single project would be funding the entire improvement and it is sales tax generated by the same one single project that would be used for the reimbursement. This would go through the State process involving the State Tax Commission and the Transportation Department. The legislation provides for a single developer and a single development. **Mayor deWeerd** pointed out that *Section 40-201, Idaho Code* includes the definitions that are in this legislation and that section is referred to several times in the current law. The intent is to make the language consistent throughout the bill and to take some of the ambiguities out of the law so it can actually be used as the tool that it was intended to be.

Senator Bilyeu asked for elaboration on what the one development and one project was. **Mayor deWeerd** responded that this project is an upscale lifestyle center with boutique, village type shopping. It will have a single owner and a high end, high sales tax generator. **Senator Bilyeu** referred to the “arterial or collector public roads” and could not visualize one project as needing those types of roads. Are there a number of public roads that are intended to be paid for by this funding? **Mayor deWeerd** said in this particular project there is a “spine” road which is a collector road and is an offsite improvement. This project must go through an onerous process to qualify.

Senator Bilyeu recalled that she supported the bill last year, however, she is concerned with the collector public roads. It speaks further than just one development. **Mayor deWeerd** reiterated that the language is already in the current code.

Representative Snodgrass said if these improvements were made in Meridian on Eagle Road, there are several other areas that would benefit from this project. Every retailer along the 2 ½ miles would have better access as well as the hospital. The tenant 2 ½ miles down the road would be responsible for the improvements but there would be several extraneous benefits as well. Every single entity along that highway would benefit.

Representative Snodgrass stated the 2 ½ - 3 miles from the interchange North to this proposed development is generally retail, light industrial, office, and restaurants. Beyond that to the North are middle to high-end subdivisions so that would not be commercially developed. The three mile stretch is all that would be developed.

Chairman Hill said that the concern may not be about this project as much as it is about what it does for other projects. How much sales tax will be siphoned off the top for transportation? **Representative Snodgrass** said one issue is, if the development was always occurring right at the site of the interchange, there would never be an issue. Unfortunately, where development has occurred off the interchange, the need to go further must be considered. This bill clarifies that if it is new money that is put in the project, that issue will be addressed.

Senator Stegner said his specific concern is the expansion of this kind of financing. This bill is written so broadly that it is possible to build roads with sales tax dollars and there doesn't seem to be any limitations. That may not be the intent today, but it is so broad that a municipality anywhere could build a road under this legislation.

Representative Snodgrass stated the \$4.0 million in new money and the \$8.0 million investment into a facility would provide significant “sideboards” to anyone proposing

such a project.

Senator Jorgenson stated the proposed legislation could help a number of situations. There is an area in his district that is growing very fast, a large subdivision is planned along with additional businesses. The arterial road is a bottleneck and a safety hazard. A partnership like this could be used for a much needed interchange.

Representative Henderson said he was one of the original sponsors of the STARS legislation passed last year. One of the concerns was the extension from the heart of the project away from it. Last year's discussions focused on the interchange. The legislation for that project provided authority to extend a road. It was done for reasons of traffic safety and the accommodation of the increased traffic that would be generated because of the improved interchange. He understands the concerns of going too far. Everyone should know that the sponsors of last year's legislation understood the bill was not restricted to the interchange and it accommodated all the attendant necessities when a highway is improved. All the costs are born by the private sector, there are no State dollars involved. The STARS financing concept is a way that we can attract the private sector to invest into our highway system. Last year's bill was a pilot study for a stand alone project. H 655aa could have a broader application and incentivize the private sector to invest in our highways.

Chairman Hill recognized and welcomed Representative Durst.

Representative Nonini reiterated that existing language does not limit improvements to interchanges and/or related freeway interchange improvements and/or highway improvements. It also refers to *Section 40-201, Idaho Code* for an expanded definition of highway improvements. This is a clean up bill based on the Attorney General's opinion.

These are new dollars. The amendment in the bill clarified that they are new dollars. The State is getting 40% of something compared to 100% of nothing and once the improvement is paid off, 100% will be going to the general fund. There are high thresholds and safety nets for the State.

MOTION:

Senator McKague moved to send H 655aa to the Senate floor with a do pass recommendation. **Senator Heinrich** seconded the motion.

Senator Bilyeu said this is a big change in our policy on how roads are being funded and also a change in policy by using sales tax dollars. It is a concern.

Senator Stegner said the arterial and collector roads language is of concern. There is some need for parameters in this type financing. This bill is not crafted to address those limitations. If this bill goes out in this form without detailed limitations, we are opening up sales tax revenues for straight line highway construction.

Senator Siddoway said he has concerns about putting sales tax dollars into building interchanges and highways. Couldn't this be done under a Local Improvement District (LID) or Community Improvement District (CID)? **Chairman Hill** said it might be done under a CID with a single land owner but they don't use sales tax money to pay it off.

Senator McKague said this is already in place, H 655aa just allows a little more of it.

VOTE:

The motion carried by roll call vote.

Ayes: Senators Corder, Heinrich, McKague, and Hill

Nays: Senators Stegner, Siddoway, and Bilyeu

Senator McGee will sponsor H 655aa on the Senate floor.

H 688

Relating to a Local Option Sales and Use Tax to add a new Chapter 46, Title 63, Idaho Code to provide for a local option sales and use tax.

Representative Lake said that H 688 is enabling legislation for HJR 4. This legislation only becomes effective if HJR 4 is adopted in November in the general election. HJR 4 provides for local option sales tax for a specific purpose if passed by a 2/3 vote on a November election date. It also allows cities and counties to enter into cooperative agreements with government entities. Roy Eiguren will further explain this bill.

Roy Eiguren, Lawyer/Lobbyist, representing Valley Regional Transportation Authority, the regional transit authority serving Ada County, said other organizations supporting this bill are: Idaho Association of Counties, Highway District Association, Idaho Association of Cities, and the Idaho Chambers Alliance. **Mr. Eiguren** said this is a simple bill that is a pure local option sales tax bill. The purpose of H 688 is to provide an additional source of revenue that is not limited in application.

Mr. Eiguren provided an explanation for each section of the bill as follows:

- Authorization for a county or city to impose a tax for an additional source of revenue.
- Establishing a mechanism for a local option sales and use tax to be levied.
- Authorization by 2/3 of the electors and to develop a detailed plan of the purpose of the tax revenues.
- Describing steps to adopt the revenue spending plan.
- Outlining steps for the election to authorize the tax.
- Establishment of administrative responsibilities by the Idaho State Tax Commission.
- Distribution of the funds.
- Authorization for cities and counties to enter into cooperative agreements as provided by *Section 67-2328, Idaho Code*.
- Mechanism for the collection of the tax by the Idaho State Tax Commission.
- Establishment of the local option sales and use tax fund.
- Cooperative agreements entered into by county and cities with the State, other authorities, counties, cities, and highway districts.
- Process for tax repeal, change or extension by a vote of 2/3 of the electors.

Senator Stegner asked if the limit of the tax authorized by a city or county would be 1%? **Mr. Eiguren** responded yes. **Senator Stegner** asked if there could potentially be a city that authorized a 1¢ sales tax and the county authorized a 1¢ sales tax for a total of 2¢? **Mr. Eiguren** responded that was correct.

Senator Stegner referred to the cooperative agreement section and asked if a city or county could enter into an agreement with a third party to draw funds from the sales and use tax fund to use for a specific purpose. **Mr. Eiguren** said yes. There is nothing in the legislation that will have any impact on existing code.

Senator Bilyeu asked who Mr. Eiguren was representing? **Mr. Eiguren** responded that he represented the Valley Regional Transit Authority which is the valley-wide bus transit system.

Senator Heinrich quoted 63-4608 of the bill; "the city or county **shall** contract with the State Tax Commission for the collection and administration of such taxes." I understand that the contract would cost \$125,000. That is a lot of money for small jurisdictions. Do they have to contract with the State Tax Commission? **Mr. Eiguren**

said it was mandatory.

Randy Nelson, Associated Taxpayers, is neutral on this bill but presented data to show what the outcome would be using actual 2005 dollars and adding a local option sales and use tax of 1/2¢. (Handout on file, see NOTE above.) The data also showed the per capita result and the allocation to the taxing district.

Chairman Hill asked why there was such a variance by county? **Mr. Nelson** said some counties had headquarters and commercial activities that would increase the revenues.

Mr. Nelson said the data was expanded to show how the revenues were distributed within the taxing district. For instance, the additional tax was used for jails in Nez Perce County. Resort cities currently have local options through room tax, vehicle rental tax, restaurant tax, and tax on liquor-by-the-drink.

Senator Corder asked how many of those rates require a super majority vote to put them into effect? **Mr. Nelson** responded that there are certain resort areas with 10,000 residents or less that require a 60% majority vote.

Mr. John Watts, Idaho Chamber Alliance, said the 20 Chapters gave full support to H 688 for the sales and use tax to support city and county infrastructure. The Alliance has sought information from a variety of sources that covers a broad spectrum of tax policy to come to agreement for support of this legislation. This is an opportunity that must be seized to provide needed revenues for cities. On behalf of the Idaho Chamber Alliance, Mr. Watts asks for the Committee's support of H 688.

Chairman Hill asked if the Alliance supports this legislation and since it is dependent on HJR 4, do they support that as well? **Mr. Watts** responded that they are neutral on HJR 4. They are not sure a constitutional amendment is required. **Chairman Hill** asked if some Chambers are for HJR 4 and some are not? **Mr. Watts** stated that was correct.

Ken Burgess, representing Community Planning Association of S. W. Idaho (COMPASS), said that cities and counties are feeling the strain on their ability to fund roads, air quality, and other infrastructure that is required as they grow or need improvements. This is a way communities can help themselves. Local option sales and use tax gives citizens the option to decide what they want in their community and how much they are willing to pay for that benefit. **Chairman Hill** asked if the Association supported HJR 4? **Mr. Burgess** said that after much discussion, the Board could not come to a consensus. **Chairman Hill** asked why they could not agree. **Mr. Burgess** said the major concern was that HJR 4 was not necessary.

Senator Bilyeu asked what would happen if H 688 passes but HJR 4 does not? **Chairman Hill** said this bill would do nothing without HJR 4.

Ken Harward, Association of Idaho Cities, stated that they have addressed the same issue. The Board met to discuss this topic but could not come to a consensus on HJR 4. However, they do support the local sales and use tax option.

Tony Ponelli, Idaho Association of Counties, said the Association supports both H 688 and HJR 4. The Association's Legislative Committee has full authorization to make decisions for the Association.

Representative Lake asked for support of H 688 and stated that any change in the bill

would meet with little interest from the House.

Mr. Eiguren stated that the Transit Authority supported both H 688 and HJR 4.

MOTION: **Senator Siddoway** moved to send H 688 to the Senate floor with a do pass recommendation. **Senator McKague** seconded the motion.

Chairman Hill stated that he would not be supporting this bill because of the constitutional amendment.

SUBSTITUTE MOTION: **Senator Bilyeu** made a substitute motion to send H 688 to the 14th Order for Amendment. No second. Motion failed.

VOTE ON ORIGINAL MOTION: The motion failed by roll call vote.
Ayes: Senators Siddoway, Heinrich and McKague
Nays: Senators Corder, Stegner, Bilyeu and Hill
Absent/Excused: 2

ADJOURNED: **Chairman Hill** adjourned the meeting at 10:45 a.m. and any further meetings will be at the call of the Chair.

Senator Brent Hill
Chairman

Twyla Melton
Secretary

MINUTES
SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: April 1, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman Hill, Vice Chairman Corder, Senators Stegner, Siddoway, Heinrich, McKague, Langhorst, and Bilyeu

MEMBERS ABSENT/ EXCUSED: Senator McKenzie

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 Hill** called the meeting to order at 1:38 p.m. Roll call was taken with a quorum present. **Chairman Hill** welcomed members of the committee and guests.

MINUTES: March 12, March 13, and March 18

MOTION: **Senator Siddoway** moved to approve the March 12, 2008 minutes as written. **Senator McKague** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

MOTION: **Senator Heinrich** moved to approved the March 13, 2008 minutes as reviewed. **Senator Stegner** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

MOTION: **Senator Corder** moved to approve the March 18, 2008 minutes as written. **Senator Siddoway** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

H 691 ***Relating to Disposal of County Property to change the current tax deeding process.***

Chairman Hill welcomed Representative Hart and Senator Jorgenson.

Senator Jorgenson said H 691 relating to County Tax Deeds, was passed by both bodies of the Legislature and sent to the Governor who requested that the time frame of two years be returned to three years. The language now reflects three years. That is the only change from the original bill.

MOTION: **Senator Langhorst** moved to send H 691 to the Senate floor with a do pass recommendation. **Senator McKague** seconded the motion.

VOTE: The motion carried by unanimous voice vote.

Chairman Hill announced that H 688 will hold it's place on the agenda.

ADJOURNED: There being no further business, **Chairman Hill** adjourned the meeting at 1:44 p.m. The next meeting will be at the call of the Chair.

Senator Brent Hill
Chairman

Twyla Melton
Secretary